MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-third Session
May 10, 2005

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara Cegavske at 2:05 p.m. on Tuesday, May 10, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, 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

GUEST LEGISLATORS PRESENT:

Assemblywoman Heidi S. Gansert, Assembly District No. 25
Assemblywoman Chris Giunchigliani, Assembly District No. 9

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John L. Wagner, Burke Consortium of Carson City
Lucille Lusk, Nevada Concerned Citizens
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Janine Hansen, Nevada Eagle Forum
Lynn P. Chapman, Nevada Eagle Forum

Samuel P. McMullen, Las Vegas Chamber of Commerce; Retail Association of Nevada
Sabra Smith-Newby, City of Las Vegas
Alan Glover, Clerk/Recorder, Carson City
Dan Musgrove, Clark County
George Harris

CHAIR CEGAVSKE:
I will now open the hearing on Assembly Bill (A.B.) 185.

ASSEMBLY BILL 185 (2nd Reprint): Revises provisions governing petitions for initiative and referendum. (BDR 24-711)

ASSEMBLYWOMAN HEIDI S. GANSERT (Assembly District No. 25):
Assembly Bill 185 concerns initiative petitions. It requires an initiative petition address only one subject and other matters properly related to that subject. As you are aware, the single-subject requirement already exists for legislation brought during a legislative session. When an initiative petition is submitted to the Secretary of State, A.B. 185 would require the petition be accompanied by an accurate description of the effect of the initiative if it is approved by the voters. This description would be limited to no more than 200 words unless approved by the Secretary of State. This description would appear at the top of the signature page of the petition. The bill would require the Secretary of State to review the description for an initiative petition before the petition may be presented to the voters for their signatures. Under this legislation, the Secretary of State must consult with the Fiscal Analysis Division of the Legislative Counsel Bureau (LCB) to obtain a fiscal note on the effect of the petition.

Assembly Bill 185 would require the fiscal note to address any anticipated increases in State, county or local revenues or expenses, should the petition be approved. Assembly Bill 185 would require the petition, the 200-words-or-less summary and the fiscal note be posted on the Secretary of State's Web site not later than 10 days after the petition is submitted to the Secretary of State. Finally, A.B. 185 would allow the description of the effect to be challenged by filing a complaint in the First Judicial District Court not later than 30 days after the petition is filed with the Secretary of State. I believe the initiative petition process was damaged by activities during the last election cycle. Some petitions presented by signature gatherers were multi-subject and misleading. Last minute

challenges also confused the issues and led to costly reprinting of voting materials. I want to be clear that I support the initiative petition process, and I believe this bill will strengthen it.

CHAIR CEGAVSKE:
We have discussed the single-subject rule before. We heard Senate Joint Resolution (S.J.R.) 8 in this Committee. I was told by some Committee members the reason the bill died in the Senate was because of the single-subject rule.

ASSEMBLYWOMAN GANSERT:
The Legal Division came up with some of this language, and we also took some language from California. Section 1, subsection 2 narrows the definition of materials in an initiative to be "functionally related and germane."

CHAIR CEGAVSKE:
We have Senator Townsend's bill, Senate Bill (S.B.) 224, which also deals with the single-subject issue.

ASSEMBLYWOMAN GANSERT:
My hope is the summary will make it clear to the individuals who are approached to sign an initiative petition. Many times the initiative petitions are lengthy. A quick 200-word summary would make it easier for those individuals to review the summary and decide if they want to sign the petition.

JOHN L. WAGNER (Burke Consortium of Carson City):
I did check on the sign-in sheet that I was not in favor of this bill. I have been looking over the bill, and now I am not sure. I do have a question concerning the requirement that the summary be printed on each page of the petition. Most petitions are double-sided. Does that mean the summary would appear on the top of each side of the page? Could it be on the top of the first page? The person signing the back page of the petition could just turn the page and look at the summary on the front page. Everything else in the bill looks fairly good. I hope petitioners can write a summary of no more than 200 words.

LUCILLE LUSK (Nevada Concerned Citizens):
We are here in support of this version of A.B. 185. We had many questions on the bill before it was amended and sent to this Committee. This bill has been finessed until it actually has a good description. The way I read the bill, the

requirement is a 200-word description must be at the top of each signature page. I understand the rationale behind that. Sometimes the signer does not necessarily see the top of the petition if they are signing on a back page. It is space-intensive. Obviously, the requirement that the summary be on the top of each page is going to prevent fitting as many signatures on a petition page. In the interest of making sure everyone has the opportunity to understand what is addressed, we do not object to that provision. We particularly agree with the fiscal note preparation and availability on the Secretary of State's Web site. That would be of great value to anyone who really wants to know what the petition actually does. I just want to express our support for this particular approach. It is far better than what we have seen in any of the other bills. We hope you will use this as your template in any remaining bills.

RENEE PARKER (Chief Deputy Secretary of State, Office of the Secretary of State):
I fully agree with Ms. Gansert's comments. We support this bill. It will help us address some of the problems. We get a lot of questions about the fiscal impacts of petitions and requests for better descriptions of the initiatives being circulated. This will help address some of the problems we have seen with the petition circulation.

The summary must be printed on top of each signature page. Petition signature pages are sometimes double-sided, and given the wording in this bill, the summary would probably have to be at the top of the double-sided page. It does make sense to do it that way because sometimes people do not flip the page over since the petition is on a clipboard. If the summary is just on the front page and the page is flipped over to get the signatures on the back page, that description would not be readily available to some of the petition signers.

SENATOR WIENER:
When we get fiscal notes in our book, we get them from a different department or agency. As written in this bill, would the fiscal note be done in terms of dollars and cents? Would it say who identified that fiscal impact? Would it be that specific? Would it say where the fiscal impact would be felt?

MS. PARKER:
It would be similar to the fiscal note you see on the ballot questions in a sample ballot. What we obtain is similar, but we would make that available to the voters before they decide to sign the petition. We would work in conjunction

with the LCB Fiscal Division to obtain the fiscal note in a timely manner so we can get it posted in that ten-day period. It would just address what kind of fiscal impact it would have on the State or local government.

JANINE HANSEN (Nevada Eagle Forum):
Article 19, section 5 of the *Constitution of the State of Nevada* says, "The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof." Every single petition bill we have seen adds additional requirements and restrictions in some way. It does not facilitate it; it makes it more difficult. Section 1, subsection 2 of A.B. 185, which defines the single-subject issue, is the best definition we have seen this Session. I told Ms. Gansert, if we are going to pass something defining the one-subject rule, this is an excellent description. It is the best we have seen by far. I support that section of the bill if that is what we plan to do on the one-subject rule. It includes " ... connected therewith and pertaining thereto ... functionally related and germane to each other ... ." It is broad enough, and yet it has some definition that might give greater comfort to those who have been concerned about that.

However, section 1, subsection 1, paragraph (b) requires a 200-word description. I have given you a copy out of the Secretary of State's handbook of what they say an initiative petition should look like (Exhibit C). There is a spot on the top of Exhibit C where you can put the full text of the proposed measure. Exhibit C does not have the full text on it. After the full text on a petition, this bill requires a 200-word description. If you are going to do that on both sides of the petition, there is not going to be any room for any signatures, maybe just three or four signatures on each page. I do not know how many of you have gone out and gotten signatures. The fact of the matter is, nobody reads it. I am sorry to tell you this, but nobody will read 200 words. It is great to put the description and the fiscal information on the Internet for people who really want to know; we would all benefit from that. The reality is that no one is going to read a 200-word description. It may be an altruistic idea; the reality is not one person out of 100 will ask to see the petition, except to put their signature on it.

With regard to the 200 words, the other thing I am worried about is the accurate description required. Who determines what is accurate? The United States Supreme Court has said when you are advocating your position on a petition, your free speech cannot be restricted. In other words, you cannot be

forced to give the opponent's point of view. You have to be allowed to give your point of view. Who determines the accuracy? It appears to me that the First Judicial District Court determines the accuracy. It means that immediately when the petition is filed with the accurate description, you are going to be in court with those who oppose your point of view. That will happen immediately. It will go to court because of the description.

In 1990, we had a serious disagreement with the Secretary of State on how she described a particular initiative. We took her to court and did get that definition changed. This is not going to be the description that is on the ballot. This description is just on the petition, not on the ballot. The description we challenged was on the ballot. Who determines what is accurate? Does that interfere with the free speech of those who are in an advocacy position? How are you going to get 200 words on both sides of this petition and have any room left for anyone to sign their signature?

I do support putting the information on the Internet, and I do support the fiscal impact information. Of all the issues we have this Session to challenge, this is the simplest, but the initiative process is not broken. We had a lot of initiative petitions that did not make it on the ballot because they did not get enough signatures. We had a lot of initiatives that failed when they went to the voters. The process worked. Everybody got up in arms because there were several petitions, but the people of the State of Nevada gave the Legislature the authority to govern us. We maintain the authority to do the initiative process. One of the reasons for an increasing number of petitions is because people are unhappy, sometimes, with what the Legislature does. This is our only opportunity. This is real democracy. Do we want to limit real democracy? Most of these bills do. I reiterate that if you are going to have a definition of one subject, by far, this has the best definition. The 200-word definition is logistically difficult.

SENATOR RAGGIO:
If you look at one of our bills, 8 or 10 lines contain 200 words. That would not take up too much space on a petition. Our bills contain rather large type. I read somewhere of someone circulating a petition in Massachusetts that condemned people who sign petitions. They got thousands of signatures on that petition, and it did not take that long to gather them. There should be something on the petition.

MS. HANSEN:
I am not against information if it is logistically possible, done in the small type you have in the bills. What I am telling you is the reality. It does not matter what is put on the petition. It does not mean people are going to read it. It does not bother me to put a description on there, except there is less room. Do not be deceived into thinking anyone is going to read it or that it will make any difference because they do not read it. That is my experience.

The other thing is, who determines if it is accurate? That is the key here. Is that answered in this bill? Section 3, subsection 1 says, "The description of the effect of the initiative required ... may be challenged by filing a complaint in the First Judicial District Court ... ." I guess that is the answer; it will have to go to court to determine the accuracy. If you want to have it tied up in court, that is what the answer will be.

SENATOR BEERS:
We should probably not hold this up as a good example for anything to do with a one-subject law. We have one, but it is not rigorously enforced.

LYNN P. CHAPMAN (Nevada Eagle Forum):
Everybody has hit upon all the topics I wanted to talk about, except for one. I carry my petitions on a clipboard, so if a petition is turned over on the back side, people just lift up the sheet and look at the top of the next petition page if they want to read what the petition is about. I always have a stack of petitions. The person who wants to read the summary lifts up the page and reads the summary on the top of the next page. That way, the summary would only have to be printed on one side. Most people do not bother to read the petitions. They usually have already heard about it and understand it. I have had people ask if it is the petition they heard about and then ask if they could sign it.

CHAIR CEGAVSKE:
Unfortunately, we found out that many petitions have hidden agendas in addition to the catch phrases heard or read in the newspaper. There were a lot of unintended consequences in some of the petitions that were out there. That is why we are seeing so many of these bills come forward. We want to make sure everyone understands because people did not understand about the fiscal notes and what responsibility the taxpayers would assume. People should know that.

I have been approached at the grocery stores to sign petitions. I have not signed them if they do not have the information describing the petition. If they cannot tell me what it is, I am not going to sign it. For the few petitions I have signed, I have actually taken the time to read up on the issue to know what it is and whether or not it is worth signing. There are people who do read the petitions and are informed before they sign the petitions. Because of this last election cycle, the citizens are aware they need to read the information provided. For all of you who do collect the signatures, you might have a different scenario the next time you collect the signatures of people who really want to understand what the petition does before they sign it.

SENATOR WIENER:
The petition form in Exhibit C, says "insert the full text of the proposed measure." Maybe the reason people are not reading the petition is because it is the full text of the measure. People may be inspired to read the 200-word synopsis, especially if there is an assurance that it is accurate. It may get people more involved in the process rather than discouraged by the full text.

CHAIR CEGAVSKE:
Staff was just pointing out to me that section 1, subsection 1 is similar to S.B. 224, which is Senator Townsend's bill. We did not have the definition in section 2.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce; Retail Association of Nevada):
I support A.B. 185 because it does three things: it requires a fiscal note, it requires the petition embrace and articulate the one-subject rule, and more importantly, it allows for a challenge.

CHAIR CEGAVSKE:
I will now close the hearing on A.B. 185 and open the hearing on A.B. 497.

ASSEMBLY BILL 497 (1st Reprint): Revises provisions relating to initiatives and referendums. (BDR 24-442)

ASSEMBLYWOMAN CHRIS GIUNCHIGLIANI (Assembly District No. 9):
Assembly Bill 497 was a bill I requested over a year ago. It does a couple of things. Section 1 clarifies a past practice. The first time I circulated a petition, I was president of the teachers association. You could just have a person sign a

voter registration form and at the same time sign a petition. That is still the practice in many of the counties, but there was some disparity this last time around. Section 1 attempts to clarify that is still allowable, but we did put in a time line. The registrar of voters would have to receive the registration form within three working days. In drafting this bill, originally, it was three days, excluding weekends and holidays, after a person signs the petition. That language did not get lifted. That might make it a little bit clearer and tighter for everybody. That was our intent.

CHAIR CEGAVSKE:
Does the bill still exclude weekends and holidays?

ASSEMBLYWOMAN GIUNCHIGLIANI:
That is correct. Next are sections 3 and 4. Ms. Gansert has requirements for the subject of each petition in her bill. In my bill, I had requirements for the subject of each petition and requirements that the subject of the petition be indicated in the title. Her bill was a good one, so we split the issue. Her bill contains the requirements for the subject of each petition, and my bill contains the requirements for the title. I want to parallel my bill to hers as much as I can. If the Committee is willing, I would suggest deleting the reference to the Attorney General and changing those references to the Secretary of State in section 5, subsection 2, paragraph (c). You do not want to put them in an awkward position. Line 20 would be deleted, line 21 should replace Attorney General with Secretary of State and line 26 should read, "The decision of the Secretary of State" instead of the Attorney General. That would resolve any conflicts with the other bill. The intent was to require that the title reflect what is going on in the petition. You know as well as I do that games can be played. The petition process is open and should be honest and forthright. It is the people's right, so we have to make sure we are not deluding people.

In section 9, we had not changed the number of registrations to qualify for a petition in over 20 years, so I just doubled it. It made sense to bump that number for the city and the county because of the population increase. Also in section 9, subsection 4, I tried to work with Mr. Larry Lomax to anticipate what would be needed, in a reasonable time frame, to turn things around if there were challenges. We changed the requirement for the affidavit receipt from 180 days to 150 days. In section 9, subsection 4, paragraph (b), we changed

130 days to 145 days before the election. That way, if there was a court case or a challenge, the voter registrars still had time to go to printing, especially for our overseas ballots.

The language in section 10 expedites the process so the court could schedule a hearing within 3 days. You will see that paralleled throughout the bill for both the county and city language. In section 11, we believe if a petition is going to be done, it should be on a general election ballot and not on the primary ballot. Too many games can be played because of low turnout in the primary elections. If the petitioners believe something is important, it should be in the general election.

Section 12, subsection 6 is parallel language for an expedited process regarding the writing of the questions. It concerns the rules and regulations the clerk has to approve on argument rebuttals. We have the committee process we did for Mr. Harry Mortenson's bill four or six years ago. We wanted a process in case they could not get anyone to volunteer to write the arguments. This allows for other writings to come into play.

The language in section 12, subsection 9, paragraph (b) parallels language in section 10, which concerns the 3 days to go into court. Section 13, subsection 8 is the same parallel. Then throughout the next sections, "primary or" is deleted for city elections, so petitions would go to a general election, not a primary election. Section 16, subsection 4 parallels the same changes in section 9, subsection 4 on days for the receipt of the affidavits. Section 19 parallels the 3-day issue for general elections because this is all the city elections.

Sabra Smith-Newby has one amendment which is fine with me. We had a question I would like to pose to Mr. Michael Stewart. In section 19, subsection 6, we were not sure about the language. It discusses city elections and city clerks, but then it shifts to county clerks. Maybe we just did not catch that or the county clerk is responsible for writing all the rules and regulations for the elections and the cities parallel that. I would like to clarify the intent.

MICHAEL STEWART (Committee Policy Analyst):
We will look into that. Generally, in my experience, we would keep it consistent throughout the paragraph. I will take a look at it and bring it up before the Committee for an adjustment. That would be fine.

SENATOR WIENER:
I do not remember when one of these petitions had been on the primary.

ASSEMBLYWOMAN GIUNCHIGLIANI:
Too often advisory questions were brought in a primary rather than in a general election. That was the issue that came up. If it is important enough, and you really want the voters' input, it should be on the general ballot. Sometimes, the petitioners come to the Legislature and tell us the voters voted overwhelmingly for an issue when it was really only 8,000 people who turned out over the entire election. It is time to be honest and put it on the general ballot. If you can make a good case for the petition, then you can make a good case.

SENATOR WIENER:
Current law says they can elect to plan which ballot the petitions go on.

ASSEMBLYWOMAN GIUNCHIGLIANI:
That is correct.

CHAIR CEGAVSKE:
I will close the hearing on A.B. 497 and open the hearing on Assembly Joint Resolution (A.J.R.) 5.

ASSEMBLY JOINT RESOLUTION 5 (1st Reprint): Proposes to amend Nevada Constitution to revise provisions governing petition for initiative or referendum. (BDR C-1399)

ASSEMBLYWOMAN GIUNCHIGLIANI:
For discussion purposes, A.J.R. 5 is an attempt for this Legislative body to address the situation in Idaho where the courts struck down their petition signature requirements. Nevada has a similar county requirement to Idaho. Signatures have to be gathered in 75 percent of Nevada's counties, and that equals 13 out of 17 counties. In looking through what other states were doing, I tried to come up with a solution not allowing Clark County to be the tail that wags the dog, but recognizing disparity from other counties.

We recommend the petition process be through the congressional districts. We have not looked at the percentage threshold in a long time. We tried to segregate the issue of what is in a statute or amendment versus a constitutional amendment. That is why you see two different suggested percentages. In our

minds, the percentage threshold should be higher for a constitutional change, so we set a 20-percent threshold. An amendment to a statute is important, but it is important to a different degree so we suggested a 15-percent threshold. That is really what the bill does. I will leave this up to the Committee. If we are going to review this, we decided maybe it is time to change the threshold because of our population growth. Does the 10 percent really allow for true citizen input, or is it one that makes it overly easy? You want people to do their petitions and the public should have that right. We do not want to become like California, where everything seems to go to a ballot. That was part of the debate.

I brought a handout for you (Exhibit D). Statewide, the 10-percent voter turnout would require 83,156 signatures. Fifteen percent of voter turnout would require 124,734 signatures. Twenty percent of the voter turnout would require 166,313 signatures. Also on Exhibit D is a breakdown by congressional district. There was not much discussion on the correct percentage. Most people agreed we should have a different standard for a statute versus a constitutional amendment. It is up to this Committee where you want to go with the percentage. There should be a tighter threshold as people are gathering signatures for amending the Constitution.

CHAIR CEGAVSKE:
I am going to close the hearing on A.J.R. 5 and reopen the hearing on A.B. 497.

SABRA SMITH-NEWBY (City of Las Vegas):
I brought a copy of our amendment (Exhibit E). It suggests a change from the number of voters who voted in the last preceding city election to the last preceding citywide election. The reason is evident in the chart I brought (Exhibit F). The chart shows the voter turnout in the city of Las Vegas in each of the elections since 1999. As you can see, there is quite a disparity between the numbers of signatures needed for an initiative or referendum if it is filed immediately after a special election versus a general election. We just wanted to make signature requirements even across time. Of course, voter turnout fluctuates, but to go from 32,000 to 6,000 is quite a fluctuation in terms of voter turnout.

The second amendment concerns language in section 19. Assemblywoman Giunchigliani brought forth the question of whether it should be the city clerk or the county clerk. Right now, the bill refers to the city clerk and then changes to the county clerk. We were not sure if that was correct.

MS. LUSK:
We are generally in support of what A.B. 497 is attempting to accomplish. We have no objection to the requirement of a clearly stated title. We do have some questions about the bill. We understand the purpose of section 1 to allow a person to sign a petition at the same time they register to vote. However, the language seems unclear, and we are not sure it would be interpreted the way it is intended. We hope you will work on that and clear it up. We could not figure out what to suggest in terms of how to clear it up. Since the intention is clear, it should not be too hard to come up with some language.

Assemblywoman Giunchigliani suggested changing the Attorney General to the Secretary of State in section 5. We would certainly not object to that. We do want to point out that you are creating a different process for dealing with the description if you were to pass both A.B. 185 and A.B. 497. There is not anyone who judges the description; if it is challenged, the court judges it. Assembly Bill 497 would require the Secretary of State to judge the title. I am not sure you want to have the processes so different. However, if the judgment of the description does stay with the Secretary of State, I would assume the petitioners could work with the Secretary of State on the title of the petition. He or she could say what is wrong with the title, and the petitioner could work on a better one. We do not want a situation where the Secretary of State rejects the title and it immediately goes to court. We do not want a straight-out adversarial process which is almost implied in this bill because there does not appear to be any flexibility.

Section 5 also addresses the Secretary of State determining the number of signatures required for the petition up front. That is absolutely essential so the rules are not changed in the middle of the game. The language is a little unclear about what the Secretary of State would use to base that number. I assume the Secretary of State would decide the number of signatures based on the numbers from the most recent general election. The bill does not say that. It would be valuable to clearly identify the determining factor.

Section 9, subsection 4 refers to changes in the time for submitting a petition. The way I read this, it reduces the time to collect signatures from 180 to 150 days. I am not sure if I am right, but if that is correct, it is a significant concern for petition circulators. It is hard enough to get signatures in the time

we now allow. We support the concept of having a title that accurately expresses what is in the petition. If you can find a way to make it work, we would greatly appreciate it.

MR. MCMULLEN:
There are some problems with this bill. Some of my comments are based on specific experience. My first comments refer to section 3 and section 4. We have already gone back and forth about the accuracy, inaccuracy and possible deceptiveness of a petition title in an earlier meeting. Section 3 and section 4 link to section 5, which refers to a review process. As I understand this, the Secretary of State would have the obligation to review, not the Attorney General. The trouble with the single-subject rule is if you say the subject of the initiative must be accurately indicated in the title, that could be a two-word indication. However, that may not be completely accurate in terms of all the implications. Actually, in section 5, you have made the test to accurately indicate the title. That could have been the case with initiatives we saw this election season, yet they were not fully descriptive and accurate.

We have two thoughts on this. You could go for a simple title line. That encompasses the single subject and all related matters to indicate the general sense of the document for the reader. The trouble is, the title has a persuasive and a practical aspect, so you run into free speech issues. I am not sure how to answer that. Our second and competing thought process was one we have talked about before; a digest could be prepared. We are all becoming comfortable with the legislative digests on the front of the bills; something similar could be produced. It is similar to A.B. 185 because A.B. 185 requires a fiscal note in appropriate circumstances. Having a neutral party explain the petition might also be valuable.

I appreciate the comment that people will not read the summary. My experience has been they do not read it because it is not in front of them. Putting the summary in the front makes sense, or at least having it there makes sense. Looking at these digests again, it seems to have a great effect in giving people an accurate view of the subject matter.

CHAIR CEGAVSKE:
Assembly Bill 185 requires a 200-word description. Would that work or do you want a legislative digest?

MR. MCMULLEN:
I hesitate to oppose the 200-word description because that goes a long way in getting information out, which is something we emphatically favor. However, the 200-word description would actually be prepared and set forth by the proponents of the initiative. That would exercise free speech and persuasion and not accuracy. It would not have to include everything in the legislative digest, such as the history, but the expertise of the LCB would be important to actually say what these things do. We have grappled with that.

Another alternative is to leave titles off. If they cannot be completely accurate, then in a sense they create the possibility of misleading the reader. Again, I understand the free speech and the persuasive issues. If you approve this with section 5, it is important to understand exactly why the title is rejected. Right now, it can only be rejected based on the issue of accuracy.

CHAIR CEGAVSKE:
In other words, we need to know what defines the accuracy.

MR. MCMULLEN:
Some additional substance may keep this from ending up in lawsuits. I did not look closely at why NRS 295.045, subsection 1 would be deleted by section 6 of A.B. 497, although that language is in section 5, subsection 1, which is NRS 295.015. I do not think that had a different effect by relating to a different procedure because you added referendum under section 5, subsection 1. We want to make sure a copy of the petition is always placed with the Secretary of State.

Section 7 discusses front ending the court hearing. It is wonderful to have a hearing within a reasonable and expeditious time after the complaint. I may not argue with 3 days, but the 5-day limit for court challenges in section 7 is an interesting time period. I have had experience gathering all information relating to procedural challenges, making sure those are documented, putting them into evidence as part of the supporting affidavits and information for a complaint, and drafting a complaint and filing it within five days. It is a challenge because booklets are each treated differently. They are supposed to be treated the same, but you may find some notarized incorrectly, a signature missing on one booklet and another booklet correctly notarized. You have to go through thousands of booklets to define the challenge.

Input from the local governments might be helpful because we basically camped out in their offices and caused a lot of disruption. They look at these books and have to transmit them. At the same time we were trying to figure out allegations about lack of notary, improper notary or things that are challengeable. Especially since we are moving the time frames around, additional time or understanding would be valuable.

We appreciate where this bill is going and would support it.

CHAIR CEGAVSKE:
You had a question about section 6, which contains the deletion of NRS 295.045. Staff told me you were correct in assuming it was deleted because the same language is in section 5, subsection 1.

ALAN GLOVER (Clerk/Recorder, Carson City):
I am here on behalf of the Nevada Association of County Clerks and County Election Officials and in particular, Mr. Larry Lomax, Registrar of Voters, Elections, Clark County. This bill has some good features that really help us as clerks. The petition process affects how we conduct an election, as witnessed in the 2004 election, which did not go well.

Having said that, we do have one concern in section 1, subsection 2. Article 19, section 3 of the Nevada Constitution states, "[an] individual who signed such document [petition] was at the time of signing a registered voter in the county of his or her residence." This bill does not change when somebody is registered. Someone is considered registered when we have received it in our office or by the postmark on the envelope. Nothing in this legislation changes that, but yet, this three-working-day problem is in here. We think there could be a challenge to a petition on the grounds that the people signed the petition before they were registered to vote, as provided by the Nevada Constitution. We would prefer not to have that language in there to make it clear. Our concern is we not have challenges to petitions. We want them clean and straight to the point so we can process the petition and get ready to place it on the ballot for the next election.

We appreciate the time frame in section 9, subsection 4, paragraph (a). This is the heart of the bill. We need more time to handle the lawsuits after the petitions are presented. That was the problem in the last election. We were running up against deadlines to get overseas ballots out, and because we had

these problems, people did not get their sample ballots on time. We did not know what to print on the ballot. We did not get a lot of overseas military ballots to those servicemen and servicewomen in time for them to vote. That is morally wrong; this goes a long way to help in that area.

Assemblyman Mortenson was kind enough to allow the inclusion of the language from section 12, subsection 6 into the bill. He has been the father of the committee process, but we had one problem: what to do if the clerks could not put a committee together. This makes the arrangements on what happens if we cannot get a committee. We thank him for that.

Senator Wiener asked a question earlier concerning the petition on the primary or the general election ballot. We favor petitions going for the general election because the statute does not say who can put petitions on a specific election. We had such a case here in Carson City with a local petition. No one else took any action; I placed it on the general election ballot because it was a controversial issue so more people were going to vote on it. Some of the proponents of the initiative did want it on the primary because they had a hard, solid core group they could have brought to the polls. That was always a problem, and this clears it up. Petitions go on the general election where most of the people are voting, and it ends that conversation there. Other than that, we are supportive of the bill and hope we can get some relief when it comes to petitions so we can conduct elections.

DAN MUSGROVE (Clark County):
I am going to echo Mr. Glover's expertise in this area. I did verify with Assemblywoman Giunchigliani that she was well aware of the discrepancy between the three days. Our Clark County District Attorney said equal protection gives the petitioner a different level of status than the actual voter. Section 1, subsection 1 talks about a person who is registered to vote. Section 1, subsection 2 discusses the person who has completed the application to register to vote. There is a discrepancy in those sections, and you have put them at an unequal position. That is a bit problematic.

That is our only concern. We completely support what has been done with this bill. We appreciate the fact it helps us in our process and are completely supportive, except for section 1.

MS. HANSEN:
I want to support this section which allows a person to register to vote and sign a petition. We are always talking about getting people involved in the process and question why more people are not registered to vote. Yet, when we have an opportunity to get people involved, we place bureaucratic barriers in their way.

I have gathered signatures all over the State many times. People move, they move here from another state, they get married, they change their name or they are young people who have not registered to vote before. These people are interested in the issues, and they want to register to vote and sign the petition. During the last petition cycle, we registered over 2,000 people to vote, but their signatures did not count on the petitions because of this arbitrary rule. This rule that says you are not registered to vote until it is in the clerk's office is not consistent across the State. I called many of the different clerks' offices and found at least three allowed people to be registered to vote on the date they signed the voter registration. Three rural counties allowed that. If we want to include more people in the process, this does not jeopardize the issue. They register to vote, and then they sign the petition within three days.

I agree with Ms. Lusk, the language in section 1, subsection 2 is unclear. I talked to Assemblyman Giunchigliani about it. If you have registered the person on a Friday afternoon in a rural county and cannot get to the post office by 5 p.m., this person's signature does not count. If you are in a large county, can get to the post office that day and get it postmarked, the person's signature does count on the petition. This would really discriminate against those in the rural counties.

What if a petitioner is gathering signatures on a Saturday? Those registrations cannot be turned in or postmarked in such a way to be counted by the clerk's office. Once again, you are discriminating against people because they want to sign a petition on a Saturday. People should be allowed to have those three days where they can sign the voter registration, sign the petition and have a couple of days over the weekend to turn in that voter registration. It is not a procedural problem because the petition is turned in after all those voter registrations are submitted. The clerks already have the voter registrations. I cannot understand why they would not want to facilitate voter registration and participation. They are disenfranchising people by this artificial rule. I support Assemblywoman Giunchigliani's bill in that area.

Regarding section 3 and section 4, I want people informed as to what they are signing. I always have information with me. I appreciate what Chair Cegavske said about reading the petition. I always read the petitions too. The reality is most people do not. If we have to put everything in the title, is the title going to be as long as the explanation? Maybe we could do either the summary or the title. To do both is repetitive. What if something is left out of the title? In 2000, we did the protection-of-marriage petition. We probably titled it "Protection of Marriage" and probably those who opposed us would have taken us to court and said the title was inaccurate. Who determines what is inaccurate? This is a continuing problem. I might like an explanation better than I would a title.

In *Brown v. Hartlage*, 456 U.S. 45 (1982), the U.S. Supreme Court said the people in our democracy are entrusted with the responsibility for judging and evaluating the relative 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. I am concerned about limiting speech both in the subject and in the description.

We have two separate processes, one for the title and one for the description. We should have one process if we are going to require both the title and the description, or we should have one or the other. We should not have both. I like the process which goes to the court better.

Section 9 increases the number of voters in a county needed to commence an initiative from 5 to 10. What if that county is Esmeralda? What if that county is Eureka? Maybe those counties cannot come up with ten people. It is hard enough in a major county to come up with ten people willing to put their names on the line to go forward on a petition. I see no reason to increase those numbers. I would like that amended out of the bill.

Section 9, subsection 4, limits the time change from 180 days to 150 days. Ms. Lusk mentioned this, and I am opposed to shortening the time. It is difficult to do a petition campaign under the best of circumstances. We should not limit the time. I am opposed to that and hope we would go back to the original language.

Section 11 discusses putting petition questions on the general election ballot and not the primary election ballot. I am in favor of putting the questions on a

general election ballot. More people are involved and participate. I support that portion of the bill.

The rest of the bill deals with committees. We have been supportive of the committee process. We know the clerks have had some problems; we support resolving that in an amenable way so the committee process can function.

The First Amendment to the *Constitution of the United States of America*, in the U.S. Supreme Court case *Meyer v. Grant*, 486 U.S. 414 (1988), protects appellees rights not only to advocate their cause, but also to select the most effective means of doing so. When you are coming up with the definition of explanation, you need to ensure it does not violate the First Amendment right of those involved in the petition of advocating their position. I am not opposed to informing people—I am always in favor of that—but we need to find a way that does not interfere with free speech.

SENATOR RAGGIO:
A valid point was made by Mr. Glover. I am referring to the *Constitution of the State of Nevada*. If there is an authority here on that, it would be you. The Article 19, section 3 he referenced talks about referendum and initiative petitions:

> The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence.

I have a problem. That is pretty clear.

MS. HANSEN:
You can solve that problem by simply making people register to vote when they sign the affidavit. When you sign any other document, it is dated the day you sign it and that includes documents for getting married, signing a contract, or an agreement. It is valid the day you sign it. It is not valid when it is turned in three days later. If someone signs a voter registration, they are saying, that day, they want to be a registered voter. I have no problem with saying the day they sign a voter register application, they are registered to vote. We can put that into

statute. The day they sign the voter registration form, they are registered to vote. Does that conflict with the Constitution?

SENATOR RAGGIO:
I am raising the issue because this would say they are deemed a registered voter if it is filed not more than three working days after they sign the voter registration application. That was the issue they raised. Up to this point, we have all required it to be in the office of the registrar of voters.

MS. HANSEN:
It has not been required in some of the counties and in other counties it has. Maybe your point is well-taken. We should change the language to say they are registered to vote when they sign a voter registration form. Then it is recorded when it gets to the clerk's office. Maybe that is the way to resolve it.

CHAIR CEGAVSKE:
Staff had a question on section 7 concerning the 3 days. What would happen if the filing date is on the Wednesday before Thanksgiving? How are the three days handled? Do we need to add weekend and holidays to that? Earlier in the section it says, "The legal sufficiency of a petition filed ... may be challenged by filing a complaint in district court not later than 5 days, Saturdays, Sundays and holidays excluded ... ."

MR. GLOVER:
We do have a number of attorneys in the room. Normally, those are court days and we use the language of excluding Saturdays, Sundays and holidays quite often in the statute. I interpret that to mean three judicial days. You are right. If it comes on Wednesday, as a clerk, I would interpret that to mean Monday is the second day and Tuesday is the third day. If you need some clarification, that would help.

CHAIR CEGAVSKE:
When we had your bill, one of the concerns you brought to us was the problem with same-day registration. Would you articulate your concerns with that?

MR. GLOVER:
One of the proposals extends registration an additional ten days, other than at the office of the clerks. As a practical matter, we would have to wait for the applications. That would be on a Tuesday, and early voting starts that Saturday.

Three days before the election starts, the deadline for voter registration ends. If you extend that deadline, we must wait for everything to come in from the Department of Motor Vehicles, all the agencies, your field deputy registrars and all these other groups circulating them. They come in and the postmark on the registration is the date they are marked as registered to vote. If we have to wait, we cannot get the sample ballots printed and out to the voters, especially in Clark County where huge runs are done. Then people do not get their sample ballots, they do not know where to go to vote, and it causes massive confusion and challenges for an election. We can live with a ten-day deadline because the people must register within our office. We see the person face-to-face, we see their identification, and we have made sure the application is completely filled out and ready to go.

CHAIR CEGAVSKE:
In Clark County alone, do you remember how many applications you could not accept because they were not valid? In Mr. Lomax's past testimony, x amount of people registered to vote and signed petitions. Then you had to try to verify those.

MR. GLOVER:
I am not sure what those figures are. Using the date on the voter application as the date they registered to vote is misleading. The problem is they might turn in the application a month, a year or two years later. When we, as clerks, are verifying a petition, we really want to know who is registered to vote and who is not registered to vote. That is where the lawsuits come in. We want it very clear. The statute already provides you are registered to vote the day you fill out the application in the office or the day you mail the application. There was confusion on the part of some clerks about whether to accept the date on the application or the postmarked date, as Ms. Hansen pointed out. We do not want to have that confusion any longer. It was a misinterpretation of the statute by some clerks. We do not want that to occur in the future.

MS. CHAPMAN:
When I sign and date a legal document, I assume that time takes precedence. That is the date I am putting down on the document. Otherwise, why should we date anything? What is the point of the date if the date does not mean anything? If I am signing my name to something, I want to have a date with my signature. That is when it should count.

We did take a lot of these into the county clerk's office the date we had people sign the petitions. That also accounted for some of the confusion. We took them in within a day or two of having people sign the petition.

MR. WAGNER:
We have a few concerns on this. It is not a bad bill, even though I indicated opposition on the sign-in sheet. The registrations seem to be the major point of contention. What are the three working days? I was circulating petitions last time, and I had people from Clark County register. If they register, there is no way I can get down to Clark County the same day. Sometimes, if the person signs it on a Friday evening, we cannot get it to the post office in time to get it postmarked. The three working days is fine, but it should be something like three working days with the postmark, in case it is mailed. Sometimes you do not know what county you are in. For example, the person may say they live in Carson City, but there are four different counties. What if I submit the petition to the county clerk in Carson City when it should have gone to the Lyon County clerk? They would have to mail it to the right office. That is another problem.

In section 5, subsection 3, there was a proposed amendment to change the term Attorney General to the Secretary of State. However, the title is also in section 5, subsection 4 where I assume you would also want to change the term Attorney General to the Secretary of State. I do not think it was mentioned.

Something no one mentioned that was required and struck down by the courts is you do not really need to have the document signer anymore. I do not think any of the bills addressed the so-called document signer who had to be first on each petition. Only the person notarizing it need sign. The Secretary of State's Office can verify that.

MR. STEWART:
I had a question on your proposed amendment to section 16, subsection 2 and subsection 3 of Exhibit E. The intent is to make sure it does not apply to any numbers from a special election. Was there a preference to specify primary election numbers, general election numbers or just the full citywide election numbers? A lot of language says general election.

MS. SMITH-NEWBY:
I did not get any particular direction as to whether it should be a primary or a general election. If there is precedent in NRS for general elections, I assume we would go with that. The main concern was it not be a special election where there is only one ward.

GEORGE HARRIS:
I have a concern. We need to make this process as easy as possible for people. I have registered a lot of people. We have mail-in ballots. I do not know why this is a problem. It is pretty clear. People fill out the registration form. On the bottom, they sign the form, they sign a perjury statement on the form, and a receipt is torn off for the voter. It does not matter if the application does not get there until three years later. If that person has the receipt, they believe they are registered. There are problems with that, but I am also concerned about someone signing a perjury statement on October 14 and the clerks say they are not officially registered until October 20th. They perjured themselves; how are you going to prosecute them? They would say they perjured themselves; they signed the document on the fourteenth, but it was not filed until the twentieth.

It is a concern of mine because these are some of the problems of petitioning. My only interest is to make sure we register people and have as many people participate as possible. That means they sign the document; if not, that means everyone has to go down and register to vote. A citizen who has a mail-in registration form is not going to question faulty information.

On the statewide, mail-in registration ballot, which anybody can hand out to anybody, they fill their registration ballot out, sign a perjury statement and tear off the bottom as a receipt. The intent is that when you give the person a receipt, they are registered. No statement on the registration form says you are not registered until the clerk files the registration form. What happens if 15 of these end up in the clerk's office and 12 of them get lost? Do those people suffer for that? Or, if they have their receipt, can they come and show they intended to register on that particular day? It is a problem that needs to be examined.

MS. PARKER:
A couple of different things are going on here. I want the Committee to understand what went on with the court cases which led to some of these problems. United States District Court Judge James Mahan specifically upheld

the procedure which requires a person be registered to vote in order to sign a petition. He also specifically upheld that for a mail-in voter registration, the person is registered as of the date the registration form is postmarked. That is in NRS 293.5235. *Nevada Revised Statute* 293.517 provides an in-person registration is effective as of the time the person delivers the registration to the clerk. The voter registration form specifically provides a notice that if you sign the voter registration form, as Mr. Harris said, you sign under penalty of perjury that you are a United States citizen, you are age 18 or older, et cetera. Those are the requirements to register to vote. It has a specific notice, required by statute, that if the form is given to you by another person, you are encouraged to bring it in to the county clerk or mail it yourself. The reason is because if it trickles in later, you are not deemed registered to vote until the court receives it. If it is postmarked or received after the date you signed the petition, your signature is not counted for that petition.

We agree with the clerks and Mr. Glover's statements concerning that. They have to qualify a petition, and they have a certain time frame to do that. It is a problem if it trickles in three years later. We also do not want to allow people to just sign voter registration forms, have someone backdate them and turn them in several months later. It leads to problems if you extend beyond that.

Judge Mahan heard testimony that since voter registration forms could not be turned in on a Sunday, it prohibited petitioners from gathering signatures on a Sunday. He said the signer has to be a registered voter. If they are not registered to vote, they are not entitled to sign the petition. They are confusing two different things: whether you are entitled to sign the petition and whether you are registered to vote. It has been upheld that you must be registered to vote. Allowing extra time to do that adds confusion and difficulties to the process.

In addition, the section Senator Raggio quoted from the Nevada Constitution, Article 19, section 3, was struck by the courts. They found the affidavit requirement unconstitutional. In the same court case, they also upheld the requirement that you must still be a registered voter in order to sign the petition. We fully support that.

CHAIR CEGAVSKE:
The issue which keeps coming up is they want people to register to vote and sign the petition in the same day. That issue is clear in NRS and what

Senator Raggio stated. I understand the concerns of the voter registrars and clerks that are being debated here. Which is it? You said the judge has come forward twice now?

MS. PARKER:
Judge Mahan upheld it. We were in court because of the marijuana petition that ultimately failed. It was the only argument in that case we won. The 13-county rule was struck down there as well as the affidavit of documents. The clerks in our office were sued and Judge Mahan upheld that the voters must be registered to vote when they sign a petition. That is the current policy and the current statute. Obviously, it is your decision whether you change that. It causes problems because there is a certain time frame in which to qualify a petition. The longer those registrations are allowed to trickle in, the more problems it can cause in the process. It also opens it up to some fraudulent issues we have tried to tighten over the last couple of sessions as well.

MR. WAGNER:
Section 9, subsection 2 discusses 15 percent or more of the voters in the last preceding election. That is current law for city petitions, and I would like to see that changed to 10 percent as well.

CHAIR CEGAVSKE:
I will now close the hearing on A.B. 497 and reopen the hearing on A.J.R. 5.

MR. HARRIS:
The only problem I have with this resolution is increasing the burden on petitioners in the State of Nevada. I do not think that has ever been the intent of the Nevada Constitution. The burden of raising that from 10 percent to 20 percent or from 10 percent to 15 percent creates a large gross number. It increases cost and regular citizen groups or regular citizens are not going to be able to petition or redress their government. The only people who are going to afford to do petitions are wealthy people. I hate to see us put a larger burden on the citizenry because, whether you agree or disagree with initiative petitions, it is the only thing in the Constitution which gives the people the right to redress their government. I certainly hope you keep the process the way it is now or reduce the burden.

MS. PARKER:
We support A.J.R. 5. The Committee knows the 13-county rule was struck by Judge Mahan. It is on appeal though; we have appealed it, and it is pending in the U.S. Court of Appeals for the Ninth Circuit. All the briefing has been done. If they deny that appeal, both the Secretary of State and the Attorney General will attempt to appeal it to the U.S. Supreme Court in support of the 13-county rule.

In 1958, our Nevada Constitution was amended to require the 13-county rule. The purpose of the amendment, as stated in the amendment and in *Wilson V. Koontz*, (1960), was to require more signatures for initiative petitions from a diversified area of the State. The 13-county rule is struck. Assembly Joint Resolution 5 is a good attempt at ensuring the rural counties are not shut out of the process as before because of the statewide, 10-percent petitioning requirement.

Assembly Joint Resolution 5 is consistent with some of the dicta in Judge Mahan's decision when he struck the 13-county rule. He specifically stated the law could be changed; instead of the 13-county rule, it could be done by electoral districts which are already more equal than legislative districts because of reapportionment. Every ten years, electoral districts get reapportioned. You could say 10 percent of the voters in each legislative district or something of that nature, but by picking counties, it seems arbitrary. That was part of the dicta from Judge Mahan's decision. We support A.J.R. 5 as a good attempt to allow the rules back into this process. We certainly support the initiative process, but believe all members of the State's population should have a say in that, including the rural counties. Striking the 13-county rule essentially shut them out of the process.

MS. LUSK:
We are opposed to A.J.R 5 because of the inflated number of required signatures. The numbers are so high, effective access to petitions would be wiped out from the general citizenry. The only people able to do petitions will be those with lots of money. Those groups usually come from out of state. We want this process available for the people of this State. We think A.J.R. 5 would take it away. We would support the signature collection on a Congressional District basis if the percentage of signatures remained at 10 percent. The problem is not the Congressional District basis of collection, it is the high numbers.

A provision in section 2, subsection 2 of the bill states if a petition is run and fails by 55 percent, there is a prohibition from bringing a similar petition in the next election. It seems like an odd provision. If a candidate ran for office and lost by 55 percent, would we say that candidate could not run in the next election? I might like to not see that candidate again, but there are some significant free speech and participation process issues by prohibiting a petition because it lost at one time.

The intent of this Committee and the Legislature as a whole is not to destroy the use of petitions, but to make the use of petitions a more effective process. This particular bill, as written, would not do that. This bill would destroy the process.

CHAIR CEGAVSKE:
Assemblywoman Giunchigliani said several times she is bringing this bill for discussion. It did pass the Nevada Assembly 31 votes in favor and 11 votes against.

MS. LUSK:
Assemblywoman Giunchigliani has commented that with our population growth, perhaps the 10-percent requirement was no longer appropriate. However, a percent is a percent. As the population grows, the percent grows with it. Her comments do not make sense to me.

MS. HANSEN:
I agree with Ms. Lusk. I brought information to help you look at this particular item. Earlier in the Session, I testified in this Committee that I would support the Congressional District division. I did not oppose the 13-county rule the court struck down. The Congressional District division of getting signatures is reasonable. I support that portion of the bill.

My first handout is similar to the handout from Assemblywoman Giunchigliani, but I have written in some numbers at the bottom (Exhibit G). When you collect signatures, they are not all valid. We figure one-third to one-half of all signatures are not valid. The written numbers at the bottom of the page represent the real number of signatures a petitioner would have to get under these new requirements.

We collected twice the number of signatures for the protection-of-marriage petition. Signatures totaled 122,000. That is less than any of the requirements here. It was a tremendous statewide effort with an incredible number of people involved. In terms of financing the project, reaching these numbers would be astronomical, as Ms. Lusk said. Only those with big bucks—not us citizens—would be able to petition.

My next handouts were given to me by Paul Jacob (Exhibit H and Exhibit I). They essentially say if we increased our petition requirements to these inflated numbers, Nevada would become the most difficult state in the nation to petition by 33 percent over the No. 2 state and 300 percent more than Colorado. It puts the citizen out of the initiative process. This would not allow them to participate anymore. No initiative has ever gotten 165,000 signatures in the past. Even the lowest numbers would be astronomical.

I went on the Web site for initiatives and referendums and brought you a final handout (Exhibit J) that compares different states. Oklahoma is the only other state which requires 15 percent of the votes cast for governor and has a record as one of the most difficult petition states. In terms of ballot access, it is almost inaccessible; the requirement numbers in that state are so high. Nevada's requirement numbers are on the high end now, without increasing our numbers.

One of the statements Ms. Giunchigliani made needs to be addressed. She said we should have a different standard for constitutional amendments. We do; we have to pass constitutional amendments twice. Our State is the only state which requires a constitutional amendment passed by the voters to be voted on twice. That is a very high standard. I have talked to people all over the country and they cannot believe we have to do that. In the 1970s, Proposition 6, which was comparable to Proposition 13 in California, passed the first election and failed in the second election. This is a significant barrier for us to overcome in doing a constitutional amendment. We already have another step up in terms of initiatives in our State. We do not want to increase these numbers. Essentially, it would just put them out of the reach of the population.

Ms. Lusk talked about the new language in section 2, subsection 2. If a petition loses by 55 percent in an election, then it cannot go on the next ballot. Perhaps we should make that rule for the Legislature. If you do not get a piece of legislation out of Committee this Session, you cannot bring the bill forward next time. That is absurd. This should be an open process. Maybe the reason to bring

a petition forward again is because the facts or the circumstances have changed. All of these provisions seek to do one thing, and that is to limit the right of the people to participate.

The third page of Exhibit J gives you an idea of initiatives and referendums nationwide. We have a situation where more petitions fail every year than pass. Sometimes more are introduced, but in each one of these decades, more petitions fail than pass. I question why there are more initiatives now. Maybe because people are unhappy with what government is doing. They are trying to participate in a democratic process to influence government. Nevertheless, it shows that most initiatives fail. That is standard and true for every single decade. Please, consider the rights of the people in government participation. Do not discourage their participation and remember we already have a second barrier for constitutional amendments in two election passages.

CHAIR CEGAVSKE:
I will now close the hearing on A.J.R. 5 and open the hearing on A.J.R. 8.

ASSEMBLY JOINT RESOLUTION 8 (1st Reprint): Proposes to amend Nevada Constitution to specify time of determination of number of signatures required on petition for initiative or referendum. (BDR C-1069)

MS. PARKER:
The purpose of A.J.R. 8 is to address another court issue relating to statutory initiative petitions. Specifically, this last election it was the smoking petition. The Constitution now provides the number of signatures of registered voters necessary for a statutory initiative petition is 10 percent of the voters who voted in the last preceding general election. The statutes allow statutory initiative petitions to be submitted up to November 9. Those petitions come to you; they do not go directly on the ballot.

This last interim we had a problem where the statutory initiative petitions were turned in after the November 2, 2004 election. Technically, the Constitution states the last preceding general election which, once the petitions were qualified, was deemed the 2004 election. That election was a presidential election with much greater turnout than the 2002 election. We went to the Attorney General for an opinion. They stated that is what the Constitution says. Judge Mahan agreed with that interpretation, but on due process issues, it

appeared everyone relied on the 2002 numbers. No one even thought of this issue, including us and our guides. He held that because of due process, we were going to use the 2002 numbers.

Assembly Joint Resolution 8 clarifies the last preceding general election is determined at the time the copy of the petition is placed on file. That puts us in the situation of never having an intervening election and always having the numbers. The problem with the above situation is even if we had stated in our guide that the petitioners needed 10 percent of the voters who voted in the 2004 election, the petitioners would not have known what numbers were needed because the numbers of those who voted would not have been known.

There was discussion in the hearing on A.B. 497 about the issue of making the deadline for turning in the petitions earlier. If you choose to address this issue, this bill could be a vehicle for you. Everyone agrees the problem with that is cutting off the days to circulate a petition. If you are going to petition, we discussed allowing people to start circulating petitions earlier. The problem with that is Article 19 of the Nevada Constitution provides you cannot start circulating referendums until August 1. For constitutional amendments, it is September, and for the statutory initiatives, it is January 1. It would help us and the clerks greatly if you could amend the bill to back up the deadlines for when they need to turn in the petitions. This would have to go to the voters twice for approval, but we would be open to that kind of an amendment.

MS. HANSEN:
We support A.J.R. 8. It is reasonable and certainly clarifies the issue of the petition. We would also support the amendment to move the dates back so petitioners have more time.

MS. LUSK:
I agree with Ms. Hansen, however, I am confused about the issue of the Secretary of State determining the signatures up front. Assembly Joint Resolution 8 is a constitutional amendment, but the same provision is in A.B. 497. If we can change the provision statutorily in A.B. 497, why are we changing it constitutionally in A.J.R. 8?

MS. PARKER:
The date for starting to circulate a petition is in the Constitution. Referendums or initiatives have to be turned in 180 days or 120 days prior to the election.

Clark County and all the counties use statistical sampling unless there are 500 or fewer voters. Another provision in the Constitution says if a county uses statistical sampling, you can require those petitions 65 days earlier. That is why deadlines are in the statute for turning in the petitions based on the current constitutional scheme of 120 or 180 days. Several bills this Session have come before you to move that deadline back. This is allowable because the option in the Constitution says you can move it back if statistical sampling is used, but no option exists to concurrently move back the beginning time. That is why you would have to do a constitutional amendment to start it earlier and then have that 65-day leeway to end it.

MS. LUSK:
That was not my question. My question related to the Secretary of State determining the number of signatures and whether we can change it statutorily or constitutionally. It does not make sense to do it both ways.

MS. PARKER:
It was recommended we put the change in the Constitution. The Constitution states when to place the copy of the petition on file. It also refers to filing the petition with the Secretary of State. We are trying to clarify that the number of registered voters is determined at the time the copy is filed. You may change it in statute, but the LCB agreed we need to make this constitutional change to clarify "copy" because of the multiple uses of "filed" in the Constitution and the statutes. The filing date needed to determine the number of signatures is not clear. In the Constitution, a copy is required, so it made the most sense to put it there.

It also relates to a 1962 court case on recalls. The Constitution used to have similar provisions on recalls. The court held that the Constitution provided for the copy, but the statutes provided for a separate filing because it was not changed in the Constitution. They brought back a constitutional amendment a couple of sessions later. The consensus was to make sure everybody understands this is the proper clarification that needs to be done in the Constitution. The requirement to file the petition with the county clerks is not provided in the Constitution. The Constitution says to file the copy and then file the petition with the Secretary of State. Clearly, that would not make sense because we would have to send it to the clerks for verification. That multiple use of filing and copies confuses everything. It makes the most sense to clarify it in the Constitution.

MS. LUSK:
It sounds like we want to start this immediately, so we are going to do it statutorily. By the time anybody gets around to challenging it, it will be in the Constitution.

MR. STEWART:
The conversation clarified it. Ms. Parker indicated A.B. 497 says the Secretary of State must determine the number of signatures. Assembly Joint Resolution 8 says to base that determination on the preceding election. It gives the Secretary of State guidelines. The concern you might have is what to do in the meantime. By the time A.J.R. 8 gets approved, if it goes through that process, it would remain undetermined until the statute passed. However, there are some court cases to go on in terms of making that determination with the numbers.

MR. MCMULLEN:
On the specific question just asked, if you look at the new language in A.J.R. 8 amending Article 19, section 2, subsection 2, of the Constitution, the term always utilized in the Constitution is the last preceding general election. You could alleviate the confusion with a statute that defines the last preceding general election as the election which precedes the deadline in the Constitution for the filing of the petition. This avoids a gap from November 2 to November 9 that is totally illogical. You may be able to do that by statute. You are always allowed to define certain terms as long as you do not misinterpret them. That might be a quick way to alleviate the confusion.

The amendment proposed by Ms. Parker about moving the time frames around is probably a good thing. I want to address the situation confronting us and the Legislators. We filed a lawsuit on a statutory initiative, which the Legislature had to hear and act upon within the first 40 days. The court's hearing on that was within the first week of the Session. The ruling was near or after the 40-day time limit. If you move these deadlines up, you allow the court to look at these, in terms of legal sufficiency under NRS 295.061, or any other challenge, and have time to adequately address the issue. As in that case, there was a lot of testimony and interaction. Then the court said the petition did not pass constitutional muster, was therefore defective and did not need to be processed. There is some logic in this, and it would make sense.

CHAIR CEGAVSKE:
I will now close the hearing on A.J.R. 8 and reopen the hearing on A.B. 497.

MR. MCMULLEN:
I was reminded about something by Mr. Robert L. Crowell, who testified similarly in previous meetings. I testified earlier on 5 days in NRS 295.061, which is in section 7 of A.B. 497. As Ms. Parker stated, there are lots of different uses of the words "filing" and "filed." There is also an issue with the phrase "filed with the Secretary of State" in section 7 of A.B. 497. This could really help people out if you cleared that up.

Section 6, subsection 1 says, "A petition for referendum must be filed with the Secretary of State not less than 120 days before the date of the next succeeding general election." Section 6, subsection 2 says, "The Secretary of State shall certify the questions to the county clerks ... ." A lot of these things are already filed with the county clerks. They are not filed with the Secretary of State other than for that mechanism. Then the county clerk has to go through it. The difficulty is trying to figure out if filed refers to the 120-day rule prior to the next succeeding election, or does it relate, as we believe it does, to the time when the county clerks look at their petition counts statistically or one by one and figure if one of those booklets or petitions qualify in that particular county. After that, each of those counties report to the Secretary of State. It is an awkward situation. I have helped on petitions, and every day we were trying to figure out if the clerks qualified enough counties. They qualify the 13 counties out of 17 by information transmitted from the county clerks to the Secretary of State. For purposes of this section, that transmittal is when the petition is ultimately "filed" and the five-day rule starts for filing lawsuits.

It would be important if you clarify what filing with the Secretary of State means for purposes of NRS 295.061. We would appreciate some additional time for accurately filing a challenge and doing so with courtesy to the county clerks, who have a lot of responsibilities that time of year. Finally, make it clear you have elaborated exactly when that happens and what that process means. You would resolve a lot of controversy. Everyone who files under NRS 295.061 is not sure whether an immediate motion to dismiss a complaint for lateness may occur with the 5-day window after filing a challenge in the 17 county clerks' offices. Under section 6, subsection 1, this filing is deemed a filing with the Secretary of State. It is absolutely illogical.

MR. STEWART:
We had some discussion on this very issue when looking at S.B. 222, which was not processed out of this Committee. One solution said after the county

clerks do their signature verifications, they file the petition with the Secretary of State's Office. At that point, the five-day time frame would start. There would be a specified time when the counties verify petitions with the Secretary of State.

MR. MCMULLEN:
Something like that is perfect. It has to mirror the actual process, which A.B. 497 does not. As you said, it is when those signatures have been certified by the county clerks and that information has not been forwarded to the Secretary of State for the sufficient number of counties.

MR. STEWART:
Ms. Parker, is it safe to assume that when the county clerks do the signature verification and submit those petitions to you, it happens all at one time or do they float in at different points?

MS. PARKER:
They do trickle in. There is a deadline and so many days. First, they do a raw count, and the copy of the raw count is transmitted. Then the Secretary of State's Office tells them whether to go forward to qualify them. Then they have so many days to transmit that for verification, and they do it within the time frame, but they trickle in. Last time, certain petitions trickled in beyond that ten-day period. It should say when the Secretary of State receives the final results for qualification, the petition is transmitted from the county clerk. That language would help so you would capture all the counties transmitting the results.

CHAIR CEGAVSKE:
I close the hearing on A.B. 497. We do need to move a couple of bills out of the Committee. Let us look at 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)

MR. STEWART:
Assembly Joint Resolution 10 was brought by Assemblyman Harry Mortenson last week. It clarifies Article 2, section 1 of the Nevada Constitution, which sets

forth the qualifications of an elector to register to vote. He testified that removing the six-month language in that section better fit what is in NRS. There was no testimony in opposition to that bill.

CHAIR CEGAVSKE:
Ms. Erdoes recommended this bill because it cleaned up our Constitution.

SENATOR TITUS MOVED TO DO PASS A.J.R. 10.

SENATOR BEERS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO WAS ABSENT FOR THE VOTE.)

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MR. STEWART:
Assembly Bill 314 was brought forth by Assemblyman McCleary.

ASSEMBLY BILL 314 (1st Reprint): Makes various changes to provisions governing eligibility for election and appointment to certain public positions and offices. (BDR 24-436)

You recall Senator Schneider's bill, which this Committee processed, was S.B. 125. It set a six-month residency requirement for a candidate. Assembly Bill 314 sets forth a residency requirement period of 3 months; he testified his preference was 6 months. The Committee talked about meshing those bills together at an acceptable six months. Assemblyman McCleary's bill addressed the issue of Governor appointments. Senator Schneider's bill did not address that. The Committee could mirror the two bills with regard to the six-month residency requirement issue and move forward with Mr. McCleary's proposal on the Governor appointments.

CHAIR CEGAVSKE:
We could delete the residency requirement in A.B. 314 that we already sent to the Assembly in S.B. 125; then we could send over the part about the Governor appointments in A.B. 314. The bills would mirror each other and the six-month residency requirement would apply for appointments too. Mr. McCleary thought that would be fine.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 314.

SENATOR MATHEWS SECONDED THE MOTION.

MR. STEWART:
We would remove the 6-month portion in A.B. 314, but keep in the section about appointments and go with the 6-month provision in S.B. 125.

THE MOTION CARRIED. (SENATOR RAGGIO WAS ABSENT FOR THE VOTE.)

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CHAIR CEGAVSKE:
I now adjourn the Senate Committee on Legislative Operations and Elections meeting at 4:19 p.m.

RESPECTFULLY SUBMITTED:

Elisabeth Williams,
Committee Secretary

APPROVED BY:

Senator Barbara Cegavske, Chair

DATE: