

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Third Session  
April 7, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:10 p.m., on Thursday, April 7, 2005. Co-Chairman Harry Mortenson presided in Room 3142 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mrs. Ellen Koivisto, Co-Chairwoman  
Mr. Harry Mortenson, Co-Chairman  
Mr. Marcus Conklin, Co-Vice Chairman  
Mr. Bob McCleary, Co-Vice Chairman  
Mrs. Sharron Angle  
Mr. Mo Denis  
Mrs. Heidi S. Gansert  
Ms. Chris Giunchigliani  
Ms. Kathy McClain  
Mr. Harvey J. Munford  
Mr. Bob Seale  
Mr. Scott Sibley

**COMMITTEE MEMBERS ABSENT:**

Mr. Brooks Holcomb (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Richard Perkins, Assembly District No. 23, Clark County

**STAFF MEMBERS PRESENT:**

Michelle Van Geel, Committee Policy Analyst  
Celeste Gunther, Committee Attaché

**OTHERS PRESENT:**

Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada  
Tom Collins, Private Citizen, Clark County, Nevada  
Jim Hulse, State Chair, Common Cause, Nevada Chapter  
Mary Lee, President, League of Women Voters of Nevada  
Janine Hansen, President, Nevada Eagle Forum  
John O'Connor, Private Citizen, Fallon, Nevada  
Marilyn O'Connor, Private Citizen, Reno, Nevada  
Stacy Jennings, Executive Director, Nevada Commission on Ethics  
Craig Walton, President, Nevada Center for Public Ethics  
Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada  
Lynn Chapman, Vice President, Nevada Eagle Forum

**Co-Chairman Mortenson:**

[Meeting called to order and roll called.]

**Co-Vice Chairman McCleary:**

[Acting Chair. Opened the hearing on A.J.R. 10.]

**Assembly Joint Resolution 10:** Proposes to amend Nevada Constitution to revise residency requirement for purpose of being eligible to vote in elections. (BDR C-1379)

**Assemblyman Harry Mortenson, Assembly District No. 42, Clark County:**

A.J.R. 10 brings the *Nevada Constitution* in line with the federal law. Our *Constitution* says that a person must reside in the state for 6 months. That is not the case; the U.S. Supreme Court has made the decision that 30 days is the maximum amount of time that a person has to reside in the state before they are eligible to vote. My keen desire to keep the *Constitution* factual, accurate, and follow the 30-day rule, so let's make our *Constitution* accurate.

**Assemblyman Seale:**

This only applies to voters; this doesn't have anything to do with candidates for office?

**Assemblyman Mortenson:**

It has nothing to do with candidates for office; it's purely voting.

**Co-Vice Chairman McCleary:**

When I was doing my bill on qualifications for candidates, I wanted to raise the bar from 30 days to 6 months. Someone at that time suggested putting it into this bill, but I'm not comfortable amending the *Constitution* for that. I think that's something that should remain in statute. Would you agree?

**Assemblyman Mortenson:**

I would prefer not to comment on that at this time.

**Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada:**

We support this. We believe that the best solution is same-day registration. We don't have that in this state, but clearly 30 days would be reasonable.

**Co-Vice Chairman McCleary:**

I will close the hearing on A.J.R. 10 and turn the chair back over to Mr. Mortenson.

**Co-Chairman Mortenson:**

Let's open the hearing on A.J.R. 7.

**Assembly Joint Resolution 7: Proposes to amend Nevada Constitution to repeal limitations on terms of elected officers. (BDR C-235)**

**Tom Collins, Private Citizen, Clark County, Nevada:**

As a former legislator I requested this legislation, and fortunately Assemblywoman Giunchigliani picked it up. This bill deals with removing term limits. In 1997, when this became effective, there were only four legislators in the Assembly that it would have affected. In the early 1990s several states as part of the Republican Contract with America, instituted term limits. Many have already removed them; for example, Utah and Idaho. It was interesting, Idaho removed it, the governor vetoed it, and they overrode his veto and removed it.

[Tom Collins, continued.] Term limits have changed the dynamics of elected officials' functions. A different type of candidate is going to run for office with a term limit in place. The opportunities to serve in the Legislature have changed because of term limits. I've attended conferences with western state legislators, NCSL [National Conference of State Legislatures], and other meetings regarding this. For example, the state of Colorado was stuck with the dilemma of sending almost \$1 billion back to their citizens, while having a deficit of nearly \$2 billion. Some of this is caused by shortsightedness, because they're going to be gone in a few years and don't have to look at the long-term ramifications of their short-term service.

Term limits create an imbalance of influence between lobbyists, career departments in government, and elected officials. The elected official is representing the voters and citizens of the state; therefore, it's important that term limits be removed. If you look at the "Nevada Legislature Election Fact Sheet" available in most State offices, you can see the turnover in every election cycle. The voters need to be the ones ultimately making that decision. The law restricts you from being able to continue to serve and from accomplishing the goals for the state that you've set, based on your voters' input.

Education, the justice system, prisons, the environment, mining, agriculture, safety, air quality, and clean water are long-term issues that we need to address with long-term solutions. Short-term legislators are not going to have that vision or purpose when they run for office. They know they are going to be gone before the consequences come into play. I urge you to support this.

I also want to speak about the influence of lobbying and career department officials. They have to put up with legislators for four or five months and then have a year and a half to go back to what they were doing before. With term limits there is a lack of institutional knowledge. I'm sure that you've all seen the things that we gain from the great people like Assemblymen John Marvel, Joe Dini, John Carpenter, and Senator Dean Rhoads. Whether we agree or not, we have all learned from those who can show us where Nevada has already tread, so we don't take the same path again. Assemblyman Morse Arberry is a great example of how we have been able to work better within our budgets. If term limits stay in place, those coming up will have a different style and purpose, which will change the dynamics of the state of Nevada.

**Assemblyman Seale:**

This is a constitutional amendment, and it got there because the people suggested that we do this. It was voted on twice, so the people have spoken. I

don't know that I disagree with you, especially about institutional memory. If this had been applied 20 years ago, how many people would have been affected?

**Tom Collins:**

I don't know off the top of my head, but one case went to the Attorney General for an opinion. Based on the 1996 election, it would affect Speaker Joe Dini, and Assemblymen Bob Price, and John Marvel. For the Senate, it was going to affect Senators Bill Raggio, Lawrence Jacobsen, Dean Rhoads, and Joe Neal. Less than 20 percent of the Senate and less than 10 percent of the Assembly would be affected in that initial year. As each term progressed, many of those people left. I mentioned more rural people than Clark County elected officials, because, although most of our representatives are elected from Clark County, there is a need for people to understand the issues facing rural Nevada; for example, health care, mining, agriculture, and rural lifestyles. After finishing the property tax issue, you are aware of how hard it is to address the growth in Nevada and still be able to address our rural communities, which sometimes, like White Pine, Esmeralda, and Mineral counties, have declining property values.

We need people who have been out to Hawthorne, Eureka, or Ely, and can represent that area so that we don't repeat mistakes. That gets harder and harder when most legislators are elected out of Clark County. For many of the folks that come up as freshman, it's their first time out of Clark County. They see the Reno airport and drive down the road to Carson City. It's a whole new experience. It is important to realize that Las Vegas is growing bigger every year by more than the size of Carson City. It's like creating a new Carson City every year in Las Vegas. We need people who have some experience with the entire state of Nevada and we need to keep those people in place, or we will become "California-ized." We need to protect Nevada.

**Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada:**

We are in favor of this bill, but we have some different reasons than Mr. Collins. From our standpoint, I don't think it's a question of figuring out who's going to be elected and who's not. We don't have the concern about short-term as opposed to long-term, because we have never been in the Legislature. I don't think that's really the criteria. Ultimately it is up to the public, whether they want someone who's been there a long time or a short time. The purpose of term limits, as I understand it, was to avoid having a professional cadre of politicians being in office for long periods of time. That's not the case in Nevada. We have a citizens' Legislature, as you all know. You have other jobs,

other lives; this isn't something that is all-consuming. It doesn't make sense to avoid having long-terms in a citizens' Legislature, because ultimately the question comes down to the will of the people. If a majority of a district wants someone replaced, they should replace them; if they want to keep them, they should be kept.

**Assemblyman McCleary:**

You just mentioned that the public can choose whether or not they want to keep someone, correct? I have my doubts about this proposal personally, but if someone likes his elected official, on the twelfth year he's gone anyway. It doesn't matter whether the public likes them or not. On the other end, you don't feel that this is taking the public's right to have someone represent them.

**Allen Lichtenstein:**

No, I think that getting rid of the term limits increases that. The term limits artificially restrict the public's right to keep people in office longer than that limit.

**Jim Hulse, State Chair, Common Cause Nevada:**

The position that Common Cause has on this is essentially the same given by the ACLU and the League of Women Voters. Common Cause is a citizen's organization dedicated to giving the people the fullest possible power and participation. Term limits restrict that possibility. A number of years ago, when this was put in the *Constitution*, our executive director was personally in favor of it. Common Cause has been consistently opposed to them, because they restrict the right of the people to keep in office, or to put into office, whomever they choose.

**Mary Lee, President, League of Women Voters of Nevada:**

[Read from [Exhibit B](#).]

I'm here to testify in favor of A.J.R. 7. For the past 15 years the League of Women Voters has been on record as opposing term limits. In 1991, we announced our opposition to term limits for members of Congress, and in 1992, our national conference affirmed our position and authorized the state organizations to take similar actions for state and local governments.

Term limits are bad government all the way around. It robs the people of the right to reaffirm a representative who is serving the people well. It robs them of the right to remove a person from office, and it negates one of the principal tenets of our

*Constitution*—the balance of power. In 1993 and 1994, the League of Women Voters of the states of Washington and Arkansas participated in suits challenging state term limit laws based on the *United States Constitution's* principle of the balance of power. Limiting the people's representatives by term limits unduly shifts the balance of power to the Executive Branch of the government. In 1995, after hearing the Arkansas case, the Supreme Court agreed that term limits imposed by states on the U.S. House of Representatives and Senate are unconstitutional. Proposals to amend the *Constitution* to impose term limits were also defeated every time, largely because of successful lobbying by groups such as the League of Women Voters.

We believe that the people have the right to express their position about their representatives at each and every election. This is the process that keeps our democracy strong and attuned to events of the moment.

[Mary Lee, continued.] Bobbie Gang [Nevada Women's Lobby] asked me if I would present her position on this as well; she is also in favor of it. Basically, what she says is that term limits infringe on our voting rights. [Read from [Exhibit C.](#)]

Term limits suggest that the majority vote of citizens is not good enough to elect the best person for the position. Nevadans can impose term limits through the ballot box. By exercising our right to vote, we can retain those who work hard for our issues and defeat those who do not agree with us. In this way, incumbents are challenged to prove their statements and actions that they deserve to be re-elected.

**Janine Hansen, President, Nevada Eagle Forum:**

I have opposed term limits for many years, but there is something more that might be accomplished by this. Several years ago I worked with former Assemblyman Bob Price, who was the Chairman of this Committee, and he shared research by the Legislative Counsel Bureau with me ([Exhibit D](#)). It shows that out of the seven states where this initiative was passed, six of them were overturned in the courts. That's an important issue. The Legislative Counsel Bureau concludes: because it includes calling an Article V Constitutional Convention, they feel that this is unconstitutional and that if it were to proceed into the courts, it would be overturned. Although this particular piece of legislation repeals the term limits, it doesn't repeal the original constitutional

amendment, which I think is far more important. This can be found on page 72 of the *Nevada Constitution*. It instructs state legislators to urge Congress to convene an Article V Convention upon the application of two-thirds of the states. I was in charge of coordinating national efforts to oppose the call for the constitutional convention, because we were concerned that it cannot be limited to one subject.

[Janine Hansen, continued.] I worked with people from the AFL-CIO [American Federation of Labor-Congress of Industrial Organizations], the national teachers organizations, and the ACLU, who came together to oppose the call for a constitutional convention, because of their fear that it would be an unlimited convention, which would be out of control. Once a constitutional convention has been called, they are a power unto themselves and become a power beyond Congress. These term limits were passed in conjunction with that.

I would suggest that you amend this to repeal the entire constitutional amendment that was passed, because it has already been declared unconstitutional in many states, and also because of the possible danger a constitutional convention poses. It is inoperative now, but I think that it cannot be ignored considering what might happen in different circumstances. It's very important to safeguard our *Constitution*. People from all parts of the political spectrum have come together on this issue, and I don't think there'll be a lot of opposition.

**Assemblyman Denis:**

You mentioned 6 out of the 7 states. What about the seventh state? Why hasn't it been overturned there?

**Janine Hansen:**

It's outlined in this research ([Exhibit D](#)). The case in the Idaho Supreme Court, *Simpson v. Cenarrusa* [944 P.2d 1372 (Idaho 1997)] was not overturned, but the state legislature did. Would Mr. Collins be willing to include the repeal of that call for the constitutional convention with this? I think it's friendly to what he's trying to do.

**Tom Collins:**

In the past, Bob Price, Assemblywoman Giunchigliani, and I have talked about this. This is supposedly a two-pronged effort. If the Legislature doesn't want to pass a resolution and change the *Constitution*, the other option would be to go to the courts. I would support either method. Idaho's legislature overturned the term limits. This is archaic language and most states are changing it. I hope that Nevada will do the same thing.



**Co-Chairman Mortenson:**

It amazes me that one group after another is coming forward against this. Where were you when the referendum was going on?

**Janine Hansen:**

We publish our voter guide every election. We did take a stand against the call for the constitutional convention and the term limits. People didn't understand the issue, especially the constitutional convention issue. We did all we could to oppose it at that time. I guess we put out at least 50,000 voter guides. It's easy to explain term limits, but it's hard to help people understand the call for the constitutional convention, which is a major concern.

**Co-Chairman Mortenson:**

Lynn Chapman [Vice President, Nevada Eagle Forum] wanted to be on record in support of A.J.R. 7.

**John O'Connor, Private Citizen, Fallon, Nevada:**

[Submitted [Exhibit E](#).] I'm in favor of enforcing term limits. There are young lobbyists, like myself, who have been here several sessions and would like to sit in those chairs. This last election I ran against Senator Mike McGinness, but so long as he is in office I'll probably not be able to win. On behalf of a younger generation, we would support the enforcement of term limits so we can have a chance to sit there and make decisions and be involved.

The voters voted for term limits, which have not even been enforced yet. They were supposed to be enforced immediately, because there is no clause giving sitting legislators the prospect of running for an additional 12 years. When you're dealing with a constitutional amendment, a prohibition, there has to be a clause, just like in the *U.S. Constitution*. I think we need to enforce term limits. We have ineligible candidates currently in office; I'm still waiting for a decision from the Nevada Supreme Court on that.

**Marilyn O'Connor, Private Citizen, Reno, Nevada:**

All the arguments that I've heard today were made before the people passed the constitutional amendment for term limits. The reason people voted for term limits is because they felt shut out of the process. This year I see a big change. I like what I see and I like term limits.

**Assemblyman Seale:**

I don't know that term limits had anything to do with the last election. Indeed the citizens have the right to turn people out. In 1990, I decided to run for Treasurer, against a sitting incumbent in the primary. There were good reasons

why I won, and I was able to explain those to the citizens. Just because somebody is sitting in a seat and wants to stay there doesn't mean that he's going to. I'm not sure I follow your logic.

**Marilyn O'Connor:**

But you were the State Treasurer, right?

**Assemblyman Seale:**

That's correct.

**Marilyn O'Connor:**

So, you already had a political "name."

**Assemblyman Seale:**

No, I wasn't State Treasurer when I ran for that office the first time. I was running as an outsider.

**Marilyn O'Connor:**

But when you ran for this position you had name recognition.

**Assemblyman Seale:**

That has nothing to do with the issue that I'm talking about.

**Marilyn O'Connor:**

With term limits there's an even playing field. The incumbent is out, and then newcomers can compete for the office. Our founding fathers, beginning with Thomas Jefferson, were in favor of rotation in office. That information is on the compact disc too ([Exhibit E](#)). More civic-minded people will be involved in government, instead of people that want it to be their profession.

**Co-Chairman Mortenson:**

I think Mr. Seale is trying to say that he was a new candidate running against an incumbent, and he won. There is no reason why anyone else can't do that.

**Marilyn O'Connor:**

Oh, you mean when Mr. Seale ran for Treasurer, you were new. Who did you run against?

**Assemblyman Seale:**

Kenneth Santor.

**Assemblyman Munford:**

The constitutional officers—the Governor, Lieutenant Governor, Secretary of State, and Treasurer—are on term limits, aren't they? How was that set?

**Marilyn O'Connor:**

The people voted to place term limits on the Governor in 1967.

**Assemblyman Munford:**

Bob Miller couldn't run again because of the term limits. At the national level, the President of the United States has a term limit. In 1959 they passed it at the national level because there wasn't any. That's a power thing too. The people felt that it took away from a party being able to participate and have a role, because the Democrats were in power for 20 years. Younger people seem to be more in favor of term limits. The middle age people who have been voting for a long time seem to be more against it. I always had a mixed feeling about it. I thought, new blood is good once in a while, because otherwise some of them become career politicians. They have access to a lot of things.

I'm a freshman and I ran against a candidate who had been in for 18 years, and many of my constituents felt it was time for a change.

With this bill, I'm not one way or the other right now. The people put it in, so they felt it has some merit. That's what concerns me.

**Assemblyman Conklin:**

I've heard some people suggest that term limits are a result of voter apathy. I'm curious if you subscribe to this philosophy. It seems to me that by setting term limits, what we're saying to people is that in between those times there's no reason to go out and vote. It's only at the end of term limits, every twelfth year, or whenever, that you might have an increase in voter turnout. The flip side of that argument is if every election were equally as important, more people would come out to vote.

**John O'Connor:**

I think you're right. If term limits were enforced, on that twelfth year when you have new candidates, you'd see a jump in voter turnout.

**Assemblyman Conklin:**

Is it really term limits that voters turn out for? Should voters be interested in every election? There are plenty of candidates out there, such as yourself, who are willing to challenge incumbents. In the end, they may choose not to run for a variety of reasons. Everybody up here had to step out on a plank to run for

office. Most of us had to do it against other strong candidates. Whether somebody is unable to run for office again, because of term limits or not, should not be a discouragement for potential candidates. If that is what you choose to do, you have to put your mind to it. Does that mean you won't have obstacles to overcome? No. But I guarantee that you'll have those same obstacles even if you were running against another new candidate, because there are always plenty of people out there to run for an open seat.

**John O'Connor:**

Yes, it was intimidating running against a 12-year incumbent—flawless record, nothing bad to say about him, no mud to sling—but I did it anyway. He's unbeatable; I could never raise enough money to beat him. If had been limited from running again, as the *Constitution* said he should have been, I could have succeeded.

**Co-Chairwoman Koivisto:**

You said that he has a flawless record. Why would you want to turn him out if he's doing a good job? Just so that you can sit in his chair? Unless he's doing something that you don't like, or he's doing something wrong.

**John O'Connor:**

What I meant by flawless record is that he's done a good job, but our issues are very different. Senator McGinness is more business oriented; I was more involved with the labor unions, but we're both Republicans.

**Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:**

I picked up A.J.R. 7 for Commissioner Collins; he actually requested it. We've been talking about this for four years now. To give you a brief history, I don't support term limits, I didn't sign the petition, and didn't vote for it. The sad part of the issue is that there was a national group that actually started term limits. It was a ploy, when women and minorities were being elected to office, to deal with term limits. It takes away the choice of the voters. As a legislator, I'm doing a job; they can either hire me or fire me each time I run for office. Term limits take that choice away.

When this term limit law went into effect, there were a few interesting and unconstitutional actions. The Supreme Court took themselves out of a petition that had been signed and voted on by the people. They made that constitutional amendment invalid. We probably should have challenged it in court, and we still might. Since nobody has brought that issue forward as a court case, it's time to go back and have the public think about this.

[Assemblywoman Giunchigliani, continued.] There was also an interesting ruling by the Attorney General that said it doesn't apply until certain individuals were in office. The 12-year clock did not start ticking upon the vote of the people; it was extended. That also was inappropriate. There were a lot of changes made to the constitutional amendment that had been signed and voted on by the public, to protect certain interests. That makes it very vulnerable to challenges.

Regardless of where you stand on this issue, term limits do restrict the voters' choice. Term limits do not make or break an incumbent. If you think of our Assembly races, every session, for the 16 that I've served in, one-fourth of our people are turned over, sometimes upwards of one-third. The voters speak quite clearly as to whether you're doing your job or not. Term limits shouldn't be interpreted as being a protection of an incumbent; that's not the intent. As an incumbent you have to stand on your record. You are actually more vulnerable. Yes, you can probably raise more money in some cases, but not always. It comes down to the campaign.

I hope you give this bill your consideration. Seven states' laws that had term limits have been overturned. Janine Hansen did point out that if we process this, we probably should pick up the issue of the constitutional convention, which would need to be removed as well. I think someone should challenge this in court, but if not, the public should be given the chance to re-think the actions that were taken, that have been modified by our own court.

**Assemblyman Seale:**

Given that it wasn't that long ago that the public voted on this, and that this legislation will have to go through the same process—through the Legislature twice, and then once to the people—what are they going to think at that point? What's going to change their minds?

**Assemblywoman Giunchigliani:**

If people cared about the issue, we should have put on a campaign. We didn't. Nobody did a pro/con debate on this; it was very complicated. Nobody stood up to explain what was wrong with it.

**Assemblyman Seale:**

I suspect that people didn't stand up because we didn't want to have the bad press.

**Assemblywoman Giunchigliani:**

I would agree with that.

**Assemblyman Munford:**

That was the question I was going to ask. When it gets back to the people, what are they going to say about this?

**Assemblywoman Giunchigliani:**

We have an obligation; we have to get past dealing with what's right in the polls and offer a debate and discourse on this topic. The public deserved that, and we didn't give that side of the story. The public is very smart, but they aren't always as interested in the same issues that we are. Just because they may be disinterested doesn't mean we shouldn't put forth the argument.

I don't think term limits have anything to do with turnout.

**Assemblyman Munford:**

If this passes here, it has to go again?

**Assemblywoman Giunchigliani:**

It has to pass again next session, and then it goes to a vote of the people. It's a 5-year process.

**Assemblyman Munford:**

The people that are in office are still there, even though their term might expire.

**Assemblywoman Giunchigliani:**

I have to go back and look. If it was 5 years, it would be just before the first limit is reached.

**Assemblyman Munford:**

Would the term limits affect anyone that is now serving?

**Assemblywoman Giunchigliani:**

Yes.

**Assemblyman Munford:**

So, while this constitutional amendment is being processed, before it can be enacted, some people could lose their seats. Would they be protected?

**Assemblywoman Giunchigliani:**

This isn't an issue of protection. If this passes within 5 years, the term limits would not kick in; that would come in the sixth year.

**Assemblyman Munford:**

So those that were elected in 1996 would still be okay?

**Assemblywoman Giunchigliani:**

Correct.

**Assemblyman Seale:**

Except for the constitutional officers.

**Assemblyman Munford:**

Constitutional officers are limited to two [4-year] terms anyway.

**Assemblywoman Giunchigliani:**

Right.

**Assemblyman McCleary:**

Until someone is affected by this, can we challenge it?

**Assemblywoman Giunchigliani:**

Absolutely. It can be any individual; it doesn't have to be any group. You'll notice in here ([Exhibit F](#)) there was a variety, from League of Women Voters to individuals, who challenged it in other states. I always felt that the Legislature itself should step up.

**Assemblyman McCleary:**

Has it been challenged?

**Assemblywoman Giunchigliani:**

Not in Nevada.

**Assemblyman McCleary:**

I would feel more comfortable challenging this than going back and legitimizing the original proposal by trying to reverse it. I have some problems with that. If this is unconstitutional, then we need to do so.

**Assemblywoman Giunchigliani:**

I would rather challenge it. If we want to get a group together, we should go do it.

**Assemblyman McCleary:**

If we wanted to, can we take A.J.R. 7 and make it a legal challenge? If we think there's a constitutional problem with this, can we as the Legislature have the Supreme Court review this?

**Assemblywoman Giunchigliani:**

I don't know. That's a good question. I think we could make a request for that because it is legally flawed, because of the separation of powers issue and the actions taken by the Supreme Court. I'd be happy to find out for the Committee.

**Assemblyman McCleary:**

I'd be more comfortable doing that than legitimizing the first one, which we're saying was unconstitutional.

**Assemblyman Denis:**

Earlier, Janine Hansen said that she was concerned about the constitutional convention. How do you feel about that?

**Assemblywoman Giunchigliani:**

I agree with her on that. We should not amend the *Constitution* on a whim. We have always been very protective.

**Co-Chairman Mortenson:**

[Closed the hearing on A.J.R. 7. Opened the hearing on A.J.R. 9.]

**Assembly Joint Resolution 9: Proposes to amend Nevada Constitution to provide for forfeiture of public office for three or more breaches of ethical duties. (BDR C-181)**

**Assemblyman Richard Perkins, Assembly District No. 23, Clark County:**

Please take a minute and think back to November 2004. We, as the legislative Body, were called together in Carson City for a special session. The purpose of this special session was to impeach the State Controller for three willful violations of ethics laws, costing the taxpayers over \$200,000. This resolution is not about that, but it is a result of what we learned from that experience. If a public official admits, or is adjudicated guilty of three willful ethical violations, we should not be wasting State time and funds on a trial. It constitutes an egregious offense that warrants removal from office.



[Assemblyman Perkins, continued.] Assembly Joint Resolution 9 amends the *Constitution* to state that any State or judicial officer who commits three or more ethical violations forfeits his office. This new law would prevent an official from agreeing to admit to his ethical violations in order to avoid criminal prosecution. This official might hope to avoid prosecution while keeping his office. As a result, he risks putting the state through a costly and embarrassing public hearing. A.J.R. 9 prevents this from happening. It's very simple—three strikes and you're out. It's time to hold all elected officials accountable for their actions. This preventative measure is the first step we as elected officials must take, in order to restore the public's confidence.

There are those who would say that this comes from that special session, but that's not the case. We had a conversation with the Attorney General and his staff about a number of things, including local government, candidate fundraising, open meeting laws, changing some civil penalties to criminal penalties, and the "three strikes and you're out" provision. This is something that I began pursuing over a year ago; it's only coincidental that we had a very recent event that provides an example for us.

In essence, you can still be impeached for one ethical violation. An ethics violation forwarded by the Ethics Commission can still arrive in this Legislature for impeachment. All I'm suggesting is that if you get to the third one, there's no reason for us to waste the taxpayers' money if it's become evident to the public that a person is not worthy of holding office.

We have a unique hiring and firing process in politics, it's called an election. For you and I, it happens more frequently than most. Unfortunately, for some folks, their terms are much longer, and if something like this occurs in the first portion of a 4-year term, and they're not removed through some other process, then someone who is, perhaps, not fit to hold office completes a term. In my mind, this does not serve the public trust well.

We've seen a number of things happen in our state in the last two or three years—scandals in the Clark County Commission, the impeachment issues, and others. We need to assure our public that we hold ourselves to a higher standard, so we can hold their trust and do the public's business.

Just today, I received a communication from the Administrative Office of the Courts, asking that the courts not be addressed this way, because of the various procedures they go through with the Judicial Discipline Commission. I would suggest to this Committee that if you're a judge, or constitutional officer, or anybody else, three strikes and you're out. If the Judicial Discipline

Commission wants to take action on the first, or second strike, that's fine, but by the third one, we should save the energy.

[Assemblyman Perkins, continued.] This will have to pass in two sessions of the Legislature and go to the voters. Like any constitutional amendment proposal, we should ultimately leave this decision with the voters.

**Assemblyman Seale:**

Why are we exempting out justices of the peace on lines 14 and 15?

**Assemblyman Perkins:**

This mirrors the language in Section 1 that was already in the *Constitution*. Justices of the peace are not impeached; they are removed in another fashion.

**Assemblywoman Angle:**

A "breach of ethics" is fairly broad. I feel that we are sometimes held to a low standard on some of these things. Using your telephone for a personal call could be a breach of ethics, and so could using your computer for a personal email, or something like that. When we went through the impeachment process, some of the things that they brought forward as charges, I thought that anybody could be guilty of.

I wonder how low a bar we're setting. Should this be more closed in? What did you have in mind, as far as ethics? Would anyone want to run for office if they thought that \$7,800 every two years isn't worth it?

**Assemblyman Perkins:**

They probably say that anyway. Before you get to the issue of following the statutes for ethics, you have to get past the sacrifices to come here, the pay, and the media scrutiny. This might be the least of your worries. Whatever happens in the *Constitution*, it is the document that governs us. The statutes are the document that governs individuals. This works with the statutes.

There are a number of proposals coming before this Committee that would further identify what constitutes a violation of ethical duties. You need to take the two together. This says three ethical violations and you're out; statutes would then further define what those ethical violations are. Also, I think that this Legislature will further define that, as it relates to all the things that you just described. It's important, because they need to work together.

**Assemblywoman Gansert:**

My concern is about due process. The bill just states, "...commits three or more breaches." Who judges if the charges are true or not?

**Assemblyman Perkins:**

Perhaps the Committee would find a different word for "commits." Due process is important. I don't know if the term "convicted" is appropriate, but certainly they have to be guilty of the three. That is adjudicated by the Ethics Commission. The Ethics Commission is charged to do that based on the ethics laws. There is a due process system and the hearings process in place. I hate to use the most recent example, because it sounds like I'm picking on an individual, but in that case, that person signed three confessions, so due process was well taken care of. The Ethics Commission makes a ruling; if they find you guilty, then that is an ethical breach. If they don't, then you're cleared. There are also appeals processes based on that.

**Assemblywoman Gansert:**

Maybe we could clarify it and point to that language, so that it's understood that there is an entire process that goes with that.

**Assemblyman Perkins:**

I would consider that a friendly amendment.

**Assemblyman Seale:**

How many people would this have affected in the last 20 years?

**Assemblyman Perkins:**

I don't have the answer, but in the research for the bill there were at least two, including the most recent. More than anything else, I want folks to be in fear of committing ethical lapses. I don't think anybody is going to risk a second violation if there is a strong penalty for the third one. We are making a public policy statement to the citizens of this state. If you're an elected official you hold yourself to a higher standard, and three strikes—you're out.

**Assemblyman McCleary:**

Who would actually remove the person from office? Let's say the Ethics Commission found somebody had made three violations, convicted him, and he refused to step down. How do we enforce that?

**Assemblyman Perkins:**

That would be done through statute. The *Constitution* doesn't address those sorts of things, because it's a document that governs the government. We would set up a statutory scheme in order for that to occur.

**Assemblyman McCleary:**

So, we would specify that in statute? Would this bar that person from running for political office in the future?

**Assemblyman Perkins:**

That would be my understanding. All this would do is remove somebody from office. If the Controller had been removed from office in this most recent instance, it would not have precluded that person from running for office again. In reality, unless the public isn't paying any attention whatsoever, it's not likely that they would succeed. I don't know if you got the same sort of correspondence that I got, but I would suggest that the public paid a lot of attention.

**Assemblyman McCleary:**

I'm also concerned with the due process, because I don't know how I feel about having the Ethics Commission do this. You mentioned that they have an appeals process. Whom can they appeal to, if they don't agree with the findings?

**Assemblyman Perkins:**

I'm not sure how the entire process plays out.

**Stacy Jennings, Executive Director, Nevada Commission on Ethics:**

All of our opinions, whether they're reached through stipulation or through an opinion of the Commission, are subject to judicial review in district court. If that is overturned, or doesn't go in their favor, they can appeal to the Nevada Supreme Court.

**Assemblywoman Angle:**

Looking at Section 2 of the *Constitution*, if we replace that section, who would be able to be impeached? Would we do away with all impeachments?

**Assemblyman Perkins:**

If you were a constitutional officer or anybody else under this definition who commits a willful ethics violation that is forwarded from the Ethics Commission to the Legislature, you could be impeached for one violation. Certainly there are violations that are egregious enough to warrant that, even after one violation.

This is saying that if you get to three, then why go through the motions? Let's just dispense with the cost to the taxpayers and get it done.

There might be those who ask, "Why wait until three?" We're trying to make a clear statement to the public that we all want to, and should be, held to a higher standard.

**Stacy Jennings:**

In *Nevada Revised Statutes* 281.551, it says that for anyone that is removable by impeachment only—which are the people identified in paragraph 1, lines 5 through 13 of A.J.R. 9—who get an ethics violation, statute requires the Commission to refer those people for impeachment anyway. I believe our Commission will support changing it so that when you get to three, it is time to throw in the towel.

**Assemblyman McCleary:**

What if somebody serving in office commits an ethical violation, or even two, survives, runs for another office, and while holding that office, commits a third ethics violation? Does that count? Is it in one office, or spanning his entire political career?

**Stacy Jennings:**

The way I read our statute it says "...three or more willful violations, committed by a public officer." So, I think it would span your political career.

**Co-Chairman Mortenson:**

That ought to be clarified, because "a political office" means one political office, in my mind. It might be a good thing to clarify.

**Stacy Jennings:**

You might want to do that, because right now it specifies "a public officer," not "the public office."

**Assemblywoman McClain:**

Why would you want it to not be specific to the person, no matter how many offices he's held? That's the culprit. A public officer needs to be the target, no matter what office he's in, or how many offices he's had.

**Co-Chairman Mortenson:**

I agree with that. Speaker Perkins said that if the person committed three ethical violations, and was thrown out of office, he could run for office again.

That was why I thought that might have been his intent. We have some confusion.

If a candidate or officer commits two violations, quits that office, runs for another, succeeds, and then commits a third violation, is he out, or does he need to get three strikes in a particular office?

**Assemblyman Perkins:**

The courts would probably figure that out, but that's part of a bigger question as well. In an impeachment trial, assuming somebody is impeached, tried, and convicted by the Senate, there are a range of penalties. As you saw, there was actually a conviction in this case; the Controller was censured. Removal or disqualification from further office is another option. The way this bill is worded, it doesn't necessarily preclude somebody from seeking office again. If that's the will of the Committee, in terms of what you think it should say, I don't think that would be offensive to the bill.

I would say that the language is unclear. My belief would be that once someone gets his third ethical violation, he would be removed from office.

**Co-Chairman Mortenson:**

That is the intent?

**Assemblyman McCleary:**

If the person committed three ethical violations while in office, he could be removed from that office and run for something else later, as we've said. But now we've got a case where if he commits two violations, he's still held to the same standard. It seems confusing, but I understand your intent.

**Assemblyman Perkins:**

I do see where you're coming from; we could certainly clarify the language more, as necessary. I think if you get beyond this it's going to become complicated. This was intended to be a simple process, exclusive of the Legislature and other bodies. This would still work out, as long as we put forward some legislative intent in our debate on the Floor to say that three strikes and you're out; it doesn't matter what timeframe or what office.

**Assemblywoman Giunchigliani:**

You picked up the language from the *Constitution*, but I don't know the history of why justices of the peace were excluded, because they're under the same canons as the other justices. If we're going to do this, treat everybody the same, make sure we've at least considered that.

**Assemblyman Perkins:**

I'd be interested in that as well. My instincts say that they don't fall necessarily under State jurisdiction.

**Assemblywoman Giunchigliani:**

That may be correct. I was working on another piece of legislation and it says justice of peaces and municipal court judges. I was looking at where their financial disclosures are located. If that's the case, then we actually have two groups that are separate and handled by counties; the *Constitution* doesn't correctly reflect that. We need to find out what's going on there.

**Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada:**

I would like to speak against this particular bill. A lot of the issues we have with it were already mentioned. What is "commit"? It's a violation determined by the Ethics Commission. A lot of violations of ethics may be fairly trivial, not rising to the level of impeachment. When we hear about using violations that took place in the past, I'm not sure that something that happened fifteen or twenty years ago is relevant to what is happening in a particular situation. The biggest problem is allowing the Ethics Commission the role of determining who is automatically going to be removed from office. It may make the impeachment process a little easier, but those are the kinds of hard choices that have to be made. We need to look at each situation and make a determination of the gravity, and the proper punishment, if any. This is a "three strikes" law, and we've found in criminal cases that there are a lot of problems with that. There are stories of someone who stole a pizza and went away for life; that wasn't the intent.

We, the ACLU, find that a lot of times zero-tolerance rules at schools have absurd results. It may be appealing to not have to make those determinations or spend the time and money looking at what a government official has done, and whether it warrants the rather extreme sanction of being removed from office. That seems to be the responsibility of those who are in office.

I don't want to be critical of the Ethics Commission, but in the last few years we have had several successful lawsuits against the Ethics Commission. They've sanctioned public officials who were thrown out for due process violations or for other problems. To allow these very grave decisions be made by the Ethics Commission, particularly with their spotty history, seems to be a mistake. That will probably require coming back in future sessions and changing it again, because it doesn't do what we intended.

While it seems appealing, I think it should be looked at carefully as to what types of violations are committed, and ultimately leave impeachment as the process by which someone is removed from office, not having some automatic removal.

**Assemblywoman Angle:**

Regarding Mrs. Gansert's questions about due process, I think that's what I'm hearing you say as well. Harkening back to our recent impeachment, to me the process was that the impeachment answers the question, "Is there enough information to bring a charge that can be tried?" It was not to find guilt. Then the Senate did the trial. For me, what has happened here is that there is no trial. The impeachment process has due process built into it; I'm not comfortable with how this works.

**Allen Lichtenstein:**

The impeachment process is somewhat laborious. The charges are brought, and then there is a trial. We saw that, not only in the recent case in Nevada, but a few years ago in Washington D.C. These become highly charged questions; they're often complex and require a lot of deliberation and judgment to balance whether they are violations, to what extent, and what is an appropriate punishment, if any. Involving the Legislature in this process, while laborious, protects the individual and public from rash judgments. While the Ethics Commission has a lot of procedural problems, we had a suit decided last week about how their procedures do not adhere to due process in one area. There is a rush to judgment. Courts will review the decision, but not factual things. They will only look at procedures, et cetera. It is, in a sense, abdicating responsibility by having an automatic process. Three violations, of any type, regardless of circumstance, and you're out, no questions asked. The "no questions asked" concept is what violates due process, as well as many of the Ethics Commission's procedures, which are highly questionable anyway.

**Stacy Jennings:**

This is one of the reasons why the majority of the members of our Commission support the concept of having some "willful" standard in the statutes for intent. This allows the Commission to say that a violation appears inadvertent, by not finding it "willful," and deciding not to penalize the person. This is opposed to the Commission looking at what they did, finding the action willful, and deciding to penalize them.

**Janine Hansen, President, Nevada Eagle Forum:**

Some of our candidates from the Independent American Party had a dispute with the Ethics Commission on the way they had filled out forms. We lost, and



then it went for judicial review. The district court found in favor of our candidates; the Supreme Court overturned that and found against them. Now they are facing fines. I suppose this would be considered an ethical violation, although they acted in good faith. Does this bill make sure to specify "willful" violations? That's important.

[Janine Hansen, continued.] Another thing about the process with the Ethics Commission is that when there are administrative procedures, like the Ethics Commission hearings, many of your constitutional rights of due process are, essentially, violated. For instance, usually in administrative procedures you're considered guilty until proven innocent. That's a serious concern for people, like you, who would be coming in front of the Ethics Commission. There was one senator in Washoe County who had 12 violations filed against him by people that were angry with him. Ultimately, he was cleared of all those charges.

One of the things I've said repeatedly about the Ethics Commission is that we need to allow for a new trial, even though it has judicial review. It is my experience with the Ethics Commission that you don't get a trial. You don't get to bring forward all the facts in a judicial review. A judicial review is limited to certain issues, mostly brought by the Ethics Commission itself. So your point of view, the things that would prove your innocence, might be left out of that. Unless you have an opportunity for a new trial, as a result of what happened in the Ethics Commission, you may find it's impossible to clear your name, even if you are innocent, because you will not have due process. I encourage you to be careful as you go forward on this, because you don't have a situation where if you are innocent, you can be proven innocent. The administrative procedure denies you some of your constitutional rights. My experience with the Ethics Commission is not a positive one, and we have some people on this Committee who have taken the Ethics Commission to court, Ms. Giunchigliani for one. We have to be careful when we proceed with this. The Ethics Commission is not accountable to anyone.

**Assemblyman McCleary:**

If you are indicted on a criminal matter, the District Attorney does that. There needs to be someone who's educated in the law, who's looking over evidence and assessing the charges, to find grounds for those charges. When dealing with the Ethics Commission, which acts as a quasi-court, who brings indictments before them?

**Janine Hansen:**

Almost anybody can. They don't have to reveal who they are, as far as I know. You don't have the right to face your accusers.

**Craig Walton, President, Nevada Center for Public Ethics:**

[Submitted [Exhibit G](#).] We have had very little time to deliberate on our position, so it isn't a clear yes or no. Right now we don't seem to have a clear channel of deciding which cases go to the Attorney General, and we don't yet have a well-made impeachment process. The Legislature can't bring about a widespread sense of shame for those who betray their oath of office, and our trust in them. "Three ethical breaches and you're out" is an attempt to make a pathway around the failures or weaknesses, by setting up an automatic removal rule.

How do you define the "ethical breaches"? If you do a search on the website for NRS, the phrase never occurs. What will occur are "standards," "practices," and "violations." Speaker Perkins said that this is meant to say "ethical violations." Perhaps that would be an amendment, to change the language from "ethical breaches" to "violations." That's a small point. A wider point, to cast a wider net, is to say "ethical violations determined by a constituted body through evidentiary hearings and due process of law." I don't know if that would help, but it might.

Due process questions have been raised since we started talking about [A.J.R. 9](#). The statement was made that the person who brings a complaint to the Ethics Commission doesn't have to identify himself. Actually, it used to be that you were identified, everybody knew who you were, but you had no lawyer on your side; there was a criminal defense lawyer defending the public official. It was a completely uneven match. Currently, the name of the complainant is no longer there, so the Commission presents the complaint and the members of the Commission act as the prosecutors and judges—at the same time. It is not a parallel to a court room. Ms. Stacy Jennings made a reference to the word "willful," which has raised a great deal of controversy; [A.B. 530](#) is trying to address that.

The question has been raised: is a constitutional amendment the best way of handling these problems? Mr. Lichtenstein referred to problems that "three-strikes" bills have had in the federal government sentencing guidelines and in the states, because strike number three could be very minor, even just a \$5 fine, but it would count as a violation. If you're saying "three is three" then that's it, you're out of office. I appreciate Speaker Perkins' comment that strikes 1 or 2 could be so bad that the person can be removed anyway, through the impeachment process, or in the worst cases I suppose it could be turned over to the Attorney General, but that's not clear.

[Craig Walton, continued.] One alternative might be to legislate that any one or number of ethics violations, if they were found through due process, must be forwarded to the Attorney General for prosecution in district court for removal from office. It should include in the statute criteria for sorting out the gravity of the violation, in order to screen which one, two, or three make the case for removal or not. In that case, the Attorney General would have guidance and some discretion. Ultimately the court would decide case by case.

If we decide to go that way, we would need to study what other states are doing and work on a draft that's suited to Nevada's needs.

**Co-Chairman Mortenson:**

The Speaker referred to the *Constitution* being a broad document that gives policy, but not detail. Do you believe that this bill could be passed as is, and then through legislation declare how it works? Or do you think it would be too dangerous to pass it the way it is?

**Craig Walton:**

If we had an agreement that the Commission on Ethics is going to be brought into conformity with evidentiary fairness, not accept any silly excuses, and put some real teeth into it, then it might be possible to work this out.

**Assemblywoman Giunchigliani:**

Thank you for pointing out some of the flaws that we still have to deal with. If we move forward with eliminating the term "willful," then how do we deal with the gravity of the charges?

**Craig Walton:**

I asked one of the professors at Boyd School of Law [University of Nevada, Las Vegas] about the word "willful." Is there a legal definition for it? Professor Stempel sent me a one-page note ([Exhibit H](#)) about the difficulties in using that particular word. I appreciate Ms. Janine Hansen's reference to the question of intent—how much intention was involved and degrees of guilt. Those have to be considered.

The passage that uses the word "willful" sets up three giant loopholes. The exact opposite of Speaker Perkins' intent is what's happening—namely, the cases where a person has not been coerced, they signed a paper saying that they knew what the law is, they understood it, but they did it anyway. They are found guilty, yet said to have not acted "willfully," because a lawyer had told them that was okay, or they couldn't find a lawyer to advise them. These are currently in law, and a number of serious cases have been presented to the

public as not "willful." We don't know what that means. Most people are held to a different standard. Did you do it? If you did it, were you coerced? If you were not coerced, did you know, or should you have known? All our criminal and civil courts go by that standard. There are two standards of willful.

**Allen Lichtenstein:**

A question arose about passing this into the *Constitution* and working out the details in statutes later. That approach scares me for a variety of reasons. If you have a situation where these questions of due process and definitions are not determined, ultimately you're buying a lot of litigation, in terms of what these things mean, but you also have a constitutional provision that might be unconstitutionally vague. What does the term "commit" mean? What are "violations"? There is a way to deal with a lot of these issues.

We oppose any kind of lock-step removal of people, but to pass it on and let other people worry about it in the future can be the genesis of a lot of mischief that nobody wants.

**Co-Chairman Mortenson:**

[Closed the hearing on A.J.R. 9. Opened the hearing on A.J.R. 5.]

**Assembly Joint Resolution 5: Proposes to amend Nevada Constitution to revise provisions governing petition for initiative or referendum. (BDR C-1399)**

**Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:**

I requested A.J.R. 5 after seeing the Idaho case that came down. I tried to figure out what would make sense in dealing with the 10 percent threshold that was changed. So, this is my suggestion. I know that Senator Rhoads has a bill to look at all 42 Assembly seats; this one takes a different approach. I have one amendment ([Exhibit I](#)).

The main change is on page 7. It suggests that we establish a different standard. Those of us from southern Nevada could just leave it as is on the books and control any initiative petition by securing the numbers. I don't think that's fair and balanced. I tried to look at different mechanisms. The suggestion, for discussion purposes, is to take a look at the three congressional seats and change the threshold. The suggestion was to set two standard thresholds, 15 percent of the registered voters that voted in the last general election by congressional seat. There is a lower threshold for an initiative petition that proposes a statute or amendment, thereby treating them differently than

constitutional amendments. We have never separated those in our *Constitution*. It shouldn't be easy to change our *Constitution*, but I don't want to lose the right of the people to petition the government.

[Assemblywoman Giunchigliani, continued.] For both types of initiatives it would be by congressional seat, but the threshold will be changed. It will go from 10 to 15 percent for initiatives that change a statute. If it's an initiative that proposes to amend the *Constitution*, there will be a 20 percent signature-gathering threshold. I asked staff to draft this all three ways, so the Committee can see what direction it wants to take, if any. We could at least raise the threshold, because our population has grown so much. We had a good turnout last election—better for Nevada—and this would allow us to have some balanced signature gathering from three different jurisdictions, rather than one county basically being able to control the rest of the state.

The amendment is on page 6. There are times that people keep proposing the same amendment repeatedly, so in a couple of other states they set a threshold. If it had failed by a certain amount—I chose 55 percent—then they could not bring that initiative back. If so, that should apply to state, county, and municipality. I originally left "state" out of the bill. If the initiative petition was initiated in a state, county, or municipality, submitted to the voters of the county at an election, and 55 percent or more of the voters disapprove of the measure, then for 2 years they couldn't bring that same exact item back. It kept those recycling of initiatives at bay. They've had some problems with that in other states. That's what I was trying to get at; those are the main changes for consideration by the Committee.

To give you an idea of the percentages that would have to be gathered, currently it would be 83,000 signatures. If you change the threshold, it would go to 124,000 to make a statutory change and 166,000 to make a constitutional amendment. [Submitted [Exhibit J](#).]

**Assemblywoman McClain:**

Instead of saying "for two years following the year of the election," perhaps say "two and a half years," so that they miss one cycle, because that is still going to let them bring it back at the next two year election

**Assemblywoman Giunchigliani:**

That was the intent, to miss one election cycle.

**Assemblywoman McClain:**

I'm sure it was, but I think it's not saying that.

**Assemblywoman Giunchigliani:**

It should probably just say "next election." Good idea.

**Assemblyman McCleary:**

It's currently 10 percent from each county, right?

**Assemblywoman Giunchigliani:**

Ten percent in 13 of 17 counties was in the *Constitution*, but it was overturned. Now it's 10 percent. You could get all the signatures in Clark County, for example; and that was the concern of the other counties. Forty-two isn't going to work. That creates a barrier to people being able to petition. I thought it would be most equitable to look at our congressional seats, because those cover all the counties now, because of their size, and that way you get a more equal balance in signature gathering.

**Assemblywoman Angle:**

With regard to the constitutional challenge of the 10 percent of 13 of 17 counties, how would this fare with that same challenge? Isn't it still one man, one vote, and it would be challenged on the same grounds?

**Assemblywoman Giunchigliani:**

No. This one balances it, because of the way the congressional lines are drawn, you have representation from all counties.

**Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada:**

This is the setup that Judge Mahan recommended in his decision; you may want to do it by Assembly or congressional district. I think it probably would pass constitutional muster. In the Idaho case too, they also discussed doing it by assembly or congressional districts, or on a district level, versus the counties.

**Assemblyman Sibley:**

The other possibility is that we could do it by State Senate districts, because there are less than Assembly districts.

**Assemblywoman Giunchigliani:**

I looked at that, but we still have two districts that overlap. It caused an additional problem of defining which Senate district counted.

When we redistricted last time we didn't get independent Senate districts in every case, so that is why I rejected that one possibility. That, to me, made better sense than the Assembly seats.

**Lynn Chapman, Vice President, Nevada Eagle Forum:**

I like that this is done by congressional districts. I was very concerned when I saw the bill for Assembly districts. That would be impossible. Too many districts overlap, and it would be difficult to figure out. How would I carry 42 clipboards around? Petitioning is important.

On page 6, line 21, I'm concerned about "substantially similar to the measure that was disapproved." How would you define substantially similar? The same wording? Somewhat the same?

**Assemblywoman Giunchigliani:**

Excellent question. We are always advised not to put more in the *Constitution* than we need to. We would have to define that in statute if this moves forward. Just as we would when you hear the bill next week on "single subject"; we have to put into statute what we mean by that.

**Assemblyman Conklin:**

It's not in this bill, but in others, that these petitions will be reviewed ahead of time by the Secretary of State or the Attorney General, so that we know that they are substantially similar and meet that requirement.

**Lynn Chapman:**

It would help to have things done ahead of time, instead of trying to find out later. My other question was answered. If we have to skip an election, it wouldn't be 2 years. Is that right? My right to petition is being limited, if I wasn't able to bring forth a petition if I wanted to.

**Janine Hansen, President, Nevada Eagle Forum:**

I support the issue of the congressional district, in fact, when I was testifying in the Senate on Senator Rhoads' bill, I recommended congressional districts. The same reasons apply. We couldn't do Senate districts because of the multiple, overlapping nature of some of those districts.

I have done petitioning numerous times, nationally and in the state of Nevada, so I know how difficult it is. When you look at these numbers, you'll see that they are substantial. It also depends on if you are doing it two years after a presidential election, then the numbers are higher. These are higher numbers than if you do it after another election. As the population grows, so does the number of people that are voting; therefore, it paces itself that way. If you're trying to figure out how many signatures you need, the numbers here aren't the numbers of signatures you'll need. You'll need a minimum of one-third to one-half additional signatures in order to make sure that you have enough

correct signatures. The number isn't 83,000 for 10 percent, 124,000 for 15 percent, or 166,000 for 20 percent. If you think you have to have 50 percent more, and it was at a 20 percent threshold, you'd have to get 249,000 signatures.

[Janine Hansen, continued.] When I participated in the marriage initiative petition in 2000, we got twice the number of signatures we needed, and that was only 121,000. That was all volunteers. If you have a lot of money you might be able to pay workers to get all those signatures. Citizens in the state of Nevada who don't have a lot of outside money are going to have a difficult time trying to pass an initiative again, with these high percentages. It's difficult, and those signatures just come one at a time.

I encourage you to leave the percentages at 10 percent. The system works; some petitions didn't get on the ballot because they were weaned out. Some petitions last time got on the ballot, but they lost. A few of them won. Although we have to change the process because of the Idaho decision, the congressional districts is a great compromise, and I support that. I do not support increasing these numbers beyond what citizens are able to accomplish.

**Assemblyman Conklin:**

The bill has two thresholds, one for statutory amendments and one for constitutional amendments. Forgetting the percentages for a moment, do you think that a constitutional amendment should have a stricter requirement, because it is longer-lasting and far more difficult to correct if it's incorrect the first time?

**Janine Hansen:**

It already does, because it has to pass twice. A constitutional amendment has to pass by the voters twice if it's an initiative; a statute only has to pass once, so it already has a higher standard. In the early 1970s, after the Proposition 13 issue in California, they got it on the ballot in Nevada as Proposition 6. It passed the first time; the second time it failed. That wouldn't be the only issue that has failed the second time.

If it's a constitutional amendment passed by the Legislature, it has to pass here twice, and then it goes on the ballot. I do think there's already a higher threshold.



**Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada:**

Overall, this is a good bill. Judge Mahan's opinion in the court case was one we were involved in. Clearly the idea was to deal with one man, one vote, but not to allow the higher population in Clark County to dominate. So there are things about this bill, such as the use of the congressional districts, which solve that problem.

It would seem that if you have a 15 percent threshold in each of the congressional districts, to require a 15 percent threshold throughout the state would be redundant, because that would happen automatically. I don't see how you could get 15 percent in each part of the state and not get 15 percent overall.

Ms. Hansen stated my question about the 15 percent as it relates to statutes. You run a risk, in increasing that threshold, that the only organizations that will be able to put something on the ballot through the petition process would be those that have enough financial resources to get paid signature gatherers. I'm not sure that's something that we want to do; it would skew the playing field towards larger, well-funded organizations and take away something of the grass-roots nature of this process. I would urge that for statutes the number stay at 10 percent. On the other hand, with the constitutional amendments, I believe the higher threshold is appropriate, because it should be more difficult. The *Constitution* is not something that should be amended for each political idea; that's what statutes are for. To have a higher threshold, so that only things that really are of a constitutional stature are on the ballot, seems to make sense.

Keeping issues off the ballot if they are "substantially similar" invites problems. We have two bills that are looking at changing the numbers, or the way things are counted. Are they substantially similar—one deals with Assembly districts and the other with congressional districts—or are they not? If this is passed, there will be a lot of rewriting, and semantics, and probably a lot more litigation concerning these petitions, as to whether something is somewhat similar, substantially similar, or substantially different enough to go on the ballot. If a petition can gather the signatures, it obviously has enough support that it should go on the ballot, even if it lost the last time. We would urge not including that provision.

**Co-Chairman Mortenson:**

Let's close the hearing on A.J.R. 5 and open the hearing on A.J.R. 8. [[Exhibit K](#) was submitted, but not discussed.]

**Assembly Joint Resolution 8: Proposes to amend Nevada Constitution to specify time of determination of number of signatures required on petition for initiative or referendum. (BDR C-1069)**

**Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada:**

Assembly Joint Resolution 8 was brought at our request and has to do with a situation that occurred in the last election cycle, with the statutory initiatives being turned in after the November 2 election. The cutoff date, per statute, allows them to be turned in up through November 9. At that time we sought an Attorney General opinion, because of the constitutional language and the number of signatures required based on the last preceding general election. The Attorney General opined that it meant the general election preceding when the signature verification was done. We went to court because the Secretary of State is sworn to uphold the *Constitution* and that was what we were told it said. We lost on due process grounds, because we didn't anticipate the situation in our guide.

The intent of this bill is to make it clear in the *Constitution* that those numbers are determined when the copy of the petition is placed on file in our office, which is at the beginning of the process. This way you will never have a situation where the circulators don't know what numbers they're using when they circulate a petition. You'll never have an intervening election, so we'll always be able to determine based on the previous election, what that number is, and no circulator will be in jeopardy of having another court overturn that, or determine that if they turned it in after November 2 they were subject to a new set of numbers.

**Allen Lichtenstein, General Counsel, American Civil Liberties Union (ACLU) of Nevada:**

This also was a case that we litigated. We certainly support the idea that before they start circulating petitions they know the number of signatures that they need to get. Last time was an anomaly that required extensive litigation. No one likes this kind of litigation; it's time-consuming, expensive, and creates havoc for both the petitioners and the Secretary of State. This will clear up a matter that the court already decided; they need to know beforehand what the number is, not change it in the middle. So we definitely support this.

**Co-Chairman Mortenson:**

[Closed the hearing on A.J.R. 8.]

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO DO PASS  
ASSEMBLY JOINT RESOLUTION 8.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

**Assemblywoman Giunchigliani:**

If we choose to do something, they can do a technical conflict amendment, so I feel comfortable moving it with it that language and they'll merge it later.

THE MOTION CARRIED. (Mrs. Gansert and Mr. Holcomb were not present for the vote.)

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CO-CHAIRWOMAN KOIVISTO MOVED TO DO PASS  
ASSEMBLY JOINT RESOLUTION 10.

ASSEMBLYMAN McCLEARY SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Gansert and Mr. Holcomb were not present for the vote.)

**Co-Chairman Mortenson:**

[Assemblywoman Gansert was not present for the votes, but indicated support for both A.J.R. 8 and A.J.R. 10.] There are questions on the rest of the bills that may need to be addressed, so we are adjourned [at 5:37 p.m.].

RESPECTFULLY SUBMITTED:

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Sarah Gibson  
Transcribing Attaché

APPROVED BY:

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Assemblyman Harry Mortenson, Co-Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Elections, Procedures, Ethics, and Constitutional Amendments

**Date:** April 7, 2005

**Time of Meeting:** 3:10 p.m.

Bill	Exhibit	Witness / Agency	Description
***	A	*****	Agenda
<u>A.J.R.</u> <u>7</u>	B	Mary Lee, NV League of Women Voters	Copy of testimony
<u>A.J.R.</u> <u>7</u>	C	Mary Lee, NV League of Women Voters	Copy of testimony from Bobbie Gang, NV Women's Lobby
<u>A.J.R.</u> <u>7</u>	D	Janine Hansen, NV Eagle Forum	Information on term limits
<u>A.J.R.</u> <u>7</u>	E	John O'Connor, Private Citizen	Information on term limits (CD)
<u>A.J.R.</u> <u>7</u>	F	Assemblywoman Giunchigliani	Information on term limits
<u>A.J.R.</u> <u>9</u>	G	Craig Walton, NV Center for Public Ethics	Copy of testimony
<u>A.J.R.</u> <u>9</u>	H	Craig Walton, NV Center for Public Ethics	Email concerning "willful"
<u>A.J.R.</u> <u>5</u>	I	Assemblywoman Giunchigliani	Proposed amendment
<u>A.J.R.</u> <u>5</u>	J	Assemblywoman Giunchigliani	Chart with signature requirements
<u>A.J.R.</u> <u>7</u>	K	Assemblywoman Giunchigliani	Email from constituent