

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

**Seventy-Fourth Session
May 1, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:50 p.m., on Tuesday, May 1, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Vice Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman Ed Goedhart
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn Kirkpatrick (excused)

Minutes ID: 1171



GUEST LEGISLATORS PRESENT:

Senator Barbara Cegavske, Clark County Senatorial District No. 8
Senator Steven Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Michelle Van Geel, Principal Research Analyst
Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Trisha Moore, Committee Assistant

OTHERS PRESENT:

Matt Griffin, Deputy for Elections, Office of the Secretary of State
Jan Gilbert, representing the Progressive Leadership Alliance of Nevada
(PLAN)
Lynn Chapman, State Vice President, Nevada Eagle Forum
Gail Tuzzolo, representing the Nevada State AFL-CIO
Janine Hansen, representing the Independent American Party; President,
Nevada Eagle Forum
Sharron Angle, Private Citizen, Reno, Nevada
Danny Thompson, representing the Nevada State AFL-CIO

Chair Koivisto:

[Roll called] We are going to hear Senate Bill 401 (1st Reprint) first.

Senate Bill 401 (1st Reprint): Requiring the Secretary of State to report certain information concerning elections to the Legislature. (BDR 24-248)

Senator Steven Horsford, Clark County Senatorial District No. 4:

The bill has been changed dramatically from the original version. As originally proposed, the bill would have provided for same-day voter registration. Based on discussions in the Senate Legislative Operations and Elections Committee, and in consultation with some of the other stakeholders, we gutted that provision and brought forward this bill. Essentially, S.B. 401(R1) requires each county clerk to collect certain information regarding primary and general elections and submit that information to the Secretary of State. The information that would be gathered includes uncounted ballots, malfunctions of mechanical voting machines, unopened polling places, challenges to voter eligibility, complaints regarding ballots cast by mail, election audits, and provisional ballots.

Nevada has a very good election process with a high level of integrity statewide; however, questions can arise before, during, and after elections. In order to maintain the highest level of integrity with our election process, we believe in having empirical data that, for the most part, would be collected by the county clerks. The Secretary of State would gather that information, analyze it, and provide a report to the Legislature and the general public. If there are issues, people will then understand what those issues are. If there are no issues, we can show the public how well our elections are operated.

We worked with the Secretary of State's Office on this bill, as well as with Larry Lomax who represented the county clerks, and other interested parties. The Carter-Baker study on voting recommended addressing any voting issues that exist, maintaining access to voting ballots for those eligible to vote, and maintaining high ethical standards for our elections. Nevada has a new role in our election process. This will be the first time that Nevada will help to select the presidential nominees for both the Democratic and Republican Parties, so we need to ensure that our election process is as strong as it possibly can be once those nominees are selected.

There is no fiscal note on the bill because the Secretary of State's Office has indicated that the information collected from the county clerks can be analyzed because of the Secretary of State's role as the chief election officer in the State. The county clerks indicated that most of the information we are asking them to collect is information they collect on their own, but they are not currently required to report that information to the State.

Chair Koivisto:

The county clerks already collect this information, and now all they will have to do is send it to the Secretary of State?

Senator Horsford:

Section 1, subsection 1, of the bill allows for a standard form to be developed by the Secretary of State's Office. The information currently being collected by the county clerks would be reported on that form. If any issues are identified based on the information collected, the Secretary of State will be better able to look at those areas. There have been questions about voting machines, voters being turned away from the polls, eligibility of voters, and whether we need to have voter ID in place. This bill seeks to collect the data to support any changes we would make to our election process. We do not want any knee-jerk reactions; we want any changes to be based on facts and empirical data.

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

We worked with Senator Horsford on this bill and the Secretary of State's Office is in support of it for a variety of reasons. It will allow our Office to be a central gathering agency for information already being collected by the county clerks. As with any process, if there is a complaint about one thing, you take note of it. If there are complaints about numerous things, the Secretary of State's Office has a duty to investigate. Collection of this information will also highlight the areas where we are doing a very good job and identify why a particular area is so strong.

As I read the bill, and after having talked with the clerks, this is information they already collect. Our Office would then have a duty to gather that information and make it available to both the Legislature and the public via our website. Word of mouth may not always reflect the most accurate information, and this bill will allow our Office to disseminate empirical data that is collected by each clerk and better address specific situations.

Assemblyman Settlemeyer:

Why do you need to contact the political parties? How did that develop?

Matt Griffin:

Certain information is already being collected by the parties concerning a variety of different things that may occur in a voting booth. Intimidation is one type of conduct or misconduct that the political parties may already be aware of. In the spirit of Senator Horsford's bill, this allows not only the Secretary of State and the clerks to be involved, but all the players in the election process will be accountable to the Secretary of State's Office. If there are problems at a poll, those problems might be better addressed by working with that political party as opposed to working through the county clerk who then would work with that political party.

Chair Koivisto:

Are there any other questions from the Committee? [No response] Is there anyone else wanting to testify on this bill?

Jan Gilbert, representing the Progressive Leadership Alliance of Nevada (PLAN):

We are in support of S.B. 401 (R1). My organization conducts a very large civic engagement program. We help people become new citizens and then register to vote. Our concern is that we want to have the information available if there are any obstacles to those people being able to access the polls.

Provisional ballots are another area we are very concerned about. As you know, if people receive provisional ballots, they can only vote in federal elections. Most states allow people issued provisional ballots to vote on all parts of the ballot. We are very interested in any statistics that might be gathered relating to provisional ballots. The registrars of voters have told us there are very few provisional ballots and that most people vote a full ballot. We hear a lot of complaints and the information gathered under this legislation will help identify whether those complaints are unfounded or not. If not, the problems need to be corrected.

We helped a woman register to vote who was a new citizen. She had a very strong accent and was turned away at her polling place because they said she could not speak English. We called our registrar of voters who corrected the mistake and worked with the people at the polling place and explained that turning the voter away was not acceptable. That kind of disenfranchisement will be prevented if information is being collected.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

We are in support of S.B. 401 (R1). We like the fact that the information being collected, whether good or bad, will be put on a website and into a report. That should bring more accountability to the people of this State.

Chair Koivisto:

Is there anyone else who would like to testify on S.B. 401 (R1)? [No response]
We will close the hearing on S.B. 401 (R1) and open the hearing on Senate Bill 78.

Senate Bill 78: Revises the provisions relating to misconduct in the signing or filing of petitions. (BDR 15-770)

Senator Barbara Cegavske, Clark County Senatorial District No. 8:

Senate Bill 78 concerns misconduct in the signing or filing of a referendum or other petition. It increases the penalty to a category D felony from a misdemeanor for signing another person's name or a fictitious person's name on a petition; or filing a petition or causing a petition to be filed knowing that the petition contains a false or wrongful signature or statement. The bill also creates two new crimes punishable as category D felonies. The first crime involves adding to, revising, or altering a petition with the intent to falsify the name or any information concerning the age, citizenship, residence, or other qualifications of another person who signs the petition. The second punishable crime concerns offering or providing any consideration, gratuity, or reward to another person with the intent to induce the other person to sign his name to a

petition or to withdraw his name from a petition. This bill becomes effective October 1, 2007.

During the last election, there were concerns about petitions and harassment issues. This bill was sent to my committee and unanimously passed out of it. It also passed unanimously out of the Senate.

Assemblyman Segerblom:

You said this bill deals with harassment?

Senator Cegavske:

I was referring to what was reported in the papers during the last election concerning improperly signed petitions. People were being asked not to sign certain petitions, or people were being asked to remove their names from petitions they had signed. Those were some of the issues that were publicized during the last election.

Assemblyman Segerblom:

This bill would increase the penalty from a misdemeanor to a felony. Were any misdemeanor charges brought as a result of any of the crimes?

Senator Cegavske:

I personally do not know that.

Chair Koivisto:

Looking at subsection 5, the language reads, "A person shall not, for any consideration, gratuity or reward, sign his own name to or withdraw his own name" Does that mean a person cannot be paid to sign a petition or that a person cannot be paid to take his name off a petition? If a person wants to, he can take his name off a petition, but he cannot be paid to do it, is that correct?

Senator Cegavske:

That is correct. A person cannot be rewarded for signing a petition or for removing his name from a petition.

Assemblyman Ohrenschall:

Do you envision subsection 5 of Section 1 banning things like day-long barbecues in parks where food and drink might be provided and people could come and possibly sign a petition? Would that be covered or am I interpreting the language in the bill too broadly?

Senator Cegavske:

The premise that was presented to our committee concerned places such as grocery stores or other places of business where a signature gatherer would be asking people to sign a petition. The petitioner could not say, "I will give you a dollar to sign this petition." Nor could the petitioner say, "If you will remove your name from the petition that person over there is circulating and sign mine, I will give you some kind of remuneration." What you are talking about are rallies where people tell the public what their petition is about. I do not know that a court would see that as relating to this legislation. What I am talking about is what actually was cited in the newspaper articles last election and the practices that were actually taken to court.

Assemblyman Ohrenschall:

So your intent in subsection 5 would be to ban someone paying an individual to sign or withdraw his name from a petition, not to ban a large event or rally where folks gather and are encouraged to sign petitions?

Senator Cegavske:

That was not the intent of the committee. Our committee staff is here and can answer. This bill was brought to the committee and actual payment to sign or withdraw a name from a petition was the issue.

Michelle Van Geel, Principal Research Analyst:

That issue was not discussed in committee, and I would not want to give a legal opinion; however, I do not believe that was the intent. The hearing in the Senate clarified that this legislation would not "cover" people who were paid to gather signatures or were hired by an organization to gather signatures. I know this does not exactly address your question, but it might help with the Committee's deliberation.

Assemblyman Munford:

Can you get signatures on petitions for initiatives and referenda at private retail businesses or only at public businesses?

Senator Cegavske:

You must ask for permission to be able to collect signatures in front of a private business.

Assemblyman Munford:

Do you have to get approval at public entities?

Senator Cegavske:

At the DMV (Department of Motor Vehicles) they ask that you inform them of what you are doing and what you are there for. They want communication.

Assemblyman Munford:

What about at schools and college campuses?

Senator Cegavske:

I do not know about the public schools.

Assemblyman Munford:

What about college campuses?

Senator Cegavske:

I know signatures are gathered on college campuses, but I do not know if there are any restrictions.

Assemblyman Munford:

Is it prohibited to get signatures on college campuses?

Senator Cegavske:

No, it is prohibited at public schools.

Chair Koivisto:

I know that at UNLV (University of Nevada, Las Vegas) there used to be an area specifically designated where this type of activity was allowed. University officials generally want people to check in with someone first so they know you are there and what you are doing.

Senator Cegavske:

Most petitioners do that; they talk to the establishment wherever they are collecting signatures.

Gail Tuzzolo, representing the Nevada State AFL-CIO:

This is a good piece of legislation for another reason. The Committee heard testimony recently from Kristina Wilfore of the Ballot Initiative Strategy Center in Washington, D.C., who estimated nearly a third of the ballot initiatives that were qualified this year across the country, qualified by using fraud. It is a country-wide problem with professional petition firms. This is good legislation to bring forward. An issue in proving or bringing charges against these people is that the prosecutors hesitate to take them on because these are only misdemeanors. By making them category D felonies, we feel the prosecutors

will be more likely to press charges. However, I would like to caution you about one thing, and possibly make a suggestion. I have circulated 43 initiatives in nearly 13 states, and I believe there needs to be prosecutorial discretion on charges. Let me give you an example: You approach "Maud Smith" and you ask her to sign your initiative. After she learns what it is, she says, "Sure," and she signs "Maud Smith." Then, she looks over her shoulder and says, "Harry, are you in favor of this, too?" Harry yells from the living room, "Yes, I am," and she signs, "Harry Smith." That happens over and over and over again. When we look at petitions, we can see these two signatures with similar handwriting throughout the entire petition. We need to be careful we are not going to send Maud Smith to jail or put her on probation. There might be other unforeseen circumstances that are similarly innocent, and it might be hard for citizens to know all the rules and regulations, so it is important that the prosecutors have some discretion in dealing with those types of situations.

Chair Koivisto:

In a case like that, the petition gatherer should know that he needs to go in the house and ask John to sign it himself.

Gail Tuzzolo:

It would take more time to get a legitimate signature, and a paid signature gatherer might not want to spend that extra time.

Janine Hansen, representing the Independent American Party:

I certainly support the intent of this bill and testified on it in the Senate. I have a couple of things to bring to your attention because it is important to have them on the record. First, I would like to make a statement concerning the testimony we just heard. If you cannot train your signature gatherers to know they must get an original signature, you might as well quit. I have trained hundreds of people to gather signatures, most of them volunteers, and they know better than to have someone sign another individual's name to a petition.

I would like to address subsection 2 of the bill where the language says, "A person shall not willfully add to, revise, or alter any petition with the intent to falsify the name or any information." I am very happy to see that the word "willfully" is included in the language. In notarizing many thousands of signatures, it has been my experience that many times people have left the date off or not filled the county in, so a lot of times someone else fills in the date or the county. Would this law put a person like me, who is trying to prepare the petition for submittal to the registrar of voters by completing missing information as I just described, in jeopardy of committing a felony? That concerns me because many times people signing petitions will omit small

details. I certainly could not sign or put their addresses on the petition, but would adding the date or some other small detail be a problem? A petition signer must sign on the proper county petition, but the individual might have left out writing the county on the petition, so that gives me some measure of discomfort with regards to this bill, especially if it is a category D felony.

I understand it is very important that we get out the message that we want honesty in the petition-gathering process. I told you previously that we had a petition gatherer turn in a bunch of forged signatures. We discovered the forgeries and did not submit those signatures. Of course, the final judge is the county clerk.

Another issue is placing the last name on a petition first. I always ask people to print their last name first, but half the time people put their first name first. What if they crossed that out and placed their name the way the petition asks it be placed? What if they put their post office box, and cross that out because it is the residence address that is requested on petitions. Is there going to be some inference that these were willfully changed in order to qualify? There is no intent to commit fraud. If anyone wants to qualify a petition, he needs to try to make sure the signatures are good. I am concerned the changes will be deemed felonious. I want to be on the record that adding the date or another small item would not be considered "willful" and would not be considered a felony.

There have been a number of hard-fought competitions between different petitions in this State. If you have someone from a competing point of view who wants to get you or your campaign into trouble, that person could accuse you of these kinds of things, and you would be placed in the position of defending yourself, so I am concerned about a category D felony and I am concerned about how this is going to play out.

Chair Koivisto:

I think the phrase "with the intent to falsify the name" would cover your concerns.

Janine Hansen:

That is what I am hoping, too, and why I wanted to place it on the record so if something happened, we would know the intent of the Legislature. Legislative intent is very important. We do not want out and out forgery, but we want to be certain that people making some small corrections are not considered to be "willfully falsifying."

Assemblyman Conklin:

I share the same concern Ms. Hansen has. I respect the intent of the bill, but in subsection 2 on line 15 what catches my attention is the phrase, "or other qualifications." What is an "other qualification?" Why is that language included? Why does it not just say "name or any information concerning the person's age, citizenship or residence?" That is the primary information needed. What is "other qualification?" Is the date a qualification?

Janine Hansen:

I would assume that it is.

Assemblyman Conklin:

I do not know the answer to that question, but that language concerns me. I am also concerned about the second half of the bill, subsections 5 and 6, where the language talks about the "signer" of the petition. The signer of the petition is not going to read this statute. Why does anyone sign a petition? I can think of a million reasons. Probably the least of all is the actual policy itself because the signer would possibly not have read the petition. I respect the intent of this bill, but I am very concerned about the message it sends to people who actually want to sign a petition.

Janine Hansen:

Assemblyman Conklin brought up an issue in subsection 6 that I see as well. A lot of times when you are out getting signatures you meet someone who has recently moved or who has moved in the last year. The person is not certain whether he is registered at the old address or at the new address. That leads to a problem with the language in this bill that states "any false statement concerning his age, citizenship, residence or other qualification." The individual may not even realize he is registered at the old address and that individual could be guilty under this language.

I have some discomfort with this language but I do support the intent of the bill. We need to send the message that we want honest signatures on any petition, but we do not want to throw cold water on people trying to get signatures and subject every campaign to the kind of scrutiny that they would be in court all the time over these small little items that are impossible to control when you are out there working with volunteers and getting hundreds of signatures. I want to make certain the opportunity for people to participate in the process is not being dampened.

Chair Koivisto:

Ms. Hansen, when you testified on this bill in the Senate, did you mention the concerns you have about subsection 6?

Janine Hansen:

I do not think I brought up that particular issue. It was only brought to my attention as I listened to what Assemblyman Conklin said. I did mention my other concerns at that time.

Chair Koivisto:

We will not move this bill today, but hold it until we can get further clarification. Is there anyone else who wants to add testimony on this bill?

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

This is not our bill. Ms. Hansen is correct. Many of the issues were discussed at length, particularly subsection 2. The question revolved around the language "with the intent to falsify." In criminal law you have the term "willful" which means a volitional act which, in this case, would be to revise or alter with the intent to falsify.

With regard to the "other qualifications," that issue was not brought up in the Senate Committee, and I have not had anyone question what that means. Presumably, and it is a valid point, "qualifications" means the person's ability to be a signatory to that petition. Those qualifications are encapsulated in the language that exists on the face of the bill. With respect to subsection 6, the bill does not attempt to change whether you can or cannot take a gratuity for signing your name. That is already illegal pursuant to statute.

This bill also removes jurisdiction for enforcement out of the city attorneys' offices. That is a function of making a violation of this statute a felony. Because it will be a felony, the city attorneys' offices would no longer have jurisdiction; it would become a matter for the district attorneys' offices and the Attorney General's Office.

Assemblyman Conklin:

Mr. Griffin, what in this bill is currently not illegal by statute? This bill basically says you cannot falsify a petition, but that is currently illegal, right?

Matt Griffin:

It is currently a misdemeanor.

Assemblyman Conklin:

Are we seeking to change the crime from a misdemeanor to a felony?

Matt Griffin:

I do not know precisely what the intent is, but, from discussion during the Senate hearing on this bill, that certainly seems to have been the crux of the conversation—making it a felony as opposed to a misdemeanor. A lot of these acts are currently not legal under Nevada law; however, it criminalizes a petition gatherer who would induce someone to sign a petition with a gratuity, which is currently not in our statute. The liability would lie with the signature gatherer, and this bill creates that.

Assemblyman Conklin:

So, currently it would be legal to induce someone to sign by giving that individual \$5 or \$10? I see a lot of people in the audience shaking their heads.

Matt Griffin:

It would enhance the penalty to a felony as opposed to a misdemeanor.

Assemblyman Conklin:

In subsections 5 and 6 where the language talks about the person who is signing, does that person currently have this obligation? This bill references the signature gatherer and also the signer of the petition. What obligation does that person have under current statute? If someone moved but signed that he was eligible in a certain precinct not knowing his precinct had changed, is he guilty? I am most concerned about the petition signer, the person who is legally being solicited to sign who has every right to sign a petition but may not know what the law is.

Matt Griffin:

I understand what you are saying. As I said, this is not the Secretary of State's bill; it came out of a committee. I do not want to say what their intent was, but with respect to the signature gatherer who is ignorant of these provisions and whatever laws the Legislature passes, that concern came up briefly in discussion of subsection 6. Regarding someone who does not know his district or his qualifications, I think the Senate committee was comfortable. Concerning the criteria mentioned in "willfully subscribe to any false statement," that could be read in two ways, as Mr. Conklin pointed out. One way would say there has to be some type of *mens rea*, or intent by the signer to violate the provisions. It could also be read to mean that not knowing what district one was in could subject that person to penalties the individual would not be aware of. I cannot speak to that, but I understand your concern.

Assemblyman Conklin:

Could Legal or Research look into subsections 5 and 6 for me and follow up? I might also point out in subsection 5 the term "willful" does not appear anywhere, and while we assume people should not accept money for signing a petition, it is not an assumption we can afford to make. The general public may think it is okay.

Chair Koivisto:

We also need to find out in subsections 2 and 6 what "other qualifications" refers to.

Gail Tuzzolo:

Very often in Nevada we have seen paid petition gatherers tell people to sign their names and the petition gatherers would fill in the addresses; so on many petitions, except for the signature of the signer, the handwriting was the same. The statute requires that the person signing the petition also include his name and address, and I think that may be what the language in subsection 6 is trying to get at.

The second scenario concerns many petitions we felt were signed with a fraudulent date. Mr. Thompson testified there were about 9,000 signatures on one petition that were signed 2010, 2020, and 2030. Perhaps paid signature gatherers were making a joke out of the whole process. The statute is clear that the person signing is to complete his entire portion of the petition. I share people's concern about the crime being a felony, so we have to be careful about the language used to accomplish the intent of the bill, which is to prevent this kind of fraud.

Chair Koivisto:

We will hold this bill until we can get some clarification from our Legal Counsel. We will close the hearing on S.B. 78 and take up Senate Bill 230 (1st Reprint).

Senate Bill 230 (1st Reprint): Makes various changes concerning a petition for initiative or referendum. (BDR 24-180)

Sharron Angle, Private Citizen, Reno, Nevada:

I am here to speak in support of S.B. 230 (R1). I am having a paper distributed ([Exhibit C](#)) and on the front it reads, "S.B. 230." That is how the law reads now. If you will look at the place where you put your name, it says, "Please print your name (last name, first name, initial)." That is not how we do things naturally. We do not think that way. When you ask someone to sign a petition, he automatically starts to print his first name even if you say, print your last

name first. The reason this is important is so many signatures are disqualified because the county clerk, not knowing whether this person is "James Robert" or "Robert James," disqualifies the signature because she cannot determine which it is. A number of people have that type of name and it is too difficult for the clerks to know, so they disqualify the entire name.

What we have tried to do with S.B. 230 (R1) is make it a natural thing. If you will flip the paper over, you will see how the petition would look if you pass this bill ([Exhibit D](#)). The petition signer would place his first name first, then his last name, and complete the rest of the information.

The balance of S.B. 230 (R1) is an amendment offered by the Secretary of State's Office and Matt Griffin will speak to that part of the bill.

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

The amendment we proposed in the Senate committee will bump the whole initiative process up 30 days, giving the county clerks the time they need to get their ballots drafted and printed. In Section 3, the time for litigation is reduced from 30 days to 15 days.

Chair Koivisto:

I thought we moved the deadlines last session to give people more time.

Sharron Angle:

What we found was people would wait until day 30 to submit their challenge to the language of an initiative petition, and then they had 30 more days for the court to set the hearing, which stalls signature gathering for at least 30 days. If there is one change, the whole petition is null and void and they have to begin with a new petition.

Matt Griffin:

That is correct. Also, if there is a deficiency on which you can place a legal challenge, 15 days would be enough time to determine that deficiency. It gives ample time for all parties involved to evaluate their claims. Moving the process up as we have here, the county clerks do not have to worry about the deadlines they face.

Chair Koivisto:

Are there any questions from the Committee? [No response]

Janine Hansen, President, Nevada Eagle Forum:

We are in support of the change to the name order on petitions. We also support the change in time from 30 days to 15 days in Section 3 for filing a challenge. I do want to go on record with our concerns about the change in Section 2 which cuts down the time to gather signatures by a month. The month of June is being cut out, and it is usually the best month for gathering signatures in terms of weather, especially if the signatures are not all being gathered in Clark County. Many times signature gatherers will face a lot of inclement weather earlier in the year in the more northern counties.

We organized a completely volunteer petition campaign in 2000, and the 30 days you are removing from signature gathering would have made an incredible difference in the number of signatures we were able to obtain because of the weather. We just want to register our concern about chipping away at the ability of people to have enough time to get the required signatures, especially when they are a volunteer organization, but we support the rest of the bill.

Chair Koivisto:

Is there anyone else who wants to speak to S.B. 230 (R1)? We will bring S.B. 230 (R1) back to the Committee. How does the Committee feel about this bill?

Assemblyman Conklin:

I do not have a problem with this bill, but I do not know if it solves anything. If people are signing twice, why do we have to tell people how to print their names? Why is that challengeable? My only concern is moving from 30 to 15 days for the court proceedings. Are the judges okay with it?

Matt Griffin:

The hearing must be set within 15 days; the hearing does not have to be held within that time frame.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS
SENATE BILL 230 (1st REPRINT).

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GANSERT,
KIRKPATRICK, AND OHRENSCHALL WERE ABSENT FOR THE
VOTE.)

Chair Koivisto:

Let us go to Senate Bill 489 (1st Reprint).

Senate Bill 489 (1st Reprint): Prohibits threatening or intimidating persons who are gathering signatures on petitions. (BDR 24-178)

Sharron Angle, Private Citizen, Reno, Nevada:

I am speaking in support of Senate Bill 489 (R1). Signature gatherers in this last election cycle encountered circumstances we had never experienced before. Hired harassers came into Nevada to interrupt the signature-gathering process. They did despicable things to signature gatherers standing in front of businesses. Private businesses allow us to stand in front of their businesses and collect signatures, but when something happens outside their establishments that causes consternation for their patrons, they ask us to leave. These harassers know that and would badger the person trying to collect signatures or the person trying to sign the petition. Coke was even thrown on them. What we found was that the law does not protect signature gatherers. We are at the mercy of anyone who wants to harass or assault us. We have very little recourse, so what S.B. 489 (R1) allows for is a private cause of action. We can go before the courts and ask for restitution. The language in S.B. 489 (R1) is permissive; it does not instruct the court what it must do. It just says that there are some remedies the court may allow and one of those remedies is an extension of time because the signature gatherer will lose time due to the disruption and have to find a new place to gather signatures.

If volunteer signature gatherers are being harassed, they will not want to gather signatures, so we need to be able to bring a cause of action. We also need to have remedies to balance out the problems caused by this kind of harassment.

Assemblyman Conklin:

I am very concerned about the language on lines 3 and 4, "threaten or intimidate through words or contact." That is very broad language. Part of your right to petition is your right to free speech, but I wonder if the guy who stands on the corner and burns the American flag gets that kind of protection. I daresay he does not. We have rights to certain protections, but how do you balance that right given the fact that we all have the right to free speech? How do we allow a petition gatherer to have extra protection that every other citizen may not have?

Sharron Angle:

We can have a law, but until it is enforced, it is not an active instrument. It would mean that the signature gatherer would have to be harassed to the point

that he was willing to get an attorney and file a charge. I have had people stand beside me and heckle me while I am trying to collect signatures. They have slowed the process but they have not actually gotten in my face, tried to put their hand on the petition, or tried to push the person attempting to gather the signature away, all actions that are almost physical. You could make the language more specific to that kind of harassment. It is my understanding that an assault is verbal; battery is physical, and we are protected by the law from those kinds of things.

Chair Koivisto:

It seems to me that we are creating a special group and making a special law so this group can have special protections not afforded to the general public. Signature gatherers could use this to manufacture claims and lengthen their signature-gathering time.

Sharron Angle:

Whenever we make any kind of statute, it can be abused. We are always looking for unintended consequences. I do not think we are creating a special class. That special class already exists because laws are putting restraints on the gatherers. This would be protection for the signature gatherers as well. I do not believe we are making a special class; we are saying what the rules are and that we are not going to allow someone to have coke thrown on them and just say, "Too bad, sorry that happened to you." We need to indicate that this business should be conducted in a very civilized way, and we are going to make certain everyone is protected. That is what S.B. 489 (R1) does. It allows people who could not bring a private action before to have that opportunity. Once in court, the judge has the discretion to decide how grievous the assault or the action taken against the signature gatherer was.

Chair Koivisto:

A person gathering signatures might not like the way someone looked at him or watched him, and an action could be brought. There is no definition of "intimidate." It is left to the signature gatherer to decide whether he has been intimidated.

Sharron Angle:

We leave that to the person's own feeling in our stalking statutes as well. Once a complaint to the police has been made, it is up to law enforcement officers and the court to determine whether that person was actually being stalked or if it was just paranoia. I have not had signature gatherers who felt intimidated; what we have experienced are incidents that get written up in the newspaper where coke is thrown on them, they were physically assaulted, and those kinds

of things. If you want to clarify the language so that you feel more comfortable not leaving it to the discretion of the judge, that would be an excellent idea.

Assemblyman Segerblom:

With respect to the problems last year, did the judge grant some type of extension?

Sharron Angle:

Yes, he did.

Assemblyman Segerblom:

As I understand it, there is a lawsuit pending against people with respect to conduct that may or may not have happened during signature gathering.

Sharron Angle:

I am not familiar with what is pending.

Assemblyman Segerblom:

What does this bill do that you cannot currently do?

Sharron Angle:

What we have not had before was the opportunity to bring a personal cause of action that delineated what should be done to remediate. It has always been up to the discretion of the court, so much so that we are not sure we can even bring a case. We found a judge who was sympathetic to our case and willing to take it. With this piece of legislation, we are saying that there really is something here that needs to be taken into consideration, and we want you, Judge, to take that into consideration. We do not want to have to search the State and find a sympathetic judge who will hear our case.

Chair Koivisto:

Are there any other questions from the Committee? [No response] Could other people who are supporting this bill come up and testify?

Janine Hansen, President, Nevada Eagle Forum:

I would like to clarify a couple of issues that have been brought forward. The problem is there is no opportunity in the statutes for a private cause of action. The only remedy allowed for a person who is intimidated, threatened, or prevented from getting signatures is the Secretary of State can fine those people. Individual people have no way to protect their rights.

I was arrested for petitioning by the Reno police in 2004, so it is not always an easy, non-threatening experience to try to gather signatures. The police claimed that I was on private property when I actually was on public property. I was exonerated and the cause of action was dismissed, but that was not the only time I was threatened with arrest. It is oftentimes a harrowing experience to try to collect signatures.

Assemblyman Segerblom:

Are you saying if you are on someone's property and they threaten to have you arrested it would fall under this law?

Janine Hansen:

No, I am not. What I am saying is that there are many hazards for a person trying to petition, including threats and intimidation. I was there petitioning legally but they arrested me anyway, so even when there is a law protecting the petitioner, there can be a problem with the person being threatened. People do not recognize the act of gathering signatures as a part of free speech although the U.S. Supreme Court has recognized it as being at the very zenith of free speech. We do have special protections for voters. They cannot be harassed or intimidated, and under that same statute, petitioners cannot be harassed or intimidated, but there is no remedy, so there currently is no way a person can protect himself. If you want to tighten up the language and make it more specific, I do not have any problem with that. It might be better all the way around to do it that way, but a person is left with no way to stop the harassment. Oftentimes, thugs are hired to interfere in petitioning. I believe in free speech. If I oppose a petition, I tell the people I know; I put it on my website, but I do not actively try to interfere with that person's exercise of his First Amendment right. That is what this is. When someone purposely threatens and intimidates someone gathering signatures on a petition, he is interfering with that signature gatherer's First Amendment right of free speech and First Amendment right of petition.

I have been threatened and intimidated many times by individuals who did not like what I was doing. I just continue to get signatures unless it becomes grievous. If there is a real problem, this bill will allow an individual to get a lawyer, go to court, and try to get some relief. Relief would be an injunction. In this last case, the court could not even get an injunction because there was nothing in statute that provided it as a remedy. So, signature gatherers cannot say to people physically trying to block them, that they cannot do it anymore. The judge just obtained an agreement between the two parties. This legislation would enable a judge, if he has proof, to request an injunction so the organization, group, or people who are interfering with the First Amendment

right to petition and the First Amendment right of free speech cannot do it any more. That is a very important remedy.

The second remedy is that the individual who has been interfered with, threatened, intimidated, and physically blocked from trying to get signatures, can hire an attorney, go to court, and seek damages. Extension of the deadline for filing a petition, as in this bill, may not be the best remedy, although a month has already been removed from the petition process, so maybe I will agree that there should be a one-month extension.

The other bill puts possible felonies on petitioners. As a result, there are more and more regulations against petitioning, making it more and more difficult to petition. It is only fair that there be regulations to protect the petitioner and his First Amendment rights, which is what this bill does. It says you cannot interfere with the person exercising his First Amendment rights. It allows a court injunction, or it allows a petitioner to seek damages for being interfered with. I think this process should operate for the will of the people.

It takes time, money, and effort to pursue these remedies. It cannot be because someone looked at you meanly or because someone drove around the block and you did not like the way he did it. It is not worth the time, money, and effort to go to court and protect yourself unless it is a significant interference with your right to petition. Petitioning is the zenith of free speech, as the Supreme Court has called it, and this bill provides protection for it.

We request you consider the incredibly important right to free speech and petition and provide some kind of protection so a person has some remedy. There is no remedy in the law now to protect that right of petition. The kind of behavior that causes harm to people has got to be recognized as violating people's right to petition and free speech.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

Janine Hansen and I are not masochists. We do not really enjoy going out there getting petitions signed. I have had problems with people challenging me. Two men tried to get me arrested when I was petitioning at the DMV (Department of Motor Vehicles). I witnessed what happened to TASC (Tax and Spending Control for Nevada). People had big signs, and one woman was harassing everyone, being very vocal and obnoxious and yelling at them not to sign the petition. She spoke with someone trying to gather signatures, and I believe she was the one who spilled some sort of drink on the petitions, ruining the documents. I took her picture and she claimed I was harassing her. In the Smith's grocery store parking lot in Sparks, a man started yelling at me. I

became frightened of him, but a passerby came to the rescue, told the individual to move along; and, luckily, the man did leave. These incidents do happen and are very intimidating and threatening to those of us trying to get signatures and exercise our First Amendment right.

Chair Koivisto:

Does anyone else want to testify either for or against S.B. 489 (R1)?

Danny Thompson, representing the Nevada State AFL-CIO:

We oppose this bill. It is in response to a lawsuit currently in district court in southern Nevada.

I want to speak about the TASC initiative. We did hire people to educate voters about that initiative. When it became clear to the opposing side that they were not going to be able to gather enough signatures, they went to district court and sought relief. Prior to going to district court, the group went to the Secretary of State with claims of intimidation. The Secretary of State chose not to do anything about those claims. The group then went to district court and asked that the deadline be extended so they could have more time to get the signatures they needed to qualify the TASC petition.

If you pass this bill, you will throw election law into chaos. You will be giving special rights to petition gatherers. Some of them are local, but there are companies that hire out-of-state people to gather signatures with the goal of qualifying a particular petition. If it does not look as though they are going to get enough signatures, they are going to go to district court, claim that they were intimidated, and request that the deadline be extended.

Speaking of intimidation and the right of free speech, do I not have the right of free speech? Do I not have the right to stand up and say, "No, this is bad for Nevada?" In fact, one of the claims in district court was that we had said their initiative was bad for Nevada. Under this bill, we would be guilty of intimidation for saying a petition was "bad for Nevada."

The judge did not recognize any intimidation because whose free speech do you believe? About 99 percent of this case has been thrown out. The only part of the case that is left is the accusation that someone was "touched," and being "touched" was an interference in their right to petition.

If this bill passes, it will mean full employment for attorneys. When you campaign, you often run into people who do not agree with your position, and

sometimes they are not very nice about it. That is the nature of politics; people do not agree with everything you say.

Clearly, this bill is unconstitutional, and the court will throw it out because you are giving special rights to those out-of-state people who will go to the court and say they felt intimidated. There is no definition of intimidation in this bill. Is it intimidation if I do not agree with what you are telling me? That is why the court chose not to do anything. Also, this bill is unnecessary because NRS (*Nevada Revised Statutes*) 293.710 gives the Attorney General and the district attorneys the right to bring action against anyone who uses or threatens to use force, violence, or coercion against another person in connection with an election or petition. While that is a criminal statute, the Attorney General can seek a civil remedy as well.

Assemblyman Cobb:

What is the remedy the Secretary of State's Office could have provided in an intimidation situation as you described? You mentioned a civil remedy. Would that help the individual trying to collect signatures?

Danny Thompson:

The Secretary of State could have sought action against us.

Chair Koivisto:

The action would have been a gross misdemeanor.

Danny Thompson:

Right; and that was one of the charges in the original lawsuit. The judge threw that charge out and the Secretary of State chose not to pursue it. It is very rare that the Legislature involves itself in a lawsuit currently in court.

Assemblyman Cobb:

What would the Secretary of State's Office have been able to do to remedy their ability to collect those signatures? I do not mean civil fines, or anything like that.

Matt Griffin:

The way the statutes read, the complaint would come to our Office and we would discuss it with the Attorney General's Office. In conjunction with the Attorney General we have fact-finding ability, and some cases we take depending upon our resources. In the criminal context, it would be a gross misdemeanor and the Attorney General's Office can bring criminal proceedings against whomever. By the same token, the Attorney General's Office has the

discretion to pursue such a complaint civilly, as well—a civil remedy in the district court.

Assemblyman Cobb:

The language in this bill at line 9 says, "to request an extension of the deadline for filing a petition." Specifically, under current laws, what could the Secretary of State's Office have done to help that individual with his ultimate goal of collecting signatures? Leaving aside penalties, fines, and what you have been describing, what would help remedy the situation of gathering signatures?

Matt Griffin:

The whole gamut of civil remedies: preliminary injunction; temporary injunction; permanent injunction; all those types of civil remedies would have been available by prosecution from the Attorney General's Office.

Assemblyman Cobb:

Would you have been able to extend the deadline?

Matt Griffin:

Yes, by injunction the court would have been able to extend it. We could have sought that through an injunction and, using its discretion, the court would have acted. I think the court would weigh the likelihood of success on the merits as it was presented to the court in the application for an injunction, and then the court would have made a determination. But the short of it is yes, we could have sought an injunction.

Assemblyman Cobb:

Your Office would have gone to district court and sought an extension of the deadline on behalf of that petitioner?

Matt Griffin:

Correct.

Assemblyman Cobb:

Mr. Thompson, you mentioned the issue of the TASC signatures and I do not want to address the lawsuit portion of your testimony as I do not see how this retroactively would apply to your situation, but you mentioned that this was a ploy for extra time to gather TASC petition signatures. I did not support that petition when it was being circulated, but how many signatures beyond the number needed to qualify that petition did they collect, and is it your contention that that extra deadline provided them the time to collect those necessary signatures?

Danny Thompson:

They were not given an extension in that particular case. When we went to court in June, the TASC petitioners said they had 60,000 signatures. The law required 83,164, or 10 percent of the registered voters who voted in the last general election. The TASC petitioners maintained they would not be able to get the required signatures unless they were left alone, but no one presented the other side of the argument. The judge did not extend the deadline, nor did she recognize any intimidation. She said that people should stand at arm's length from each other, because they were all exercising their rights of free speech. She advised everyone to go forward with what they had been doing.

On June 20, the deadline to turn the petitions in, TASC turned in 150,000 signatures. That is when we started digging deeper. I purchased copies of the two petitions one particular hired company was carrying. I digitized those copies so I could compare the petitions, and that is where we found much of the fraud. I found someone who signed a sworn affidavit that he was at a party at Lake Mead where those petitions were forged and where the signature gatherers had been shown how to forge signatures. The people who sponsored the petitions may not even have known this forgery was going on. The court has extended the time periods in some cases, but not in this particular one.

Assemblyman Goedhart:

You mentioned if something were currently being debated in a court of law that we should not be delving into it. Is there a precedent for that, or is that usually how it is done in the Assembly?

Danny Thompson:

It is not good practice for the Legislature to interject itself if there is currently a case in court. I am not going to say that it has not happened because it certainly has, but it is not a good practice for the Legislature.

Chair Koivisto:

Are there further questions from the Committee? [No response] I have a lot of questions about this bill, so I am going to close the hearing on S.B. 489 (R1).

Mr. Conklin, we heard Senate Bill 401 (1st Reprint). That was our first bill today and I held it until we had enough Committee members to move it.

Senate Bill 401 (1st Reprint): Requiring the Secretary of State to report certain information concerning elections to the Legislature. (BDR 24-248)

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS
SENATE BILL 401 1st REPRINT.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chair Koivisto:

We are adjourned [at 5:38 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: _____

EXHIBITS

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

Date: May 1, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
SB 230 (R1)	C	Sharron Angle, Private Citizen, Reno, Nevada	Current signature portion of a petition
SB 230 (R1)	D	Sharron Angle	Proposed signature portion of a petition