MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-third Session
March 29, 2005

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:08 p.m. on Tuesday, March 29, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Barbara Cegavske, Chair
Senator William J. Raggio, Vice Chair
Senator Warren B. Hardy II
Senator Bob Beers
Senator Dina Titus
Senator Bernice Mathews
Senator Valerie Wiener

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Committee Counsel
Michael Stewart, Committee Policy Analyst
Elisabeth Williams, Committee Secretary

OTHERS PRESENT:

Carole Vilardo, Nevada Taxpayers Association
Larry Lomax, Registrar of Voters, Elections, Clark County
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Joshua Hicks, Senior Deputy Attorney General, Office of the Attorney General
Alan Glover, Clerk/Recorder, Carson City
Janine Hansen, Independent American Party
John L. Wagner, The Burke Consortium of Carson City; Nevada Republican Assembly
Lynn P. Chapman, Nevada Eagle Forum
Lucille Lusk, Nevada Concerned Citizens
Sabra Smith-Newby, City of Las Vegas

Samuel P. McMullen, Las Vegas Chamber of Commerce; Retail Association of Nevada
Robert Crowell

CHAIR CEGAVSKE:
We have three bills that are going to be heard today. We are going to open the hearing on Senate Bill (S.B.) 222.

SENATE BILL 222: Revises various provisions relating to elections. (BDR 24-297)

CAROLE VILARDO (Nevada Taxpayers Association):
I requested the changes in S.B. 222 because I became aware of all the activity and all of the problems with the initiative petitions. We wanted to, for lack of a better description, "front end" a number of the procedures that are currently in law concerning initiative petitions. There were a number of court cases which were filed because of the different challenges, which occurred after the petitions had been circulated, as to sufficiency of signatures to the subject matter. In a number of cases, because of the litigation that came after sample ballots had already been printed, the cost incurred was very large.

I wanted to mention one thing which occurred in the larger counties, such as Clark County and Washoe County. The law requires the clerks to make a determination based on cost to see if their offices can print the full text of an initiative petition measure and the full text of the statewide measure. If it would be too costly to print the full text, it would not have to appear in the sample ballot. I know we all want everyone to read the sample ballot, and we hope they do. In some cases, to totally understand what an initiative is, you need to be able to read that initiative petition. The summary and explanations do not cover all the details in the petitions.

We do not want to impact and change the method of cost. You will see what we have asked for in section 1 of S.B. 222. It says that if the full text of the statewide measure or the petition is not printed within the sample ballot, that you, at least, post a notice at the polling places saying that the text is available in the polling places. Current law requires if you do not print it, you have it at the polling places, but there are no signs. People have no reason to know they could get that information there. We have also asked for the sample ballot to

include a notation that if the text of the measure is not printed in the sample ballot, there be a notice in the sample ballot as to how it can be obtained.

SENATOR RAGGIO:
I have a question about section 1. It would refer to each proposed constitutional amendment. What is the intention as to each polling place where something like this would be found or made available? As I understand it, the whole text, if you had 4, 5 or 6 proposed amendments to the Constitution, would be prepared by the county clerk in this 16-point type, at least. Then, at each polling place a notice would be posted that the amendment is available. I am not sure what I am reading here. When I walk in the door of a polling place, I should see it. This is going to have to be somewhere visible to you while you are standing in line. The notice will say that somewhere in this polling place the full text of the constitutional amendment is available. What do you envision, as a practical matter, is going to happen? Is there going to be a table, somewhere, with all the full texts? Is there going to be a bulletin board in the polling place?

LARRY LOMAX (Registrar of Voters, Elections, Clark County):
I can tell you what we have done in the past. What Ms. Vilardo has said is true; there has been no notice in the past that the text was available. The current law requires us to have the full text available at the polling place. During the last election, we made the full text of the constitutional amendments available in the newspaper. We are required to publish the text three times.

SENATOR RAGGIO:
Was that at 16-point font? Is it just the notice which has to be at 16-point font?

MR. LOMAX:
No, it was 11-point font, and yes, it is just the notice which has to be at 16-point font.

SENATOR RAGGIO:
Where is the text at the polling place?

MR. LOMAX:
You would have to ask for it. We would give you a copy of it, and then you could review it. The text is not just out on the table.

SENATOR RAGGIO:
The reason I am asking is there is a lot of reaction about this. Everyone wants to change the election laws and do what they think is necessary. I do not want to overreact. I want to make sure we are not doing something that sounds good, but is meaningless. That is why I am asking these kinds of questions.

MS. VILARDO:
I wanted to add, that was one of the issues. Current law requires if you do not print the statewide measure or the constitutional amendments, it still has to be at the polling place. The problem was the language was not in the sample ballot. If a person is not a newspaper subscriber or just does not read the legal section of the classified advertisements where the text is printed, that person would have no way of knowing you had the text available to read. We felt putting a notice up and putting something in the sample ballot as to how to obtain the text, either from a Web site or through a call on the phone, would help to create more informed voters.

The next change in S.B. 222 talks about the sample ballot and the committee that is appointed. The language under section 7 has been changed, "Except as otherwise provided in subsection 2, one committee must be composed of three persons who favor approval by the voters ... ." Right now in the law, it only says initiatives or referendums, and this language is in a number of sections. Throughout the bill, you will see the terminology "constitutional amendment or statewide measure" proposed by the Legislature, instead of "initiative or referendum," and that we have a committee requirement posted under current law. The statewide measures are not done by an independent committee, they are done by the Legislative Counsel. From calls we had, we found the public seems to be very comfortable with having a committee appointed, particularly if they know the committee people and committee members understand what the issue is so they can articulate the pros and the cons of the issues. The Secretary of State's Office also works very hard to expand the use of the committee and clarify all statewide measures and any constitutional questions, not just the initiative petitions or the referendums that would be done by the committee. You will find that language duplicated throughout section 7.

Section 8, just to clarify if someone is looking to give weight to how the arguments were done, requests the names of the persons who are on the committees and that their affiliations, if any, be identified. Further down under section 8, subsection 2, paragraph (b) of S.B. 222 it says, if the full measure

was not printed then, “The sample ballots inform registered voters how to obtain the full text of each proposed constitutional amendment and statewide measure.”

The next set of major changes starts on page 12 with section 10. In section 10, subsection 1 is a reaffirmation that petitions shall pertain to 1 matter or subject. There shall not be multiple subjects.

SENATOR BEERS:
I am concerned this could unfairly lead to the disqualification of ballot questions. How would you define one topic? There was an initiative petition which sought to repeal the effects of S.B. No. 8 of the 20th Special Session. Is that 1 topic or 17?

MS. VILARDO:
To me, it was two topics.

SENATOR BEERS:
Which were?

MS. VILARDO:
There was the tax part and there was the expenditure part. There were changes made to the appropriations, which was the expenditure side. It had nothing to do with the taxes. There were two provisions that increased the amount of appropriations. That is an expenditure that did not relate to the tax issue.

SENATOR BEERS:
They were processed as one bill in the Legislature.

MS. VILARDO:
Yes, but as a personal opinion, I had a problem with that.

SENATOR BEERS:
Your point speaks to my concerns with this provision. It leaves a tremendous amount to the judgment of individual voters as to whether or not they would sign this ballot or initiative petition.

MS. VILARDO:
It is a policy issue before you, Senator. I am not saying I disagree with you. My own personal concern with S.B. No. 8 of the 20th Special Session was that it did more than I thought we were allowed to do because of the 1-measure rule. I look at taxes generically; I am not looking to break them out. Obviously, that is subjective, but it is one of the reasons if there is a problem, then the procedure set up in section 14 would apply. I am jumping around, but maybe this will give you some comfort level or maybe, make you more uncomfortable. Right now, if I take a petition to the Secretary of State and say I am going to circulate it, the Secretary of State looks at it for form. He may tell me I have it worded wrong with regard to the full text. The full text issue in 1955 was different than in 1963, when the Constitution was changed. Be that as it may, the Secretary of State could tell me I cannot have my petition the way it is because it is not the full text of the measure. It has to have a narrative to it, not just numbers.

The only thing the Secretary of State can do, under statute, is tell the person this. His office has no authority to tell the person to rewrite the petition. Personnel there cannot say they will not accept the petition until it is put in the proper form. I made a reference about trying to front-end some of the situations which went to court and delayed the whole process. In S.B. 222, what you find is the Secretary of State's Office has the ability to tell someone the initiative does not meet the correct form, so it will not be accepted for filing. That person is then provided the due process to go through and appeal what the Secretary of State has done. Hopefully, by doing it at that end of the petition process, we will stop all the delays we had, the additional cost for printing and the dragged-out court cases. That is part of the intent of this.

SENATOR BEERS:
Is there not a provision now that initiatives cannot require expenditures without identifying a source of revenue?

MS. VILARDO:
There is a provision, right now, which says if a person proposes an initiative to add a statute in the *Nevada Revised Statutes* (NRS), he cannot propose that initiative without having a source for expenditures in place. However, that same provision does not apply if I propose an initiative to amend the Constitution.

SENATOR BEERS:
There you are talking about expenditure and revenue in the same initiative. That, in your opinion, violates your new section 10, subsection 1.

MS. VILARDO:
You are absolutely right, but I would assume that is why the Legal Division puts through bills which I believe deal with more than one subject matter because of the way they are typed. As with any bill, these provisions are offered to you. They are policy changes. A couple of them are mechanical changes, such as posting the sign. Front ending the procedures is a serious policy change. I do not try to make light of them. I happen to believe in the initiative process. I do not want to prevent us from having the initiative process because I realize it is a phenomenon of the Western states. Looking at what happened with all the initiatives last Session, it needs to be a better process.

SENATOR BEERS:
I would be concerned with holding the public to a standard we do not really hold ourselves to.

MS. VILARDO:
That is a very valid point. I am not going to argue that. We have put in a statement so the voters know what they are looking at has to be approved. A yes vote does not mean you are not doing the reverse. This is not the first time it has happened; it happened to us with one of the initiatives from last year, and it happened on a ballot question in 1994. The voters were approving the question if, in effect, they voted no. This does nothing more than try to simplify that provision.

There is another issue. I felt, as did many others, like I was being accosted when asked to sign some of these initiatives. I can think of some very specific instances this summer while I was going grocery shopping. People would ask me if I was a registered voter, and then tell me I needed to sign a petition. I would always ask what the petition would do and was given explanations. Then, I asked if I could have some material I could read, and if I agreed with the material, I would come back to sign it. The petitioners did not have information. I could not read the petition because some of them were long, one was over two pages. I was outside a grocery store in the summer heat. I saw parents coming out with their kids holding ice cream. If the petitioner had a good sound

bite, people would start signing the initiative without having a clue about what they were signing.

In one case, I asked if I could have some information, and they gave me some information. I was very impressed—until I read the information. It happened to be on the tax issue. That referendum on the tax issue, which I will make available to the Committee, never talked about the expenditures they were putting in the budget and even quoted two wrong tax rates. This was being circulated within the Clark County Government Center. It never said that by voting no, you would repeal everything, and there was nothing to stop you from coming back and putting it in. It probably would not have happened if it had gone that far. We do not have many referendums go forward. The interesting thing was there was nothing that advised me if this failed there were 219 sections of statute that would be required to go on the ballot if we wanted to make a change within the changes made. That would have been an absolute nightmare.

What you want to try to do is get an explanation up front, in plain English, that people could have to better understand what they are signing. They should not just have sound bites. There are serious ramifications to petitions, which should not be taken lightly. We want to have an informed electorate and this does it.

To ensure the voter receives the explanation, there should be a place for the voter to initial next to his or her signature on the petition. The voter may not have read the information, but at least the information was given to them. On that assumption, the voter gets the information and signs the petition, anyway. What happens when the voters read the information and decide they did not want their names on the petition? We wanted a better system for informing the voters on how to remove their signatures from the petition. I got a number of calls this summer in Clark County. Some of the people wanted to remove their names from various petitions they had signed because of the amount of press on some of the initiative petitions. They did not know where to go to get the information, and they did not know what the procedure was. That is why the provision in section 13 of S.B. 222 allows the voters to obtain a very simple form they can use to remove their signatures.

SENATOR BEERS:
In section 12, is there a process by which the explanation required in subsection 3 is reviewed and approved by the Secretary of State for validity?

MS. VILARDO:
In section 14, subsection 3, it says, "Any person may challenge the accuracy of an explanation required pursuant to section 12 of this act by filing a complaint in the First Judicial District Court ... ."

SENATOR BEERS:
I will hold my questions about that until you discuss section 14. On section 13, should there not be some mechanism to notify the petition circulators that someone has withdrawn his or her signature from the petition, so it is no longer a valid signature?

MS. VILARDO:
I had not thought about that. Maybe that should happen; existing law does not require it. I can write and say remove my signature. As long as it is done before the count has started, it is taken off.

SENATOR BEERS:
I would like that considered as an amendment. I want the people who are listed to be notified, and then, the group that got the approval to circulate the petition should be notified.

MS. VILARDO:
Section 14 tries to give the Secretary of State some authority for prior provisions relative to his accepting the petition for filing. Then, once it is accepted for filing, the petition and all of the explanations should be put on the Secretary of State's Web site. In the past, the petition was not there. There was information about who had filed the petition. In a couple of cases, there were Web-site addresses, and if the initiative was made available electronically, the Secretary of State was able to key the person over to the link. Fewer than half of the initiatives had a way for people to easily access the language of the initiative. In effect, section 14 seeks to have what has been submitted put on the Secretary of State's Web site. We want to make that information available to the voters, the electorate or anyone who might want to sign a petition.

We had challenges based on the accuracy of the explanations. In section 14, subsection 3, we allow an opponent of a petition, who did not feel the explanation and the language showed the intent of the petition, to challenge the petition in court, once it has been posted. Originally, we looked at having the challenge done in the Attorney General's Office, but in all probability, it would

come back to the Attorney General from the Secretary of State. As such, they were the ones doing the review in the first place. If the opponent does not like what they say, he is still going to go to court, so we left out the middle step. This front-ends it, and in doing that, it allows the ballots to be prepared in time.

We deleted section 16, subsection 3. Section 18 is directed at petition circulators, which we know has become a lucrative industry. Earlier, I discussed the provisions of putting the signer's initials on the petition to prove the voter has received some information. We want to be sure of that; in the new provision there is some penalty if the petitioner tries to add initials instead of crossing out the voter's name because the voter signed the petition, but did not initial it. Section 18, in effect, becomes the penalty provisions you have for falsely changing anything on the initiative relating to the signatures. Section 19, subsection 2, paragraph (c) deletes language rewritten in the new paragraph (c).

We do not want to stop the initiative process. We would like to make it a better process. We would like to have questions that are understood and available when they go before the people, whether in a petition form or on the ballot. That is the basis for the bill.

MR. LOMAX:
I would like to iterate that we are greatly in favor of anything that would move the litigation up to the front of this process. We do not want to get into the situation we were in during the last election because it cost the taxpayers about $500,000 in ballots, which had to be thrown out and reprinted.

I have a few suggestions related to this bill. Section 8, subsection 1, paragraph (e) talks about the names of the people who drafted the arguments and the organizations and the affiliations they have. I do not have a problem with that. We clerks can attest we have had people object to having their names associated with arguments they have to write. They are willing to do it, but they do not want their names associated with ballots that will be circulated as widely as they are. They are afraid of retribution. This section may have a chilling effect on our ability to get people on these committees. It is not a big deal to me, I am just pointing it out.

Also, if we are going to list their affiliations and their attachments, we are going to need some formal way to do that. I do not want to be the one who is blamed if it turns out they are affiliated with some group and I did not print it. We just

need a standardized form they could fill out. They are going to have to attest to the groups they are associated with.

SENATOR BEERS:
It sounds like you are suggesting the individuals who draft the arguments get to select their own affiliations.

MR. LOMAX:
I put the responsibility on them. They would have to list who they are affiliated with. A form could be developed to require them to do that.

SENATOR BEERS:
What if people say they are from the Nevada Policy Research Institute, but they are with the Parent Teacher Association?

MR. LOMAX:
I am saying, I do not want to be accused, after the argument is written, of not having exposed who they truly were associated with.

On line 23 of page 10 of S.B. 222, the current law says if we do not print the full constitutional text in the sample ballot because of cost, we will provide, "a sample ballot that includes the full text." It is an administrative change. I would request that it not say we will provide a sample ballot that includes a full text, but we provide "a supplement that provides the full text." It is an expense thing. That way, it is just one version, as opposed to 288 different versions with full text.

I will point out in the last election, the full constitutional text of question 8 alone was 51 single-spaced, typewritten pages in 11-point font. If that is blown up to 14-point font, which we are required to provide to anyone who wants it; the document is 78 pages long. That is just one question. The whole mass of information is over 100 pages of printing. I have no problem doing that, but I would suggest there are cheaper ways to do it. Right now, we are required to print all of this language in the newspaper three times. We print it, in Clark County, in the business section because it is the cheapest way to print it. It cost Clark County over $97,000 to print it three times in the business section. For those of you in Clark County, how many of you even saw it back there? Most people do not even see it. We can put it on the Internet essentially for free. I have no problem putting it on the Internet. I would suggest that rather

than printing it in the newspaper, we put it on the Internet. We could still provide it to anyone who requests his or her own booklet.

RENEE PARKER (Chief Deputy Secretary of State, Office of the Secretary of State):
The State now pays, out of the statutory contingency fund, the publication costs for all the counties, combined. In the past general election, we had the largest number of ballot questions we have ever had, over $462,000 worth.

CHAIR CEGAVSKE:
So, you paid Mr. Lomax's bill?

MS. PARKER:
It is currently pending at the Board of Examiners. We will, ultimately.

SENATOR BEERS:
I remember at some point in the last couple of sessions, we attempted to try to move this out to the Internet, but it ran afoul for some reason.

SENATOR MATHEWS:
I remember that, too. I believe it was the small counties who get revenue from publishing the text in the newspaper. I remember we ran afoul.

SENATOR BEERS:
It may have been the Nevada Press Association.

MR. LOMAX:
We are also required, in Clark County, to print all of this text in Spanish, which we were unable to do in the last election. There is a timeliness issue which is going to come into play. Rather than trying to nail down when all this needs to be done, because there are so many bills right now associated with questions and petitions which are eventually going to have to be singled out, we will probably have to come up with one bill. We need all of these 100 pages of information given to us and translated into Spanish. We did not get it in time. It was impossible to get it done last election. That is another issue that has to be addressed, and it increases the cost. It is expensive.

CHAIR CEGAVSKE:
The timing is an issue for you on several of those.

MS. PARKER:
The translation into Spanish is under the Federal Voting Rights Language Assistance Act of 1992. Washoe County is right on the cusp of meeting that 5-percent population requirement. We are expecting by the next election Washoe County will also need bilingual ballots. There will be additional, substantial costs in Washoe County for translating the text into Spanish.

CHAIR CEGAVSKE:
What was the cost of doing the translations for the ballots for Clark County in the last election? You said you did not have time to do it in the newspaper, but you did do it for the ballots. Washoe County is going to be facing the costs of translating the ballots.

MR. LOMAX:
I do not remember.

MS. PARKER:
They will face the local publication costs. We had to translate all of the statewide ballot questions into Spanish. I do not recall what that cost us for Mr. Lomax. We will also have to do that for Washoe County, as well. They will face their own costs. The State pays the publication costs, we pay for the translation of the statewide and constitutional questions, and the county has to pick up the costs of the local questions.

CHAIR CEGAVSKE:
Are there any federal dollars at all for that?

MS. PARKER:
No. That was amended years ago.

MR. LOMAX:
We were on page 13 when Senator Beers asked his question about notifying people if their names had been removed from a petition. I would object to it being worded in that manner. I would have no problems making available to a petition circulator the names of those who asked to have their name withdrawn. I request we not be required to notify them individually. I would be happy to put them on the Internet, unless there is a privacy issue. We can make the list available to anyone who wants it.

CHAIR CEGAVSKE:
If someone is doing a petition, and they got their names, then they can call you to obtain information about people who have withdrawn their names.

MR. LOMAX:
Correct. It would be public information. Anytime anyone asked for a withdrawal, it is public information and all anyone has to do is ask for it.

CHAIR CEGAVSKE:
Is that information on the Internet?

MR. LOMAX:
It is not now. We could put it there if someone wants it.

CHAIR CEGAVSKE:
I am not asking for you to put it in there one way or the other, I just wondered if it was.

MR. LOMAX:
We did not have any people in Clark County request their names be withdrawn from petitions. There was a lot of that going on, but it was in other counties in the State.

Section 14, subsection 3 talks about the 15 days a person has to challenge the accuracy of an explanation. My attorney in Clark County said there probably has to be some sort of notice as to a starting time, so the Secretary of State just does not put something up on the Internet and not somehow notice the fact it is there and the 15 days have begun.

SENATOR BEERS:
Could you repeat what you just said?

MR. LOMAX:
Mary Miller, my attorney in Clark County, advised me the way this is written, the Secretary of State would put something on the Internet. People would then have 15 days to challenge it or take issue with it. She said there ought to be notice required that, officially, the 15 days began on a certain date.

CHAIR CEGAVSKE:
If it was put on the Web site for the Secretary of State, she thought that would be okay?

MR. LOMAX:
I did not get into details. I do not know.

CHAIR CEGAVSKE:
That is something we can ask the Secretary of State.

MR. LOMAX:
My other question, because I know I am going to be asked, is when can they start circulating the petition under this process? I do not know from the way this is written. Will it be when they first give it to the Secretary of State, at the end of the 15 days?

MS. PARKER:
Senate Bill 222 does not change the process. When the copy of the petition is filed, they can start circulating, per the Constitution. There are some other issues about moving the court challenge up front because they can circulate, but what happens if the court throws it out and says the explanation is confusing? Is it material enough to say that any signatures gathered up to that point should not be counted? The way this bill is written, it is left in the court's hands to determine the outcome. I do not know if you want to go there. The alternative would be, if the explanation is inaccurate, they would probably say if it is a material inaccuracy you cannot count any signatures up until now, and you need to start over. If it is not a material inaccuracy, the courts would decide.

SENATOR BEERS:
Mr. Lomax, you have been quoted in the newspaper as saying you thought some people had falsified petition signatures during the signature-gathering heyday last year. You had some problems with existing statute doing anything about it. I was wondering if the language being proposed in section 18 of S.B. 222 made you feel you had the tools to go after those people.

MR. LOMAX:
No, but that is not the fault of this bill. Most of what you said I was quoted in the paper as saying had to do with registering voters, as opposed to signing

petitions. We have had problems in the past, there is no question. The penalties are in the law. Our problem is getting someone to go after these people. I am an administrative agency. I do not have any authority to go after these people. I have to have someone else do that.

CHAIR CEGAVSKE:
Mr. Lomax, would you tell us again, because I know you did the last time I asked you, who you approached to take some action?

MR. LOMAX:
We went to the Federal Bureau of Investigation. They looked at our box of fraudulent forms and decided they were not going to pursue it. We went to the district attorney and had the same response. Then, we went to the Secretary of State because Washoe County was also having some problems. They assigned it to the Nevada Department of Public Safety's Investigation Division that did do some investigating. When it was all said and done, their conclusion was that there were fraudulent forms being collected, but there was no overall conspiracy to throw the election. These people were ripping off their bosses because they were getting paid by the form and making money. Nothing was ever done to anybody, although I can assure you, I have boxes full of fraudulent forms.

CHAIR CEGAVSKE:
That was one of the things we had brought up when we first met and talked about this issue. Mr. Lomax gave us the rationale as to why these bills are being presented and why there is one coming from the clerks. When the clerks and the voter registrars allowed me to come and sit with them at the Nevada Association of Counties meeting, these were some of the issues brought up. They were hoping this body would find a solution we could hold over the heads of those who are doing this, so they know there would be some serious action taken against them. We are still looking for that avenue and for the language. If there are any recommendations from the Committee in the next few weeks of our deliberations on petitions and initiatives, please bring them forward.

Ms. Parker has an amendment to S.B. 222 (Exhibit C). Would you briefly go over this?

MS. PARKER:
Before I explain the amendment, I have to explain the background on why we have an amendment and why we support this bill. Moving everything up to the

front end would help us greatly. We have no interest in cutting off the initiative petition process. The Secretary of State fully supports that process. Our concern is that while we are in the middle of an election cycle trying to make sure ballots are accurate, voting machines are properly audited and the entire process is secure, we are also being challenged in court at the eleventh hour on the language of petitions. As you know, during the last election, that caused several ballots to be thrown out. We had great concerns about our military and overseas citizens being able to vote and get their ballots on time. Those problems have led to a lot of these changes.

Ms. Vilardo's recommendation of having explanations for petitions addresses another issue we had with the referendum repealing S.B. No. 8 of the 20th Special Session. The referendum read, repeal sections 1 through 200 and sections 310 through x and y of S.B. No. 8 of the 20th Special Session. It had no other explanation for the voters other than that. The text of S.B. No. 8 of the 20th Special Session was not in there, so nobody would know what they were repealing. Ms. Vilardo is correct, all the Secretary of State's Office could do is send a letter saying we did not think the full text of the measure proposed had been explained. The voters were not given adequate notice of exactly what they would be doing if they signed the petition.

The explanation in S.B. 222 will help that process. The Secretary of State was approached outside the county clerk's office and asked if he wanted to sign a petition to repeal the Governor's luxury tax. Mr. Heller asked what the person was talking about because he did not know the Governor had passed a luxury tax. The person proceeded to explain that Governor Guinn put a luxury tax in last Session, and he was trying to repeal it. Secretary of State Heller asked to see the petition and saw it was trying to repeal provisions of S.B. No. 8 of the 20th Special Session. The person had no other information to provide the Secretary of State. We would agree with these changes. It gives more information to the voters.

The reason for it not going through our office, Senator Beers, is exactly why I am proposing an amendment to another section of existing law. The petitions are circulating, the petition circulators need some certainty their petitions are constitutional, and the voters need some certainty they are signing petitions where the number of signatures will be reviewed and turned in. In the middle of that process, if someone wants to challenge it, he comes to the Secretary of

State's Office and asks us to reject it. We review it to find if it is factually inaccurate or libelous. That is what we do with the arguments.

We got into a tough position this last election. We started late because the committees to write the arguments were implemented last Session. Mr. Lomax gave me some assistance because he has done it for years. We had to form a committee to write the arguments for every one of the statewide ballot questions. We had the most ballot questions ever. We were still in the middle of fighting over whether certain petitions would qualify in court. We formed the committees, and it all went great. As soon as they wrote their arguments and as soon as I transferred the argument from one side to the other side to write the rebuttal, the fighting started. I was in my office for several 24-hour days and many 18-hour days trying to deal with other election issues. I was receiving constant e-mails and arguments from both committees telling me I had to reject arguments.

One example was the minimum-wage petition. I happen to have a bachelor's of science degree in economics, so I knew there were two credible theories on minimum wage. I have to reject anything that is factually inaccurate. There is a credible theory from one committee that gave me a paper from John Hopkins University. The other committee gave me a paper from Harvard Law School. Both were credible theories, and we could not reject either argument, but both sides retained attorneys. This happened on all of the ballot questions except for the legislative questions. Question 1 was the only question we did not have constant letters and phone calls on from attorneys retained by both sides. Raising education to the national standard was another one.

Then, we went to the Attorney General when we refused to reject the information. The Secretary of State's office is not a finder of fact, we are not a judge. The proposed amendment in Exhibit C would put it into the hands of the court. Ultimately, that is where it is going to end up, and you will not have this administrative process in between to hold anything up. We get closer to the ballot, closer to people not being able to receive their ballots, throwing out ballots and having questions about what is right and wrong. I cannot weigh the credibility of that evidence. I could try; I would love to be a judge, but I am not. I do not have the staff in my office. I am an attorney and our elections deputy was an attorney. She was caught up in the elections process, so, it all fell on me. The Secretary of State had to determine if things were factually inaccurate or not.

You would have the same issue here for the explanation. I would have to review that, and the Attorney General would advise us. I would go to the Attorney General and say I do not think I should reject an argument. Then, they say do not reject it, but subsequently someone appeals to the Attorney General, saying we should have rejected it. Now, we are creating a conflict in the Attorney General's Office, where they are advising us not to reject it. They are now the authority deciding whether we properly rejected it. We also had situations where people tried to force us to reject things. They appealed to the Attorney General and they said there was no authority in the statute for the Attorney General's Office to review the Secretary of State's Office's refusal to reject things.

Our amendment goes to that portion of the bill where we review the arguments for whether they are factually inaccurate or libelous. Our rejection can be appealed to the Attorney General, and then it goes to the courts. We would prefer if there is a problem with the arguments, the explanation or with the entire process, that it is all front ended into the courts. Let us give everybody the certainty that when this petition qualifies, it is going on the ballot, and we are not going to end up, at the eleventh hour, throwing out ballots, striking language or changing language that may already be out there.

SENATOR BEERS:
The other alternative, besides the Secretary of State's Office policing the language of the explanation, is to have both the pro and con explanations up front. Is that feasible?

MS. PARKER:
The problem with that is, when they file the copy of the petition, we go through all the work to form the committees, and then it may not ultimately qualify. It may be a lot of work for naught. We would also have to prepare the condensation and the explanation because, we found this last time, the committees get so confused. Mr. Lomax told me the committees need the question and the explanation before they can even attempt to write an argument. I did do that with the Axe-the-Tax campaign and the public employee's petitions because they were tied up in court. We were coming up on the deadline, and I needed the arguments. I formed the committees and had them write arguments which were ultimately thrown out.

SENATOR BEERS:
Ultimately, if we are going to be able to trust the voters to read and understand these petitions, which I think are the underlying arguments for why we are having this discussion, we are going to have to have someone make the decisions and the judgment calls on whether the descriptions are or are not accurate. Do you prefer that to be a judge? Do we have any judges who want to volunteer for this?

MS. PARKER:
We actually have judicial confirmation. We draft the ballot question itself and the explanation. Then, the committees draft the arguments. Once that process is completed, judicial confirmation is similar to what you do with bonds, right now. What we would prefer is, if anyone wants to challenge a description, have a judge decide whether there are constitutional issues or that there is misleading language. We would not do that. We are supposed to be independently ensuring the ballot is accurate and not get involved in whether something is unconstitutional or a proper policy. We try not to do that. We draft the explanation, and we try to do it in a very neutral manner. This is what it says; this is the change to the law. That is for the arguments, and that is for the voters.

I have another comment on another minor change in section 14, subsection 3 of S.B. 222. It says, "Any person may challenge the accuracy of an explanation ... in the First Judicial District Court not later than 15 days ... ." It should say after the copy of the petition is filed in our office, because that is what starts the process. We support the bill.

JOSHUA HICKS (Senior Deputy Attorney General, Office of the Attorney General):
I wanted to get on the record and join in with Ms. Parker's comments. I wanted to point out, the Attorney General is asking for this amendment for all the reasons Ms. Parker brought forth, and particularly, because of the conflicts of interest that develop before the Attorney General under this procedure. It is on section 7, subsection 7 of S.B. 222, which is in Exhibit C.

SENATOR BEERS:
As we go through the processing of this bill, I would like to point out we would get laughed at by the citizenry for requiring them to initial their signature. Typically, you see initialing of the pages of a contract you did not actually sign. Maybe there is another way we could do this. For example, we could

incorporate into the petition language itself, you are seeking affirmation with that initialing.

MS. VILARDO:
In the statement of the people signing, they are not only signing they agree with the petition but also that they have been given the information. The problem is it is one thing to say you want the petitioners to have information available so the citizens understand what they are signing; you also have to be able to make sure the citizens received it. I would be happy to work with you, Ms. Parker or Mr. Hicks, if there are any better suggestions about doing this. That is a valid point, but we did not know how else to do it.

CHAIR CEGAVSKE:
Before I ask for any other input on S.B. 222, I need to introduce Bill Draft Request (BDR) 19-1294.

> **BILL DRAFT REQUEST 19-1294**: Makes various changes concerning adoption of certain rules and regulations affecting business. (Later introduced as Senate Bill 488.)

CHAIR CEGAVSKE:
It is an act relating to administrative procedure affecting businesses. It makes various changes concerning the adoption of certain rules and regulations affecting business and providing other matters properly relating thereto. I do not know who submitted it.

SENATOR RAGGIO MOVED TO INTRODUCE BDR 19-1294.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

ALAN GLOVER (Clerk/Recorder, Carson City):
I apologize for Barbara Reed, the Douglas County Clerk, because she had to be in another committee. Senate Bill 222 deals with the committees to write the arguments for and against the measures and their appointment. There are several bills introduced dealing with this section, but we have the same concern

in all of them. Our concern from the smaller counties is that we are having trouble getting people to serve on these committees. What do you do when you cannot get anyone to serve on these committees? Mr. Wagner volunteered to serve on one of our committees. We could only get two people on the last one.

CHAIR CEGAVSKE:
What section are you in?

MR. GLOVER:
I am referring to page 7 under section 7. It discusses the arguments committees and applying them to referendums and initiatives. Basically, in concept, what I would like to do, if it is all right with you, is submit an amendment. What we would like to do in the smaller counties is have some sort of escape mechanism if, after we have advertised for people to serve, people do not volunteer. We want a provision whereby the district attorney, in conjunction with the clerk, would write the arguments.

Another problem occurs if these committees do not finish their work. We need some language in S.B. 222 to address that. We are very much in support of trying to get this process front-loaded. We have got to solve this problem. One solution is having this go directly to the courts. I know the First Judicial District Judges Michael R. Maddox and William A. Griffin are looking forward to seeing this come before them.

CHAIR CEGAVSKE:
You should work with Mr. Stewart and staff to get your amendments.

JANINE HANSEN (Independent American Party):
You will notice on the handout I gave you (Exhibit D), that Article 19, section 5 of the *Constitution of the State of Nevada* says, "Provisions of article self-executing; legislative procedures. The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof." In other words, you are prohibited from doing anything which makes the process difficult. You are to facilitate it and allow the people to exercise their right to petition. That is very important. In Article 19, section 2, subsection 1 of the Nevada Constitution, it says, "...the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls." This is the responsibility of the people. I have a lot of

issues with particular parts of the bill, but I want to have a couple of preliminary statements.

We talked a lot about making sure people know what they are signing. I have done petitioning, and I have testified in this Committee before. I have run national petition campaigns in almost every state; I have done numerous petitions in this State, and I am very familiar with the great difficulty of doing it. In the U.S. Supreme Court case *Meyer v. Grant*, 486 U.S. 414 (1988), the court opinion stated, "The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." Ms. Vilardo was unhappy with some of the things people may have said, but when I trained my people, I gave them a copy of the Legislative summary of S.B. No. 8 of the 20th Special Session. We provided that to hand out. Some may not have done that.

It does not matter what Ms. Vilardo thinks on this because we have the right, or whoever is doing the petition has the right, under free speech and freedom of petition, to use what they believe is the most effective means for doing so. The Supreme Court also said that the speech at issue, the petitions, is at the core of our electoral process of the First Amendment freedoms. It is an area of public policy where the protection of robust discussion, in other words, freedom of speech, is at its zenith. The government has no ability to restrict our freedom of speech.

In *Meyer v*. *Grant*, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech. There is no authority of the government to limit that kind of speech. I understand they want to take care of the problems in advance and they want to protect the public. The Supreme Court said in *Thomas v. Collins*, 323 U.S. 516 (1945), the very purpose of the First Amendment of the *Constitution of the United States* "is to foreclose public authority from assuming a guardianship of the public mind." In this field, every person must be his own watchman for truth because the forefathers did not trust any government to separate truth from faults for us. In *Brown v. Hartlage*, 456 U.S. 45 (1982), the Supreme Court said the people in our democracy are entrusted with the responsibility for judging and evaluating the merits of conflicting arguments. The State's fear that voters might make an ill-advised choice does not provide the State with a compelling justification for limiting speech.

MS. HANSEN:
We have no problems with giving more information to the people. We think providing as much information of the text of the measure, in the best way available, is a good thing to do. We support that. We also support, on page 7, the argument committees. I served on a committee. We have had other people serve on committees. We think it is very positive to allow the people to participate in government. We support the aspect of committees. If there are problems in the rural counties, we understand that. We hope to help them facilitate that. We support this whole process.

Page 10 of S.B. 222 discusses the names for the committees. This might, although I do not have a problem with it, be a problem in the rural counties and in the other places. People might feel that if their name is included on the ballot they might be subject to persecution and ridicule. In my political career, I have had a lot of persecution. I have had satanic pornography placed on my windows, I have had death threats and I have had a bodyguard. I do not think they will probably be in that condition, but people are worried when they put themselves on the line. That may make it harder to get people, although it would not matter to me, personally.

I do not have a problem with including the full text of the measure. The information we can have is good. On page 12 of S.B. 222, I have one question about section 10. Who defines what one subject is? Senate Bill No. 8 of the 20th Special Session was one subject, according to the Legislature. When we did it as one subject, there might be a challenge. Who defines what one subject is?

The biggest problem I have with this bill is in section 12. I do not know how many of you have ever tried to petition. I have talked to this Committee before about how difficult it was. A petitioner has less than 30 seconds, a sentence or a few words, to be able to attract someone. When the petitioners are petitioning, we always have literature and information available. Of course, a lot of that is available on the Internet, as well. Then, the whole idea of having to initial a box to say the petitioner has given the petitionee the literature makes the process that much harder. Just as I said to begin with, under *Meyer v. Grant*, the people who are advocating their point of view also have the right to select what they believe is the most effective means in doing so. What you are doing is interfering in this process.

I gave you a copy of a petition in Exhibit D. There is already a lot to fill out. On the blue sheet in Exhibit D, there is an explanation for petitioners on how to instruct people to fill out a petition. I do not know if any of you have collected signatures, but I have done it many times in many places. Half the time, people do not put down their residence address, they will put their post office box. You have to stand there and point to each section and tell them what to fill out. They might leave off the date or the county. They might switch their first name and their last name. You cannot believe that people never read what it says to do. Not only do they not read what is on the top of the petition, but I have only had 1 out of 99 people ever ask me for information on what the petition said. I always read the information myself, but most people never read what the petition itself says. It is their right if they do not feel like reading the information. They do not even read how to fill out the petition.

MS. HANSEN:
This is one more thing that petitioners have to do. This greatly increases the burden, especially for people who do not have a lot of money trying to petition with volunteers. To get someone to initial that they have actually signed their own names and have received a copy of information is one more thing we have to do. We do not have a responsibility, under the Supreme Court, to provide them with a copy of anything except, under the Nevada Constitution, we have to let them read the petition. That is just and fair. To require this other information is another burden on our right. The Nevada State Constitution says you are to facilitate it, not to make it more difficult. Then, if someone were to fill in an initial, we would be guilty of a misdemeanor. You may have had a petitioner go out and get petitions signed all day, but he missed getting the initial that someone signed her name. This is really a difficult process, and I am sure Ms. Chapman and Mr. Wagner can attest to it. This requirement is unconstitutional, and it will be challenged; you can count on that. We will challenge it. It is unfair to require it.

The provisions regarding removing one's name from a petition are good. It is good to have a stated process on how to remove someone's name. People ought to know that because a lot of times people change their minds or we find out something new. In section 14, I looked, but I did not see any review by the Secretary of State. I do not see any additional authority that he has to tell you that the explanation is wrong. I cannot see that, but maybe I am not reading it correctly. It is a good idea, if someone is going to review it, that it be the courts and not the Attorney General. I agree with that idea, but I hope that we would

not have started circulating a petition and then have it be rejected after we have collected those signatures. That is an issue which needs to be resolved in advance. Maybe, they should not start circulating until the 15 days has ended. Otherwise, it is going to create a tremendous amount of grief for people who have donated their time and money to try to do this.

On page 14, section 18 of S.B. 222 talks about signing the initials just to withdraw their name from a petition. I have concerns about the whole initials idea. I have a question about the language on the top of page 15 of the bill. I understand that you want to get people who have forged signatures on petitions. This is not aimed at some person who signs a petition who is not really registered to vote, but it could be interpreted that way. If someone was not registered to vote, he could be charged with a misdemeanor if he did not have the right information. What you are really trying to get at are the people who are described where the affidavit is, who have to sign this to say that as far as they know, this is correct. When I am out gathering signatures, how in the world am I going to know if one of the hundreds of people I get to sign the petition is giving false statements? Then, I am required by this affidavit from the Secretary of State to sign something which says that I know this is correct information. How do I really even know that? All I can do is take that person's word that she is a registered voter. That is all I can do. I have no other way of checking it when I am out there in the field. You might be putting this person in jeopardy of being guilty of a misdemeanor because she, in good faith, signed the petition, but there were people who were not registered to vote or you have someone who has gone out and paid them. We had that problem; there was someone who was paid, and who then forged a bunch of names. We discovered the names were forged, but what if we had not discovered it? We were having a document signer, which is required, sign for that county. That person might have no way of knowing that. The objective is good because we do not want people falsifying things, but it is too open.

There was talk about front-ending this. You cannot limit speech on the front end because someone might say something is not true. I am concerned about that process. If there is a way to protect free speech and resolve that in advance, I could support it. As I said, we did use the explanation from the Legislative Counsel Bureau, but you do not control everything that everybody says. Have we gone too far trying to protect ourselves from ourselves? Do we not have to have a little faith in the voters and allow them to make some decisions?

JOHN L. WAGNER (The Burke Consortium of Carson City; Nevada Republican Assembly):
Most of the people who are in The Burke Consortium of Carson City do not want their names known because they are business people in Carson City. If we take a position that someone does not like, it could hurt them. I am retired; I cannot be fired, and I do not sell anything.

Mr. Lomax had concerns about section 1 of S.B. 222. Most people should know how they are going to vote before they get to the polls, but I do believe that information should be made available as conveniently as possible. It should be on the Internet because almost everyone is on the Internet. I have never seen petitioners of petitions I have circulated ask someone to vote no on a petition issue. They always ask people to vote yes. I agree with everything Ms. Hansen has said.

LYNN P. CHAPMAN (Nevada Eagle Forum):
Most of my concerns have been addressed. Some of the things in S.B. 222 are very good. I have gone out and collected signatures on petitions for years, even before I met Ms. Hansen. When you are talking to people, a lot of times, they do not want to read. They just want to know what the petition is about because they are not voting on the petition, they are just signing a petition to get it on the ballot. That is all they are trying to do. I signed a petition to get the Green Party on the ballot. I do not belong to the Green Party, but I felt it should have the right to be on the ballot if the petitioners had enough signatures. It was not that I was voting on something, but I was signing something so it could be put on the ballot. That is the difference.

When I was collecting signatures in Pershing County, there was a lady who told me she had gotten a phone call telling her that since she was a government employee, she had better not sign one of the petitions I was circulating. She said she wanted to know about it, so I explained to her what it was about. I had her read it because everything at the top explained the petition. She ended up signing it because she agreed with it. She did get a phone call from someone; she did not know who the caller was.

If people have to sign their names, sign something extra and initial this and that, how many clipboards are we going to have to carry around with us? I am very concerned about having to get people to initial, sign the petition and then sign something else which says they signed the petition. That is getting a little

redundant and silly. Most people are smart enough to figure out whether they want to sign a petition or not. Most people, if they do not want to sign the petition, say no. The petitioner goes on to the next person.

LUCILLE LUSK (Nevada Concerned Citizens):
Many of the things I have to say have been expressed. I do want to say we are mostly in support of this legislation. We think better information equals better decisions, whether that is in the Legislature or by the people. There are a couple of things I would like to quickly address. The Secretary of State has proposed an amendment. The Attorney General has proposed an amendment, Exhibit C. We far prefer that to the language which is in the bill.

CHAIR CEGAVSKE:
Would you repeat that?

MS. LUSK:
We far prefer the amendment the Secretary of State has that Ms. Parker offered, Exhibit C. The heading said it was the Attorney General's amendment. We were a little confused.

Page 12 requires a petition to be limited to one subject. I would like it to simply say it needs to be defined up front. Whatever definition applies to one subject should apply to the Legislature as well as petitions, so we are all working from the same standard. Further down on page 12, section 12, of course, is the issue of extra cost and the complication with the initial box. We would like to suggest you consider the possibility of having a limited explanation, perhaps up to 200 words, and that be placed at the beginning of the petition. That way it would always be available to the person who is signing. There would not be a necessity for an additional initial box or signature.

On page 13, there is a requirement that people who want to remove their names use a form provided by the Secretary of State. We ask you to consider the possibility that there would be fewer people who have concerns who would ask to have their names removed rather than facilitating this process by having to go find a specific form. Section 14, subsection 3 discusses filing directly with the First Judicial Court. We definitely support that, as opposed to the current process we have of going through the Secretary of State's Office and the Attorney General's Office. On line 25, we note it says 15 days after the petition is placed on file, but all of your discussion has been 15 days after it was posted

on the Secretary of State's Web site. We suggest the possibility of an amendment to reflect what you really intend.

We very much support getting these legal challenges resolved early, but there is some question as to whether the people will even know this issue exists this early in the process without some notification. That notification, in terms of publishing in the business pages, is not likely to be real notification. I do not know whether there is a way to get it through press releases and into the general media. It is very difficult to expect people to know within 15 days of the filing of a petition when they are not the ones filing it and they do not even know that someone is contemplating that petition.

In conclusion, I would say we strongly support the right to petition. We believe that, if properly done, some of these changes can actually strengthen that right rather than weaken it. It is very important that the changes be properly done.

SABRA SMITH-NEWBY (City of Las Vegas):
I am in support of S.B. 222. The City of Las Vegas has not had a chance to look over the amendments that were offered today, but we do support the bill as an effort to clarify some of the ambiguities that surround initiatives and referendums.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce; Retail Association of Nevada):
Probably, the best way to handle this is to have my comments translated into amendments. There is a whole group of business lobbyists who have really focused on these bills and have decided there needs to be some clarification of these issues. It is definitely a serious issue to us. Just in case I do not get to testify on Senate Joint Resolution (S.J.R.) 8, we also clearly support that.

SENATE JOINT RESOLUTION 8: Proposes to amend Nevada Constitution to make various changes concerning initiatives and referenda. (BDR C-298)

On page 12 of S.B. 222, we believe the phrase "one subject" needs to be better defined or clarified because I do not even know if "one subject," as a phrase, would be enforceable. I do not know what it means. It is clear we need to state what it means so it can be understood along with its implications. I have been involved with petitions, I have circulated many petitions and have gotten them certified. We have found in a certain number of petitions we have looked at over

the past few years, if you are not careful with the issue, you can make something deceptive. We also ought to have a statement saying it cannot be misleading or deceptive.

The title is also something we need to pay attention to. The title is used as persuasion or a sales point. A title is a very interesting thing because, in its simplicity and its marketing ability, it can misstate what the full context or text is, not that you have to have that in the title. For instance, we had a petition that was supposed to reduce frivolous lawsuits. There was an argument as to whether it did that, but it certainly did not indicate that it was going to obviate prior statutes which had been enacted. The title is something we need to pay attention to. I do not know exactly what to do with it. It may be that the title needs to be approved so that it, like other things, is at least a fair statement of what is going on in the initiative or the referendum.

SENATOR TITUS:
I understand what you are saying, and I agree, but those become political decisions. All you are doing is shifting the power of somebody passing judgment from one group to another. You thought that did not get rid of frivolous lawsuits; maybe, I thought it did. Whoever is making that call is going to have her own political prejudices in that judgment process. I do not know how you would do some of this stuff unless you get an ombudsman, or some sort of totally objective group, which I think is impossible.

MR. MCMULLEN:
The comments which prompted me to think about this, more than any, were Ms. Hansen's. We are talking about the difference between advocacy and explanation. There is a difference between getting the facts out so people know exactly what is proposed if they sign on to it, and advocacy. My point on the title is maybe we need to understand that because it is formalized and printed up as part of the document; it takes on a life of its own. We have to be careful of anything that is part of that document. It ought to be reviewed for accuracy as the rest of this is.

To the extent you go into the persuasive or the advocacy part, where free speech is rampant and should be, if the title is a moment of advocacy, then let us set it aside from the document. There ought to be one central place where, if you want to figure out what a petition does, you can very quickly and easily discern that with a factual explanation of what it does.

SENATOR TITUS:
I still worry about somebody's censorship. Sometimes, just a choice of words can make a difference. For example, a dump or a repository, those are two very different images you have created with two accurate words. Who is going to make that judgment?

CHAIR CEGAVSKE:
I was working with Ms. Vilardo on this; there is the part of S.B. 222 which requires a person to say who they are affiliated with and disclose the background of the person who is helping to write it. We are trying to educate a population of voters. How can you do that in the simplest framework? That is what you are trying to get at. You are right; it is very difficult. Mr. Glover brought the comment that in his county, he has such a problem trying to get anybody to write anything. Up in the north, the smaller counties do not have a large pool of people to pull from to write the questions.

MR. MCMULLEN:
We are talking about the differences between advocacy and persuasion and explanation and information to voters. We happen to believe the explanation feature is an important thing and it has to be done in advance of the process. We agree with Ms. Lusk, who said it should not be separate and probably should be on the form. That means it is an important part of the information and the disclosure. I heard Ms. Hansen talk about the voter making ill-advised decisions, but that assumes some level of truthful information about what is in the initiative. They are allowed to make an ill-conceived decision, but I do not want them to make an "ill-deceived" decision. We have to have a correct explanation of it. What is interesting this year are the digests in your pieces of legislation. They just state subjectively and correctly what the legislation does. That is an important thing and shows us there is a model. Who prepares that? It may be wise to have the advocate prepare it, but we could also consider having someone digest it and do the same so it is accurate for the voters. The alternative is to have a requirement that the explanation be vetted and certified as accurate.

CHAIR CEGAVSKE:
Who do you think should do that?

MR. MCMULLEN:
I understand the issue about the Secretary of State and the Attorney General and their conflict. I think, to the extent we are enacting laws, there needs to be an explanation of those laws. We have to have resources which can do that. One is the Legislative Counsel Bureau (LCB), the other is the Attorney General. Again, it is basically saying what a law does. I am assuming that the Attorney General's Office would be an appropriate place. I guess you could say the Secretary of State, with the advice of the Attorney General, but I need to think about it a little more because of the conflict issue I had not fully comprehended. We also have the resources within the LCB. They are much-demonstrated resources at this point. I guess that gets into a separation-of-powers issue.

The final point I would like to make is there should be an understanding the petition or the ballot proposition is not complete until the explanation has been done. In other words, the time would start to run from the point it is completely filed. We ought to make that a part of the proposition.

CHAIR CEGAVSKE:
When Ms. Parker and Ms. Vilardo were testifying, we talked about having the explanation done before instead of after. Senator Beers brought this up. We thought that would help. Mr. Lomax, you and I talked about that when we met, too. If it is written before, maybe it will not become so political. The people who submit the petition have to have the pro and con arguments done before, and then they can be validated or certified that it meets the criteria, whatever it is.

MR. MCMULLEN:
We have to be careful that we do not confuse argument with explanation.

CHAIR CEGAVSKE:
Good point; the explanation has to be an explanation of the bill or petition.

MR. MCMULLEN:
The arguments, pro and con, are persuasive and they have free speech rights. I will say I appreciated what Ms. Hansen said about *Meyer v. Grant*, but Buckley, in some senses and you have to read very carefully, says there can be some limits on the right of expression for enforcement or for administration. You have to be careful about that. I want this Committee to know it is not rampant free speech in that you can lie. We need to make sure we have some accuracy in the process, and that we can limit some of it. It does not mean they cannot go

out and say whatever they want to say when they are trying to persuade people. We would hope they would not lie, and we would hope they would not say, for example, “get rid of the Governor’s luxury tax.” The point is, an explanation up front is a very good thing. It needs to be set forth, and at that point, you have really clarified exactly what it is in front of people.

On that point, I do not know if I care whether people initial or check a box. I thought checking a box was interesting. I think the reason for the initial option is so you can have some enforcement. Anybody can check a box, but at least initials can be decipherable. You can tell it was done by a particular individual connected with that signature. We could at least work on that.

This has more to do with S.J.R. 8, but if these propositions have a fiscal impact, it might be important for the voters to know what the governmental fiscal impact is. You also have to look at the referendum process. It is different than the initiative process. The one thing which happens here is this phrase on page 12, line 24, which says, “We, the undersigned registered voters of the State of Nevada, propose that the following (statute/resolution) be submitted to the people of the State of Nevada for their approval.” In a referendum, you are saying to the people, do you accept and approve this or do you reject and disapprove of a statute that already exists. If it is not drafted correctly, you get into a loop, which happened this last time. Although, part of that was because you were asking for a statute to be repealed. It was a statute, not a law, but a piece of a bill. The real effective way you deal with that is you repeal it. What is important is not that we resolve it in this. If you give the Secretary of State’s Office the ability to recast it so it is correct and to reject the wording until it actually makes sense for the voters, you have given that Office a very effective tool. I have nothing against what was done this last time because, once you have thought through it legally, you might even have figured out it was correct.

I thought the notice provision was important because I do not think everybody gets on the Internet to look to see if these things are posted. We have to be careful of that. I do not know where the notice should be. I also thought, at one point, and this might make some of the people behind me a little skittish, not only should there be access to the explanation, but at one point, the person could say he has read it. When you check the box, maybe that is too intrusive, but it is important people actually vote for these things or sign them based on some information. I know Ms. Chapman said it is wonderful to get these petitions to the ballot. However, people need to understand their signatures are

used with some persuasive impact later because it is perceived they actually accepted the notion and wanted it in front of the people. If that is a logical implication of that signature, then we have to be careful about allowing people to say they signed the petition just to get it on the ballot. I appreciate the issue has some constitutional rights attached to it, but what we are trying to do is to get people to understand what they are putting up front.

On page 14, in section 17, the Legislature has given anyone who challenges these petitions 5 days. You have increased the time, assuming that were to pass in S.J.R. 8. However, five days, when you are looking at the great number of signatures, booklets and notaries from different counties, is not a lot of time. I do not know if it helps anyone, but this is something you need to look at because it is important to the counties and their staff this is done correctly and timed correctly. They definitely get thrown through a ringer with these things; there is no question about that. Five days may not be long enough for the outside world to decide whether or not there are some question marks, when they cannot even find the circulators. Sometimes, they have to file a competent complaint in a court of law within five days.

The other piece you ought to deal with is in section 17. The phrase “legal sufficiency” ought to be defined to be the procedural side, the side in NRS 295 and in the Constitution. Other challenges can be left for later because the one thing that is always interesting about this, and I have been on this side, is if a claim is not raised by a certain time, will someone argue you left it behind and you should have raised it in this five-day period? It is very difficult to figure out all the arguments, pro and con, on something. It is a difficult issue. I will be happy to participate as we go through this process, but I would like these points on the record as concerns that relate to this bill.

ROBERT CROWELL:
I am not here representing any client, although I have litigated a number of these petitions. Let me call your attention to the last paragraph Mr. McMullen was talking about. There is another ambiguity in that statute which needs to be cleared up. *Nevada Revised Statute* 295.061, in section 17 of this bill, says you get 5 days from the filing of the complaint with the Secretary of State. All I call your attention to is a substantial lack of clarity as to when that filing happens.

CHAIR CEGAVSKE:
I close the hearing on S.B. 222. Now, we will open the hearing on S.B. 252.

SENATE BILL 252: Revises date for primary city election and general city election in cities in certain larger counties. (BDR 24-971)

MS. NEWBY:
The City of Las Vegas is neutral on this measure. We do have some concerns about municipal issues getting lost in the ballot, but we are remaining neutral at this point for further consideration.

CHAIR CEGAVSKE:
I want to say this so we have it on the record. I will give you an explanation of the bill. I am actually going to read from the bill's Digest.

> Existing law provides that city primary and general elections must be held in odd-numbered years while state and other local primary and general elections must be held in even-numbered years.
>
> This bill requires a city incorporated under general law in a county whose population is 400,000 or more (currently Clark County) to adopt an ordinance setting city elections in even-numbered years. This bill also amends the charter of each city created by a charter that is located in a county whose population is 400,000 or more to reflect this change in election dates. Cities affected are Boulder City, Henderson, Las Vegas, Mesquite and North Las Vegas.

I had met with the clerks and the registrars of voters. We were trying to figure out ways we could help make the job easier for them and cut costs. They were telling me the exorbitant amount of money being spent on things. This was one of the recommendations which came up. If we could eliminate the odd-numbered-year elections and put the elections in the even-numbered years, the general elections, they roughly estimated there would be $1 million in savings just on the mailings part of the election. The turnout for voters is small in the odd-numbered-year elections, and it is so costly to put the elections on because of the costs of printing the ballots and the mailings.

This is a recommendation brought forth in hopes of helping to eliminate duplication. By the way, the northern part of the State already does this. It has been very effective. That is what we are trying to do with this Legislation.

SENATOR TITUS:
I know there are a lot of advantages in doing this, it gets higher turnout, savings in time and savings in money. One of the downsides of doing this is that the attention span of the public is fairly short. If there are too many elections on the ballot, there is a lot more information, campaigning and signage. The races tend to run together, the voters tend to focus only on those races at the top of the ticket and there is a lot of falloff down at the bottom. There is a downside to it as well as an upside. You have to weigh those.

SENATOR RAGGIO:
I do not disagree; although, I do not think the downside, when you weigh this, is more persuasive. Reno and Sparks now have their elections at the same time as the general elections. The turnout was always low in the municipal elections. Sometimes you really wondered if the people elected were really those the majority of voters supported. Senator Mathews, you went through it at a time when it was in an odd-numbered year.

The other good side of this is all those political signs are not there during odd-numbered-year elections. The system now, where the elections all run during the even-numbered years, is a lot better. Candidates get a full opportunity to campaign. The municipal election candidates are out there as well. The savings to the counties and the cities are really quite good.

CHAIR CEGAVSKE:
That was one of the things which was so appealing, especially in staff time. They explained to me they all had to hurry and get this election done so they could get revved up for the next election. It is time-consuming, and they have to get more people. They might just have part-time positions to come in and help. Senate Bill 252 will help with staffing, also.

There is an issue which has been brought to my attention by the judges. I would like Mr. Stewart to address it. In section 2 of the bill, it says, “Unless the terms of office of city councilmen are extended or shortened ... .” That was one of the concerns. You will see it in section 3, subsection 2. The judges were concerned their time would be shortened. That is an issue we were now trying to deal with. We were talking to the Secretary of State, and Mr. Stewart has found a constitutional provision in the NRS.

MICHAEL STEWART (Committee Policy Analyst):
You brought this question to me yesterday. I spoke with Legislative Counsel Brenda Erdoes and she referred me to Article 15, section 11 of the Nevada Constitution. I will summarize it: the Legislature shall not create any office, the tenure of which shall be longer than four years, except as here and otherwise provided in the Constitution. In a lot of ways, the Legislature can say there are particular municipal offices or county offices with four-year terms. It would most likely be against Article 15, section 11 for the Legislature to increase the term. Since there were some concerns about whether or not the terms should be extended or shortened, the reality is, as Ms. Erdoes explained, if you really wanted to switch from a municipal cycle to a general election cycle, there may be an instance or two where you probably have to shorten it. In no way could the Legislature, pursuant to this, do anything to allow you to extend it.

CHAIR CEGAVSKE:
The judges have a six-year term. How would that affect this bill? Is that an exception because it is a six-year term? That is a concern to the judges.

MR. STEWART:
The six-year term might have been set forth in the Constitution. I would have to look that up. Ms. Erdoes explained to me they chose that terminology because of Article 15, section 11.

CHAIR CEGAVSKE:
Would we have to change the Constitution?

MR. STEWART:
I do not know. I would have to look that up. One thing to point out is that has to do with general law cities where this language is set forth. General law cities are Ely, Fallon, Fernley, Lovelock, Mesquite, West Wendover and Winnemucca. The rest of the bill changes the city charters as in our special act sections of the NRS. That is part of the bill. They have rolled the municipal and the general election cycles so, after a while, no one ends up losing any race time.

SENATOR RAGGIO:
I did not look at it that closely; I thought the general law only had to apply to counties with over 400,000 people.

MR. STEWART:
That is correct. In section 1, subsection 2, it mentions that. I guess we are looking at the one city it would affect which would be Mesquite.

CHAIR CEGAVSKE:
We are going to look into that because it is the concern of the judges. When we do a work session, we hope to have the information.

Mr. Lomax, we have gone over S.B. 252 briefly. We have also had some discussion. I would appreciate you making any extra comments.

MR. LOMAX:
Clark County supports this bill. From a financial point of view, we estimate it would save the taxpayers about $1 million every other year. That is about what it costs the cities to put on a primary and a general election every other year. Combining those elections adds almost no cost to us. We are already manning the polling places and the early voting sites. There is only some additional printing, adding a few more races and any additional questions there might be.

What happens is we pay for the election and the taxpayers reimburse us. We billed the cities in Clark County about $620,000 for the 2003 primary election, alone. The general elections in the municipal arena are more difficult to quantify only in the sense that they are always different. In the city elections, if one person gets 50 percent of the vote or in the City of Las Vegas, if there are only two candidates, the race is run in the primary election. Very often in the city elections, the general election is much smaller than the primary election.

For instance, we are doing the city election, as we speak. Right now, all of Las Vegas is voting. In the general election, only Ward 6 will vote. Five of the wards will fall out because they have nothing to vote on. Usually, the general election is cheaper. On an average, the last couple of times it has been about $600,000 for the primary and $300,000 to $400,000 for the general election. Almost all of that cost goes away as far as the taxpayers are concerned. We would have to work out our schedule with the cities. That would have to be determined. All in all, it is hard to point to a downside, at least from a financial standpoint.

SENATOR WIENER:
I just voted absentee. I had a ballot with one race that had two candidates. I have done this every time I have been here. It is not uncommon to have a very light primary election and an even lighter general election. What would be the average number of races on a ballot? I live right in the city, in Spanish Oaks. What would be an average primary election and an average general election, in terms of numbers of races on the average voter's ballot?

MR. LOMAX:
In an individual city, just like our commissioners do in the county, half the councilmembers come up each election cycle. Then, if they are unopposed, they do not show up on the ballot. For the worst case, you take however many council people they have on their particular council divided in half. That would be the worst-case number of contests. Then, there would be the municipal judges and a mayoral race every other year. It is not a lot of contests. The mayoral races between the cities are staggered so they do not always take place at the same time. Right now, for five of the six wards in Las Vegas, you, as did I, had two judges to vote for in one contest. Ward 6 actually has that and a council race. Henderson has one judge race and a mayoral race. North Las Vegas, in the primary, has one judge race. We are not talking about a lot of contests. Of course, hand in hand with that goes the turnout you might expect. It is not uncommon for the turnout for these elections to be less than 10 percent.

CHAIR CEGAVSKE:
We will hear S.J.R. 8 next week. I want to thank the staff and the Committee for staying this late. Since there is no more public testimony, I will now adjourn the meeting at 5 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: