

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

**Seventy-Fourth Session  
February 22, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:48 p.m., on Thursday, February 22, 2007, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Ty Cobb (Excused)



**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legal Counsel  
Patrick Guinan, Committee Policy Analyst  
Kim Guinasso, Committee Counsel  
Sheila Sease, Committee Manager  
Jackie Valley, Committee Manager  
Terry Horgan, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Caren Jenkins, Nevada Ethics Commission  
Rick Hsu, Nevada Ethics Commission  
Juli Star-Alexander, Executive Director, Redress, Incorporated, Las Vegas, Nevada  
Tonja Brown, Private Citizen, Carson City, Nevada  
Sherry Powell, Private Citizen  
Janine Hansen, representing the Independent American Party; State President, Nevada Eagle Forum  
Matt Griffin, Deputy for Elections, Office of the Secretary of State, State of Nevada

**Chair Mortenson:**

[Roll taken.] We are introducing several bills, and the Chair of Elections, Procedures, and Ethics will introduce them.

**Chair Koivisto:**

I am requesting authorization from the Committee for two Committee bill drafts. The first is a ballot initiative bill. You will hear the details when we hear the bill in Committee after it is drafted and introduced. May I have a motion?

ASSEMBLYMAN SEGERBLOM MOVED THE COMMITTEE  
AUTHORIZE A BALLOT INITIATIVE BILL BE DRAFTED.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

**Assemblyman Christensen:**

Just to clarify, the motion is to create a Committee BDR (bill draft request), but we do not know what it is going to be about?

**Chair Koivisto:**

We do not have the details yet, because the bill is not drafted. We are requesting a bill to do some ballot initiative work.

**Assemblyman Christensen:**

That is a first for me. Is that common?

**Chair Koivisto:**

Yes.

THE MOTION PASSED. (ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.)

**Chair Koivisto:**

The next Committee bill draft is also a ballot initiative bill, and this one will deal with signature fraud on ballot initiative legislation.

ASSEMBLYMAN OHRENSCHALL MOVED THAT THE COMMITTEE REQUEST A BILL DRAFT DEALING WITH SIGNATURE FRAUD ON BALLOT INITIATIVE LEGISLATION.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.)

**Chair Mortenson:**

We will open the hearing on A.J.R. 1.

**Assembly Joint Resolution 1:** Proposes to amend the Nevada Constitution to provide for forfeiture of public office for three or more violations of ethical duties. (BDR C-171)

**Patrick Guinan, Committee Policy Analyst:**

Assembly Joint Resolution 1 is a similar, but not identical measure, to one that was introduced in the 2005 Session, which was A.J.R. No. 9 of the 73rd Legislative Session. It did not pass through the entire Legislature.

**Assemblywoman Ellen Koivisto, Assembly District No. 14:**

I find it difficult to understand legislating ethics because it seems to me that, by the time we get elected, we should understand ethical behavior. It seems we must put things in statute and in the *Constitution*.

Assembly Joint Resolution 1 proposes to amend the *Nevada Constitution* to provide for the removal from office of any elected official who has committed three or more violations of his or her ethical duties while holding the same office, as determined by the Commission on Judicial Discipline, for judges, and by the Ethics Commission for all other elected officials. Currently, such violations by the Governor and other state and judicial officers, except justices of the peace, would be subject to impeachment and removal from office. Existing law also allows for expulsion of a member of the Legislature by a two-thirds vote of the house in which that legislator serves. This Constitutional Amendment would supersede that provision, as well.

A similar bill passed the Assembly in 2005 and died in the Senate. This bill is one of several ethics reform bills being brought forth this session in an attempt to restore public confidence in elected officials in light of recent scandals, indictments, and jail sentences.

I am not going to dwell on the impeachment hearing we had in Nevada a few years ago. I think we need to look to the future and our efforts to ensure that we hold all elected officials to the highest standards.

It seems a matter of common sense. An individual who has been found to have willfully violated ethics laws on three occasions by the Ethics Commission or Commission on Judicial Discipline should not be serving in office. We should not need a lengthy and expensive impeachment process to reach that conclusion.

Two representatives from the Ethics Commission will explain the process on an ethics complaint before a decision is rendered, so we will find out how a case is made that an official has willfully violated ethics laws. These decisions are not made lightly, in fact, there are many who say our standards for a guilty decision are too high.

I hope we can once again pass this legislation in this Body and that this session it will be approved by the Governor and signed into law. This is a Constitutional Amendment. It has to be voted on and passed twice by the Legislature and then voted on by the people.

**Caren Jenkins, Member, Commission on Ethics:**

We have been asked to serve as a resource if you have questions about the Ethics Commission in general, and also to explain our process for receiving complaints or addressing violations of the Ethics in Government Laws in Nevada.

There are eight members of the Commission; four are appointed by the Legislature, two must be former public officers, and one must be an attorney. Four additional members are appointed by the Governor and, again, two must be former public officers and one must be an attorney. No more than four members can be of the same political party and no more than four members may reside in the same county. No member may hold another public office while serving on the Commission on Ethics, and no member may actively be involved in a political party, a campaign, or lobbying for compensation. This Commission makeup ensures arms-length deliberations to the highest extent possible.

The Ethics Commission is not a prosecutorial forum. In essence, we receive complaints from the public. Most complaints come not from public officers, nor the Commissioners themselves, but rather from members of the public or third parties. The Commission does have the ability to address a request from a specialized or local ethics commission, or can bring an action on its own motion. The Commission may not initiate proceedings based solely on an anonymous complaint preventing the "witch hunts" or "fishing expeditions" that were of great concern when the Commission was established.

No complaints may be filed by an incarcerated person, and only complaints filed in the proper form are considered by the Commission. The Executive Director is charged with notifying the public officer or employee in writing about the complaint and giving that subject an opportunity to respond to the complaint. The public officer or employee is provided with a copy of the complaint and asked to write a letter of response. At that time, some people actually obtain counsel although that is not required. After we receive the response from the public officer or employee, a panel of two of the eight Commission members reviews the information and determines whether the complaint contains just and sufficient cause for the Commission to go forward, investigate, and render an opinion about the complaint. To assure objectivity, the panel is not allowed to contain two members from the same political party. The Executive Director of the Commission investigates the facts and makes a recommendation about whether just and sufficient cause exists to move forward, and the panel, not the Executive Director or his or her investigative staff, makes a determination whether just and sufficient cause exists. We are not able to do that unless the subject has been given an opportunity to respond and provide an explanation, defense, or other information about the allegations that have been made.

The panel determination has to be made on what is called "credible evidence;" it cannot be based solely on newspaper articles or media reports. The Commission keeps the entirety of that process confidential; only the complainant and the

public officer know a complaint has been filed against him or her. We neither confirm nor deny the filing of a complaint. If the media calls, if the complainant shares that information with others, or the public officer shares that information with others, we cannot confirm or deny the filing of a complaint.

If the panel determines just and sufficient cause does exist to move the complaint forward, then it becomes a more public process, but the panel members are then excluded from participating in the further process because their minds are somewhat made up from the very cursory information at the panel level. Following a panel determination of just and sufficient cause, the Commission holds a hearing. We provide the person with notice of the hearing, we allow the public officer or employee to be represented by counsel, and that person hears the evidence and is given an opportunity to respond and cross examine any witnesses brought before the Commission. At that stage in the proceedings, credible evidence is no longer the standard of review, it is a preponderance of the evidence—the civil standard for culpability in a court of law. It is also the standard for the Commission. The Commission's opinion, when it reaches one after a hearing, is appealable. It is subject to judicial review. The Commissioners are prohibited from responding or commenting to the media about the proceedings until a final determination is given, so until a hearing is concluded, individuals on the Commission are prohibited from discussing material, opinions, et cetera, with the media or any other person. Again, we try to ensure the integrity of the process. We do not have the same powers that a court of law may have, although we do have subpoena powers to bring documents and evidence forward and we do as good a job as we can within the statutory time constraints to vet the complaint as thoroughly as possible.

If the complainant brings an allegation of a violation of statute that is under our jurisdiction, and in our investigation we see additional potential violations, the Commission is permitted to expand the investigation or the deliberations about those issues. We have a checklist of the statutes under our jurisdiction and, typically, when you list them, people look them up. The form complainants are provided with is very user friendly. Every complaint we get is dealt with to the best of our ability. We have a general counsel, our Executive Director, an administrative person in Carson City, and an investigator and administrative person in Las Vegas.

**Rich Hsu, Member, Commission on Ethics:**

I have been a Commissioner since 2000. There are multiple levels of due process. I am an attorney by trade, and the notion of due process is that you have notice of the charges against you, and you have the opportunity to present

your side of the story. You have that level of due process both at the panel stage where two Commissioners look for just and sufficient cause, and at the hearing stage, if it gets that far, before the other six Commissioners.

I would like to emphasize that the Executive Director is the lead investigator, the person ultimately charged with investigating, but the Executive Director's opinions essentially go out the window when it comes to actually making a decision, both at the panel stage, and also at the hearing stage. There has been criticism of the Executive Director, but the ultimate decisions are made by the Commissioners at both the just-and-sufficient-cause stage, and at the final stage during determination about whether there is a violation.

If there is a violation, the Commission is posed with the question of whether or not the violation is willful. That is directly related to A.J.R. 1, because a willful violation in the realm of ethics violations can have severe political consequences, for obvious reasons. It is a charge we take seriously when we decide whether a matter has simply been an oversight versus a truly willful matter that the public officer knew or should have known was wrong.

**Chair Mortenson:**

Any questions from the Committee?

**Assemblyman Segerblom:**

Do you have lists of published opinions and advisory opinions?

**Caren Jenkins:**

Posted on the Commission's website is every written opinion the Commission has issued since at least the 1980s, that is not confidential. Those opinions provide a lot of guidance to public officers because they illustrate the troubles former public officers, officials, and employees have had. If elected officials or appointed officials wish to go to that website, or go to any law library and find our written opinions; there are dozens of them.

**Assemblyman Segerblom:**

If you have not issued an opinion about a particular action, do you consider that when you come to the determination of willfulness?

**Caren Jenkins:**

There have been interpretations of the term willful, and the statute does a reasonably good job defining it, as much as one can when one is defining an intrinsic feeling or knowledge that is not tangible. The Commission has been very good, in my experience, about taking every case on its own merits and

determining willfulness based on the public officer, the testimony, and the credibility of all the material before the Commission. Willfulness is defined in our statutes as it applies to ethics violations, and there have been several opinions interpreting, or at least applying, the willful standard when there has been a finding of willfulness.

**Assemblyman Segerblom:**

Does that include an evaluation of whether that particular conduct has been ruled upon by your agency in the past?

**Caren Jenkins:**

Rick, are you aware of any particular opinions we can point to?

**Rick Hsu:**

Are you asking if there is a reported decision on the books, and a person violates the ethics laws based on the same kind of decision, whether that is considered for purposes of willfulness?

**Assemblyman Segerblom:**

Right, and more particularly, if there is not a published opinion, because this is an area that has not been dealt with, it seems to me that should lessen the conclusion that it was willful. A lot of times these are not bright-line cases.

**Rick Hsu:**

Yes, and I do not think that is something that is overtly argued. I assume it would be a great argument by the attorney for the public officer—that this is a new area and there has never been a decision on it—but that is not something that is intrinsically considered. Ultimately, what we do is consider whether or not this kind of conduct, as defined by statute, is something that the public officer knew, or should have known, would violate the ethics laws. Something we consider is whether they have taken training classes. A number of different types of public officers will sign as to having affirmed, reviewed, and understood the Ethics in Government Laws. Whether or not there is a previous opinion on the books is not something we consciously look at; however, individually, the Commissioners may look at that when they are considering it.

This Commission is balanced, as described, and that often leads to deadlocks. I presided over Mayor Goodman's case where there was a finding of a violation, but a deadlock as to whether the conduct was willful. Built into this process is the fact that, inherently, there will be incidents where there is a balance, a deadlock, in deciding whether or not there is a violation and, if so, whether it was a willful violation.



**Assemblyman Segerblom:**

Without a majority, there is no finding?

**Rick Hsu:**

That is correct.

**Assemblyman Segerblom:**

It is eight members evenly split 4 to 4?

**Rick Hsu:**

Because the two panel members are precluded from further participation, the maximum number of Commissioners would be six, so the split would be 3 to 3.

**Caren Jenkins:**

*Nevada Revised Statutes* (NRS) 281.4375 defines willful violation. "Willful violation means the public officer, or employee, knew, or reasonably should have known, that his conduct violated" this Chapter where the Ethics in Government Laws lie. Because A.J.R. 1 talks about a violation of ethical duty on page 7, as being "serious" or "indicates the public officer behaved knowingly or willfully in a manner," the Ethics Commissions' interpretation of a willful violation fits, somewhat, with this definition of "knowingly or willfully in a manner inimical to the nature of a public office as a public trust."

**Assemblyman Munford:**

Who has the right to file a complaint concerning ethics violations?

**Caren Jenkins:**

Any member of the public may file an ethics complaint unless they are incarcerated.

**Assemblyman Munford:**

Does the complaint always have to deal with monetary issues? Does the person always have to profit from it?

**Caren Jenkins:**

Chapter 281 [of the *Nevada Revised Statutes*], and specific sections of that Chapter, are grouped as the Ethics in Government Laws. That section of Chapter 281 is deemed to be the jurisdiction of the Ethics Commission. If it is outside that Chapter, the Commission has no jurisdiction over it. Most of the statutes tend to deal with an elected official, public officer, or an employee acting for his own personal interest above that of the public for which he or she

may be elected. Often, it deals with money, but that is not the sole way to violate those statutes. It is, however, the most prevalent.

**Assemblyman Munford:**

That always seems to be the situation and it always gets the public's attention, too. It is always money.

**Caren Jenkins:**

An example could be using a public office to promote a political campaign. There have been allegations that a sheriff was wearing his uniform in a campaign ad for somebody else. That does not involve personal financial gain, particularly, but a misuse of public office, so there are other types of complaints that are received.

**Rick Hsu:**

A number of complaints involve disclosure and abstention, and that is when there could be a willful violation for someone who really should have disclosed a conflict, or potential conflict. The Ethics Commissions' view is that, when in doubt, disclose, so the public can understand what is going on. If there is a relationship, it allows the individual to explain why the relationship does not create a conflict of interest. Quite often there are cases that do not involve taking of money or even use of government time, equipment, or resources for personal benefit that still can fall within our jurisdiction.

**Chair Mortenson:**

You spoke about some opinions being confidential. Under what conditions would opinions remain confidential?

**Caren Jenkins:**

Hopefully, you are all aware that you are eligible to apply to the Commission for advice about future conduct you are considering. Confidential, first-party, advisory opinions are kept confidential. As an example, if you were considering entering into a business, you might want advice about whether this business should enter into contracts with a member of the public who testifies before your committees all the time. The Ethics Commission could give you advice about whether it would be advisable to go forward with the business and, if so, under what circumstances you might want to watch for pitfalls, when you might want to disclose that you are acting in your capacity as an Assembly Member, and when you might want to avoid entering into contracts. Those sorts of things, that advice, is held confidential for public policy reasons. We want to encourage you to ask before you get into trouble, "you" meaning elected officials, public officers, and employees.

The public officer can waive confidentiality. Sometimes when you come to us for advice, you realize that advice might be helpful to the other Legislators and you might waive your confidentiality in order that that advice may be shared with the remaining Legislators. A waiver of confidentiality is always by the request of the public officer.

**Assemblyman Goedhart:**

You said when a complaint is received it goes to a panel of two, which determines whether or not it has the merits to keep on going forward to an official hearing. Is it true you have only 45 days within which that must be accomplished unless the person who is being investigated gives his or her permission for that timeline, that statute of limitations, to be waived? Is that correct?

**Caren Jenkins:**

That is correct. It is not a "statute of limitations," it is a period within which action is required. If the complaint is complex or if the calendar will not permit, often either the Commission or the public officer may request a waiver of the timelines. Without a waiver, that is our timeline, period.

**Assemblyman Settlemeyer:**

I agree that we need to restore the public's faith. I was in Clark County and spoke to citizens there about how disgusted they were with the entire political process. Something must be done. Out of curiosity, if this law had been put into place ten years ago, how many people would have been eliminated from office?

**Rick Hsu:**

In my seven years as a Commissioner, I have yet to see a finding of three willful violations in one proceeding. The closest we came was when Nevada State Controller Augustine stipulated that she engaged in three willful violations. When you have a willful violation, there is an issue about whether it needs to be based on different conduct. You could have the same conduct and have different parts of the statute apply, and there could be a violation for each of those. The way I look at the willful statute, if it were based on the transaction, that would be one willful violation. You typically do not have three separate violations in one hearing.

**Assemblyman Settlemeyer:**

If a person made a mistake and sent out an email, or sent ten emails, would that be ten occurrences or one?

**Rick Hsu:**

The Commission would have to decide on a case-by-case basis whether it would constitute one transaction for willfulness or several. I was on the panel for the Augustine matter, and I believe an argument could have been made that for each employee who was alleged to have been pressured to work on a campaign, there could at least have been one transaction, if not more. It really has not been established or settled in my seven years as a Commissioner.

**Chair Mortenson:**

The bill says three violations within the period of the individual holding a single office.

**Rick Hsu:**

On page 6, beginning on line 3, it reads, "Each act or omission of a public officer that is part of a continuing course of conduct or arises out of the same occurrence, transaction, event, or scheme constitutes a separate violation" and that is where it is helpful to have defined what a "separate violation" is for purposes of A.J.R. 1. You could have one set of facts and you could have a number of violations.

**Caren Jenkins:**

Referring to Assemblyman Settelmeyer's example of an email, it may be one act to add a signature to all your outgoing emails that says, "Support Caren Jenkins for Governor," but you send it every time you send an email. Would that be a continuing course of conduct that constitutes a single violation, or does each email constitute a violation? I would argue that it was one act. You placed it once, but it just happens to go out every time you send an email. Others might argue that each email was intentionally sent because you can block the signature, but chose not to. Considerations such as these come before the Ethics Commission with nearly every case, so we look at the facts and circumstances before us, individually, case by case, and we need to.

**Assemblyman Ohrenschall:**

Under this scheme, how do you envision a public officer being removed from office? Would the Ethics Commission have to institute judicial action, or would it be automatic? Would there be an impeachment and then a trial by the Senate?

**Caren Jenkins:**

I need to be very clear that this bill is not the Ethics Commission's bill. We do not have any idea how it might be implemented. Assemblywoman Koivisto asked that the bill be written, and I would rather defer to her as to how it might be implemented.

**Assemblywoman Koivisto:**

Section 5, page 5 of the bill talks about the violations and whether they are committed at the same time or during the same term. Judicial officers are overseen by the Commission on Judicial Discipline, which makes the determinations; for all other public officers the Commission on Ethics makes the determinations. If charges are brought and the person is found to have committed three ethical breaches, it is my understanding that after all appeals have been exhausted, unless the person successfully appeals, that is the end of the road.

**Rick Hsu:**

*Nevada Revised Statutes* 281.551, subsection 4(c) says if "three or more willful violations have been committed by a public officer the Commission shall file a proceeding in the appropriate court for removal of the officer," so the Commission would actually have to file something. The way I read the language in A.J.R. 1, if you have three violations and they are determined and upheld, then it is a forfeiture by operation of law.

**Chair Mortenson:**

That is the way I read it also.

**Assemblyman Ohrenschall:**

Then, when the late Controller Augustine stipulated her guilt to those three willful violations why did the Ethics Commission not institute a court action to remove her? Why did the Governor call a special session for impeachment and trial?

**Rick Hsu:**

Because she was a constitutional officer you needed only one willful violation, and that would automatically trigger an impeachment proceeding. After the impeachment proceedings I suppose we could have initiated a proceeding under the statute I just read to have her removed. We did not do that and it was not something I thought about at the time.

**Assemblyman Ohrenschall:**

Referring again to Ms. Augustine, the Assembly impeached her; the Senate had the trial; and they decided on some fines but not removal from office. If this had been the law and she had committed those three violations, could there potentially have been a constitutional stalemate where the Legislature impeached her, tried her, found her guilty, and sentenced her to fines yet the Ethics Commission demanded she forfeit her office? We have the Senate fining her but the *Constitution* says she forfeits her office. Are these complementary or in conflict?

**Rick Hsu:**

That is an interesting dynamic. I think the Commission chose to defer everything to the impeachment proceedings. If we had initiated an action for removal, I do not know. Certainly, the late Controller's attorney would have made those arguments you are bringing up. Perhaps the notion was that she had been through it once. It was not technically double jeopardy, but it feels as though it is, and then you have an Ethics Commission doing something the Senate would not do. That might have been their mindset at the time—why we did not follow this and initiate a proceeding to have her removed.

**Assemblywoman Koivisto:**

I believe the intent of this is that if someone, as in the case you are referring to, stipulates to three ethical violations, the impeachment proceeding does not happen. It is done; that is the end of it. There would have been no impeachment proceeding.

**Assemblyman Ohrenschall:**

Article 7, Section 1 of the *Nevada Constitution* says "the Assembly shall have the role of impeaching." What happens if the Nevada Legislature is not in session, but there is something going on and an impeachment might be called for? If the Chief Executive is not willing to call us into session, what happens, nothing, or can the Assembly initiate an impeachment?

**Brenda Erdoes, Legal Counsel:**

We asked ourselves that question when the impeachment came up. There is no answer I know of to that question other than to tell you that there is no explicit power for the Assembly or the Senate or the Legislature acting together to call themselves into session. There could be an argument made that the power to carry this out is inherent. Would it have been successful? I am assuming that it would have happened because it is not exactly challengeable, but there is no clean answer to this question.

**Assemblyman Goedhart:**

In Section 5 it reads, "If a public officer commits three or more violations...while holding the same office." What happens in the hypothetical situation where a gentleman in the Assembly has two ethical violations and runs for State Senate? Now he has two ethical violations as a State Senator, but it is technically not the same office. Why not say, "while holding elected office" versus the "same office?"

**Rick Hsu:**

I do not know why it was drafted that way. You read it correctly and I certainly think the public officer's attorney would point to this language and say it is only three during that tenure of a particular office. I would think that if someone commits two violations but does not get to number three, their constituents might do something about allowing that person to be re-elected. I do not know if that is a flaw in the statute or the proposed language, but I understand what you are saying and I think you are reading it correctly.

**Assemblywoman Koivisto:**

I would be happy to amend that to say, "while holding elected office," but Mr. Hsu makes a good point. If someone's constituents know he has been bad twice and they still elect him, what can you say?

**Assemblyman Segerblom:**

Ms. Augustine did run and, theoretically, could have been elected last fall.

**Assemblywoman Gansert:**

Looking at page 7, (b)(2) it speaks about the "public officer behaved knowingly or willfully." It seems as though that language is expanding the definition because I think we usually use "willfully" versus "knowingly and willfully" and it is an "or" not an "and". I guess "knowingly" would have qualified under "willfully" anyway, so is that an expansion of the definition?

**Caren Jenkins:**

I am not speaking for the Commission at this moment and I am not lobbying but I was a bit perplexed about implementation because if an individual has a felony conviction outside of his public office and then has some willful violation found by the Ethics Commission, does that qualify as three strikes? Further, a felony is, "without limitation...including felonies." What other serious acts might qualify and make it automatic? Who gets to say what a "serious act" is makes it difficult to make it automatic. "Knowingly" is subsumed in "willfully," so if the measure were to read, "the public officer behaved willfully" it would be the

same as "knowingly and willfully." I think it just identifies one of the definitions of willfulness. Thank you for allowing me to mention page 7, (b)(1).

**Chair Mortenson:**

I will now take testimony from those who signed in and in the order they signed in, whether for or against.

**Janine Hansen, representing the Independent American Party:**

My concern with this is the constitutional process. I am concerned with the basic problem of the Ethics Commission being extra-constitutional. When I say that, I refer to Article 3, Section 1 of the *Constitution*, which says there will be three departments of government—executive, judicial, and legislative—and that those particular powers are divided. However in the Ethics Commission, all those powers are essentially combined into one, so you have a situation where you do not have the judge, the jury, and the executioner—they are all the same people. I have serious concerns about that with regards to the Ethics Commission.

In an opinion of the Supreme Court of the State of Nevada, Justice Becker stated, "The Fifth Amendment has long been interpreted to mean that a defendant may refuse to answer official questions put to him in any proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings, the defendant, therefore, retains his Fifth Amendment rights. A state may not impose substantial penalties on a person who decides to invoke his right against self-incrimination." Unfortunately, this right against self-incrimination does not exist when one goes before the Ethics Commission, which concerns me.

There are other rights missing when one goes before the Ethics Commission, one of which is the right to trial by jury. In Article 1, Section 3 of the *Nevada Constitution* it says the right to trial by jury "shall be secure to all and remain inviolate forever" and that includes civil cases; however, because this administrative procedure of the Ethics Commission falls outside of civil or criminal, one loses one's right to trial by jury. I have long advocated that you have a right to appeal an Ethics Commission decision to a *trial de novo*, a new trial, so that the facts can be considered independent of the Ethics Commission's "kangaroo court".



The bill does say there is the right to judicial review. It does not say that you have the right to a new trial or one with a jury, so I am not sure what that means. You should have the right to have a new opportunity to have a trial by jury.

I hope no one will have three serious violations, but I am concerned about individual rights with regards to this and that those rights may be jeopardized because this places them with the Ethics Commission. There is no accountability for the Ethics Commission because they are not elected; we cannot unelect them as we might some of you. They are not really accountable to anyone. Who supervises? Who checks on their decisions? In past years there have been some concerns about what went on with the Ethics Commission, so I would like to know how they are held accountable.

You say we have a balanced Commission—four Democrats and four Republicans—and if they are on opposite sides it can be said that the decision appears to be political. You bet it is political. What happens if someone from one of the three minor parties comes before the Ethics Commission? There would be no one representing that person; the minority is not represented. There is no one who would be interested in their rights or political process, so we are not represented on the Ethics Commission and are worried about what they would do. In the past the Independent American Party had an issue before the Ethics Commission, and the Commission's decision was split. It was appealed to District Court and District Court said we were right. Then it was appealed to the Supreme Court, which said we were wrong. The Secretary of State sent notices of \$2,000 fines based on that decision to all our candidates. The notices were sent before our State Convention, which is essentially our primary under the election laws. That truly suppressed our ability to get candidates. Ultimately, after our Convention, the Secretary of State withdrew all the fines.

I do not see any safeguards, especially because you do not have the right to trial by jury or a new trial when the Ethics Commission makes their determinations. Maybe that is the issue that is missing, because I certainly believe we need integrity in office and I support the objective of the bill to achieve that, but I am worried about people's individual, constitutional rights being denied when they are before the Ethics Commission. I support the current constitutional process unless these issues can be resolved.

My brother is an attorney and takes many cases relating to administrative proceedings and administrative courts. In almost every case, when one is in a bureaucratic court such as OSHA (Occupational Safety and Health Administration) or the tax department, those administrative bodies have not only violated the statutes, they have violated their own regulations and rules. Who protects the individual citizens, or in this case the public officers, from potential violations by the Ethics Commission of the statutes, the regulations, the rules, and their constitutional rights?

I support ethics in government. I support honesty and integrity in government. I am most concerned about being sure we have maintained our basic God-given constitutional rights.

**Juli Star-Alexander, Executive Director, Redress, Incorporated, Las Vegas, Nevada:**

I also support this bill. I think it is a really good step in the right direction, but I also have certain concerns. There are too many for me to address today, so I would like to seek permission to submit a package in writing for the review of the Committee that will go into further issues with regard to the way A.J.R. 1 is written with regard to the judiciary.

Specific to the Nevada Commission on Ethics, there was an experience with a Clark County public administrator. One of the deciders of fact was an attorney who disclosed that he had a conflict of interest because his law firm was representing that administrator in a number of matters, but then he said, on the record, that he did not think it would affect his ability to judge fairly. Well, it did. The final decision was 3 to 5 and the attorney did vote in favor of the public administrator. I would like to see situations like that addressed—where there are concerns about the neutrality or impartiality of the people hearing the facts.

I was at a tribunal giving truthful and accurate testimony in a respectful manner and a particular senator told me that I might want to "think about making friends" with them because they were the ones who were going to decide the bill. Upon submission of my complaint to the Commission on Ethics, I was informed that their attorney decided that this particular senator really had not meant what he said. However, any prudent person shown the transcript and legislative testimony would say the same thing—it could be considered cronyism; it could be considered favoritism; it could be considered a lot of different things; but it could not be considered appropriate behavior. It was completely passed over by the Commission on Ethics.

I think the best intent of A.J.R. 1 can be defeated if there is not more "meat on the bones." There are other issues that come into play that can actually set aside the successful culmination of any ethical review.

**Chair Mortenson:**

We would like to have your package. We will have a work session on this bill and enter your package into the record.

**Tonja Brown, Private Citizen, Carson City, Nevada:**

I am in favor of passing A.J.R. 1 and including judges among the public officers the resolution applies to, based on the information I have provided you with ([Exhibit C](#)). I want to read you a letter I received dated February 16, 1996 [read from the letter ([Exhibit D](#))].

**Chair Mortenson:**

Ms. Brown, does this concern the Ethics Commission?

**Tonja Brown:**

Yes, it does. In 1996 I filed a complaint with the Ethics Commission and with the Judicial Discipline Commission. I was told they will not touch it.

The information I provided you with includes the Affidavit of Treva J. Hearne; the December 19, 2000, "Order Denying Motion for Evidentiary Hearing...;" a photocopy of the sealed DNA kit from 1989; and a 1995 photocopy showing the kit opened. According to the index tracking cards and chain of custody records, the DA (District Attorney) and Judge McGee were the only persons who made requests for the kit. The DA at the time was Mills Lane and in 1996 I personally spoke with Judge Mills Lane.

**Chair Mortenson:**

This will be part of the record. We will be having a work session and will look into how this relates to the Ethics Commission.

**Tonja Brown:**

Ms. Hansen was speaking about an appeals process. Would members of the Legislature be a subcommittee to oversee appeals and make final determinations? Crimes are being committed, yet nobody wants to do anything.

**Chair Mortenson:**

We will consider all you have given us at the work session, and I will consider your information prior to the work session, of course.

**Sherry Powell, Private Citizen:**

I am a paralegal, a certified legal assistant, and also head up the Ladies of Liberty, a women's organization. In reference to the Ethics Commission, Judicial Discipline Commission, and the Bar Association—when complaints are filed, if there is no foundation to them, they are not printed. But I have also spoken to all three committees, and when you have a case presented to them, they make a determination about their own people. In my opinion, there should be a subcommittee. I have 19 cases I feel are ethics violations by numerous elected employees. I have filed complaints in reference to the drugs in this State. A law enforcement person placed a restraining order on me to prevent me from telling the news media, Assembly Members, the Legislature, or police departments anything. I think there are issues a lot bigger than just three violations. It is getting past the Judicial Discipline [Commission].

**Chair Mortenson:**

Could you put your thoughts in writing and submit them to this Committee? We will consider your information and how it might affect the Ethics Commission at our work session.

The hearing on A.J.R. 1 is ended.

[The gavel passed to Chair Koivisto.]

**Chair Koivisto:**

We are going to hear another ethics bill, A.B. 79, and you should have a mock-up of a proposed amendment to that bill ([Exhibit E](#)). I believe this is a Committee bill. Mr. Conklin worked on this bill last session, but it did not pass in the Senate. He will present the mock-up.

**Assembly Bill 79: Prohibits a public officer or employee from using governmental time, property, equipment or other facility for activities relating to political campaigns or the preparation of certain disclosures or reports. (BDR 23-172)**

**Assemblyman Marcus Conklin, Assembly District No. 37:**

Assembly Bill 79 is another bill in a series proposed this session to restore the public's trust in elected officials by clarifying and strengthening ethics and campaign law. Assembly Bill 79 prohibits a public employee from using

governmental time, property, equipment, or facilities for campaign activity or for the preparation of financial disclosure statements or campaign expense and contribution reports. This prohibition was included in legislation last session which passed the Assembly but was not approved in the Senate.

This is just common sense. Many people I have spoken with are amazed that this is not explicitly expressed in law. This bill would leave no doubt in anyone's mind that an elected official at any level of government cannot ask his or her staff to prepare a campaign report or do other political activity during the workday, nor can they use office equipment or office space for activities such as campaigning.

I believe the first draft of the bill is, at best, convoluted and hard to read. These statutes are important and the average person should be able to read them and have a very clear understanding of what is or is not allowed. If you are going to consider this bill, I would ask that you consider it in the form of the mock-up that has been presented to you ([Exhibit E](#)) and not in its original draft form. The mock-up clearly embodies what we are trying to accomplish in this act.

On page 2 of the mock-up you will see we have removed language from subsection 7 of Section 1 and created, under subsection 7, paragraph (a), subparagraph (2), a new section which explicitly states that the limited use of government property "does not include any activity relating to campaigning for elected office, including preparing a statement of financial disclosure...or preparing a report required pursuant to Chapter 294A of NRS (*Nevada Revised Statutes*)."

That makes it quite a bit clearer to the layman that this is an activity that is expressly prohibited under ethics law.

Because there are two sections, you will also find that same notation under subsection 8, paragraph (a), subparagraph (1), item (IV).

**Assemblyman Ohrenschall:**

If this had been the law when our late Controller was impeached, would anything have happened differently? Would there have been more penalties; would the process have been swifter?

**Assemblyman Conklin:**

I cannot say whether things would have been any different. This bill is not about any precedent set; however, one of the things one learns is that what you believe to be embodied in a piece of legislation is not always how it is interpreted. This legislation attempts to clarify what we had in mind when this particular statute was originally drafted.

**Chair Koivisto:**

Would anyone else like to speak on this?

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

The Secretary of State's position is in support of this bill. This is a practice employed by most legislators but heretofore not yet codified in the NRS (*Nevada Revised Statutes*). To that extent, it is a necessary measure and a good measure. Because this is a working draft, I would like to point out an issue we noted. Many appointed officials, like myself, are required to file financial disclosures as part of our duties as State employees, yet we are not filing those disclosures for purposes that relate to a campaign. The filings are merely part of our official duties and required by this Body. Perhaps those people could be addressed with this legislation, either by being exempted or dealt with as you deem appropriate. I just wanted to mention that not all documents required to be filed are filed from elected officials.

**Assemblyman Conklin:**

Mr. Griffin did come to me with that proposal beforehand. Last session, the legislation we passed required those who were not elected, but had control of money or budgets, to disclose this information, but it does raise an interesting question because they are not elected. They cannot campaign, so I do not know how this might be addressed, but it is something we should take a look at.

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

I certainly appreciate the changes in the mock-up that made the language much more clear. We support this language and the concept. We think the more explicit, so people do not misunderstand and make mistakes, the better off we are since the consequences are great, as we have seen.

The only continuing concern is about the Ethics Commission, and I assume any violations would go to them. The language ought to be explicit, but my concern remains about the problems with the Ethics Commission and the fact that there is no way to have a new trial if one is convicted there.

**Chair Koivisto:**

Does anyone wish to add anything to the discussion? [No response]

We will schedule a work session and try to include changes, based on the comments we heard today, as well as other people's ideas so as to put their

minds at rest about this legislation. Is there anything else to come before the Committee? [No response] We are adjourned [at 5:26 p.m.].

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblyman Harry Mortenson, Chair  
Constitutional Amendments

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

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Assemblywoman Ellen Koivisto, Chair  
Elections, Procedures, and Ethics

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

**EXHIBITS**

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

**Date:** February 22, 2007

**Time of Meeting:** 3:45 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
AJR 1	C	Tonja Brown	Copy of Affidavit and other supporting documents
AJR 1	D	Tonja Brown	Letters from Niles Carson to Mills Lane and to the Det. Div. Commander from Tonja Brown
AB 79	E	Marcus Conklin	Proposed Amendment and Mock-up of A.B. 79