

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

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

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:53 p.m., on Thursday, March 22, 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:

Assemblyman Harry Mortenson, Chair
Assemblywoman Ellen Koivisto, Vice Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
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 Settlemeyer



STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Kim Guinasso, Committee Counsel
Sheila Sease, Committee Manager
Terry Horgan, Committee Secretary
Trisha Moore, Committee Assistant

OTHERS PRESENT:

Tom Case, Private Citizen, Reno, Nevada; Independent Board Member,
Buffalo Family of Mutual Funds
Mike Sears, Vice President and Trust Officer, Great Plains Trust
Company, Overland Park, Kansas
Sharron Angle, Private Citizen, Reno, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State

Chair Mortenson:

[Roll called. The Chair reminded Committee Members and the public of Committee rules and etiquette.]

Chair Koivisto would like to introduce two Elections, Procedures, and Ethics Committee bills, so I will turn this meeting over to her.

Chair Koivisto:

We have two more Committee bills that must be introduced before next week's deadline. The first one is from the Secretary of State's Office and is cleanup language relating to the statutes and election processes.

BDR 24-542—Makes various changes to election laws. (Later introduced as [Assembly Bill 517](#).)

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE
INTRODUCTION OF BDR 24-542.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

BDR 24-522—Revises role of Attorney General in review of ballot arguments for and against initiatives and referendums. (Later introduced as [Assembly Bill 516](#).)

ASSEMBLYMAN MORTENSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 24-522.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Thank you, Committee. I will turn the meeting back to Chair Mortenson.

Chair Mortenson:

We will open the hearing on [Assembly Joint Resolution 4](#). Mr. Guinan, will you please brief us on this bill?

[Assembly Joint Resolution 4](#): Proposes to amend the Nevada Constitution to repeal the constitutional rule against perpetuities. (BDR C-1105)

Patrick Guinan, Committee Policy Analyst:

As background, this resolution was passed consecutively by the 1999 and 2001 Legislatures, but lost at the 2002 General Election.

Chair Mortenson:

The prohibition against perpetuities occurred in England. At one time in England's history, all the nobles had wonderful estates that they wanted to pass on to family members forever—in perpetuity. As a consequence, the whole country was tied up with land problems. Cities could not expand and the country's economy was in decline. Finally, the Crown decided the situation was unacceptable and the law against perpetuities was established. That law says that, after a certain length of time, the heirs have the ability to sell off the estates and the lands. Many states have adopted that limitation, or prohibition, against perpetuities, including Nevada. We have a limitation on perpetuities.

Assemblyman Ty Cobb, Assembly District No. 26:

I am here to introduce [A.J.R. 4](#), a bill that will allow financial and family trusts to be carried down from generation to generation without interference from government. As you know, this bill passed the Legislature in 1999 and 2001 without a single vote in opposition in the Assembly. However, when it was placed on the ballot in 2002, it failed due to the lack of a public education campaign.

Currently, State law only allows charitable trusts to be held in perpetuity, with non-charitable trusts limited to 365 years. While this is a long time, financial planners believe a law allowing perpetuities, which 14 other states have, is the preferred vehicle for investors whose clients want to ensure that their family trusts can be left to grandchildren and on for generations to come.

The tax benefit of perpetuity trusts is realized at the federal level, so there is no tax consequence or cost to the State of Nevada. The benefit of this bill is that it will protect people's assets, boost the securities and trust business, and increase revenue and investment in the State.

I am joined today by Tom Case and Mike Sears, both of who are involved in the securities industry, and who will explain in greater detail the benefits and ramifications of this bill.

Tom Case, Private Citizen, Reno, Nevada; Independent Board Member, Buffalo Family of Mutual Funds:

[Spoke in support of A.J.R. 4 from prepared text ([Exhibit C](#)).]

Mike Sears, Vice President and Trust Officer, Great Plains Trust Company, Overland Park, Kansas:

[Spoke in support of A.J.R. 4 from prepared text ([Exhibit D](#)).]

Assemblyman Cobb:

At this point, I would like to read a letter in support of A.J.R. 4 from John Kornitzer, Chairman and CEO (Chief Executive Officer) of Kornitzer Capital Management, Inc., Shawnee Mission, Kansas. [Read letter ([Exhibit E](#)).]

Assemblywoman Koivisto:

Tell me what would happen if two only children got married but had no children.

Assemblyman Cobb:

It is my understanding that that money would escheat to the State if it was not otherwise accounted for by a will, a trust, or something like that.

Assemblyman Conklin:

The rule against perpetuity may be wholly to protect against the tying-up of limited resources that may appear in a trust, such as land. Nevada has a significant land problem, so is there the possibility that this, even if it is a good business practice, might have an adverse effect in-state by tying up a very limited amount of land?

Mike Sears:

You could make the argument that it could tie up land, but I do not think that is a very strong possibility for several reasons. Under your existing law, you have perpetuities that last 365 years so land could be tied up for that length of time. In addition, most trust or estate planning documents provide the trustee with the ability to sell the property or invest the property in such a way that it probably would not be tied up. The trustee would have a fiduciary duty to the beneficiaries of the trust to make sure the trust assets were used for the best benefit of the beneficiaries. I cannot think of a situation where, if the trust owned real estate or real property, it would be in the best interests of the beneficiaries to leave that property vacant or not put it to productive use. In fact, I think it would be just the opposite; the beneficiaries would have a cause of action against the trustee to say the land must be used for their benefit. While that was a concern in England 400 years ago, in today's economic climate it is not much of a concern.

Assemblyman Conklin:

If we have a booming trust business in Nevada and folks from outside Nevada come here to form their trusts, those trusts would cross state lines. It is not a trust solely for assets in Nevada, so right now if Nevadans wanted something in perpetuity they could go to one of the states you mentioned and have that done, right? How much of a business increase would you expect to have if Nevada had no limit?

Mike Sears:

I cannot give any numerical data on how much of an increase in business there would be. Nevada has a definite advantage over several of the states that allow perpetuities because there is currently no income tax in Nevada. That would favor Nevada over a majority of the states. I think there would be a significant increase. I am from Kansas where there is a relatively small rule against perpetuities and if I wanted a perpetual trust, I would have a Nevada trust company act as the trustee. It would hold my assets, and although they are essentially Kansas assets, I would still need a Nevada trustee. It is true that there are a handful of other states I could go to, but if I am going to go to the trouble to do a perpetual trust, I am going to eliminate all the states that have a state income tax. Why would I want my trust assets eaten up that way? Two other states that have true perpetuities and no state income tax are South Dakota and Alaska. If I must choose among South Dakota, Alaska, and Nevada, there is more to do in Nevada, so I think Nevada would be more attractive than either of the others.

Assemblyman Ohrenschall:

You make a very good argument about the business advantage of doing away with the perpetuity rule, but how do you respond to the public policy considerations about the moldy hand from the grave, the dead controlling the futures of the living?

Mike Sears:

Your current rule does not prevent that from happening because all I need to do is go to South Dakota, and my dead hand can control from the grave. I think that public policy argument is difficult to make now with the number of states that have gotten rid of the rule against perpetuities.

The other response I would add to that is, with the federal estate tax and federal generation skipping tax if I have a large estate, I am limited in what I can put into a dynasty trust unless I want to pay a significant amount. Currently, the generation skipping tax would be 46 percent. I could put \$2 million into a dynasty trust and anything above that would be taxed at 46 percent, which is going to prevent me from doing that. My point is, there is other federal law that will help limit the dead hand control that the rule was originally designed for.

Assemblyman Ohrenschall:

There has been talk about the federal government and the Congress doing away with the estate tax. If that ever happened, what would the interplay be with states that have the rule against perpetuities versus those that do not have the rule?

Mike Sears:

You would see a lot more assets flooding into the states that have no rule against perpetuities. First, they are not going to get rid of the estate tax. They have talked about it for a long time, but I do not foresee that happening. Assuming that it does, you will see assets flooding into the states with no state income tax and no rule against perpetuities so those assets can be sheltered from the estate tax in the years to come. Why a state would not want to court that business, I do not know. The public policy against dead hand control is not really relevant because which state does that dead hand control come from? Why you would not want it to be your state where, if needed, you could pass bills in the future to correct public policy or meet any public policy issues that might arise, I do not know. I would think you would want to keep as much of that in your state as possible.

Assemblyman Settelmeyer:

I took some law classes and was told over half the states had gotten rid of the rule against perpetuities, but you are indicating only 15 states completely got rid of it. Do the others have a modified version? To me, if the State ever did run into a problem where there were too many issues of people controlling from the grave, we could either take a wait and see attitude or go to one of the different models of rules against perpetuity. Have you thought of explaining to the voters that there are other alternatives if something goes wrong? You were indicating you would be helpful in that process.

Assemblyman Cobb:

The only real arguments I have heard are the public policy arguments. We do not want people being told what they can or cannot do with properties. That is a very sacred right if you look at the fabric of our legal system. Through common law we have developed the concept that every parcel of real property is unique. Therefore, when you are talking about individuals who steal property or improperly attain property, the way to recompense the person is not to give them money, but to give them the actual piece of property back. These public policy arguments were pretty strong 400 years ago when we were talking about the problems that could ensue when exploiting real property.

As Mr. Sears testified, a lot of trust business is not necessarily tied up in real property, but in overall assets. They view it not so much in terms of wanting to prevent future generations from doing what they want with an asset, but how to maximize the benefits to the beneficiaries. We could revisit this in the future, but looking at where we are now in 2007 versus how English society was when they created this rule hundreds of years ago, I do not think that we would ever need to enact future laws just because of the public policy side of it.

Assemblyman Segerblom:

Explain to me Nevada's current laws. If I had a piece of property or a trust, I could control either for 365 years?

Mike Sears:

Yes, that is my understanding.

Assemblyman Segerblom:

You say people are going to South Dakota because they want to control their property for more than 365 years?

Mike Sears:

Yes.

Assemblyman Segerblom:

I did not realize this was voted on a couple of years ago. At that time, it only received 40 percent of the vote. Why revisit this so soon?

Assemblyman Cobb:

That was the result of a distinct lack of a public education campaign. When this was brought to me by individuals wishing to bring multi-billion dollar trusts and their attendant business to Nevada by eliminating the rule against perpetuities, that was my first question. I asked what they were going to do to change that outcome. I think there was a lack of understanding due to the fault of the proponents. I do not believe 60 percent of the voters were against the issue because they had such strong feelings about the rule against perpetuities. I believe it was a distinct lack of a public education campaign. We have been assured it will not happen again because there is so much interest in enacting this legislation and bringing all those assets to our State.

Assemblyman Segerblom:

My concern is the cost. I asked the Legislative Counsel Bureau to come up with some numbers. They said it cost about \$140,000 to publish the ballot questions in 2002, although I do not know how many ballot questions there were. It will cost tens of thousands of dollars just to put this on the ballot, probably, and it does not appear that the prospects are very good.

Tom Case:

We will spend a lot more than that from a public relations aspect and getting people to understand that perpetuity means a "yes" vote. Through early planning and working with the banking and trust associations and trust attorneys, we hope to get it approved and get people to feel good about voting "yes" on perpetuity. It is not the kind of issue that will have people handing out cards at grocery stores saying, "Vote no on perpetuity." It is widely felt the defeat in 2002 was caused by a lack of knowledge of the subject.

Assemblywoman Gansert:

I appreciate your bringing this bill, because Nevada has always positioned itself as a business friendly state. I think this will probably add to our business. We have low corporate fees, no income tax, and we continually strive to increase business in the State.

Assemblyman Ohrenschall:

How much do you think your group would spend on a campaign like that?

Assemblyman Cobb:

I am presenting this bill as a legislative issue, not a campaign issue, and I want to make that very distinct. We had some issues on the ballot last year that were not controversial. The proponents of one, Question 8, the sales tax exemption for used cars, spent somewhere around \$100,000 and it passed overwhelmingly because there was no organized opposition. If you have an active campaign against you, you have a pretty steep hill to climb. You better have a good advertising campaign and a lot of money invested. It is my understanding that with an uncontroversial issue, all you need to do is make people understand why there would be a benefit.

Chair Mortenson:

Any further questions? [No response] We will bring A.J.R. 4 back to the Committee and open the hearing on Senate Joint Resolution 1.

Senate Joint Resolution 1: Proposes to amend the Nevada Constitution to remove requirements concerning affidavits that must be affixed to referendum petitions and initiative petitions. (BDR C-688)

Sharron Angle, Private Citizen, Reno, Nevada:

I am representing myself and other citizens who believe in the initiative process. Senate Joint Resolution 1 removes the notarized affidavit from the bottom of initiative petitions. I had an exhibit distributed to you ([Exhibit F](#)), and it shows you the bottom of an actual petition circulated in 2006. As you can see, there is the summary of the initiative, then the signatures, and at the bottom is this required affidavit which must be notarized. If you read the Legislative Counsel's Digest at the beginning of the bill, Give Nevada a Raise put this issue before the Nevada Supreme Court. The Supreme Court decided it was unconstitutional, according to the First Amendment, because it impedes our right to free speech. It was also an unnecessary provision, because after the signatures are collected, the county clerks must verify that all the signatures are actually registered voters within their counties. Also, speaking as one who has circulated petitions, we pay from \$2 to \$4 per signature and we do not want to pay for something that is not verifiable.

This provision in our law is also costly and obstructive. There is no such thing as a free notary any more. As you can see from my example, every time you got four signatures, you had to get the page notarized. Some petitions are structured so that you can get more than four signatures on a page before you have to get it notarized, but at some point, you have to get it notarized. At that point, the citizen who is circulating the petition has to pay so now you are putting a price on the cost of petitioning your government.

Finally, it places some criminal penalties on ordinary citizens. If you look at what they are sworn to, they swear that the person who has signed the initiative is registered to vote and registered in that county. When you are standing in front of a grocery store or post office, there is really no way to know whether that person is actually a registered voter or even lives in the county he says he lives in.

These are the reasons we brought S.J.R. 1. We feel the Supreme Court made the right decision in saying it was unconstitutional, and now we are just trying to clean up the law.

Chair Mortenson:

Mrs. Angle is absolutely right. This is a bill that has to pass in order to make our *Constitution* agree with the law. The Supreme Court has said that requiring these notarized affidavits is an illegal process. It impedes the process too much.

Assemblyman Segerblom:

What are we currently doing with respect to petitions, affidavits, or signatures?

Sharron Angle:

In 2006, all of us who circulated initiatives did go along with the affidavit but in view of the Supreme Court decision and the difficulty finding free notaries, we would rather spend \$25,000 and take it to court, because we know we will get the decision to come down in our favor. I believe from this time forward it will be disregarded because of case law. This will also free up a lot of space for more signatures and remove an onerous requirement on the citizen who is circulating a petition.

Assemblyman Segerblom:

Has the Secretary of State issued any regulations or said you no longer have to do this based on the Supreme Court ruling?

Sharron Angle:

A representative of the Secretary of State said during the Senate hearing on this bill that he would not stand in the way of a Supreme Court ruling on constitutionality.

Assemblywoman Koivisto:

Since this was in the *Constitution*, that means it was voted on and passed by someone in order to get into the *Constitution*.

Sharron Angle:

I believe this provision was in our original *Constitution*.

Chair Mortenson:

I believe the Secretary of State would not require it because it is against the Supreme Court's decision.

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

Mrs. Angle is correct. We do not oppose S.J.R. 1 as it is proposed today. Because of the interpretation we received of the unconstitutionality of this requirement, it is no longer being enforced by the Secretary of State's Office. However, the statutory circulator affidavit is still a requirement and is not addressed by this decision.

Assemblyman Segerblom:

Is that what we have here, just the affidavit of the circulator?

Matt Griffin:

That is correct.

Assemblyman Segerblom:

And that person does not have to be a notary?

Matt Griffin:

It has to be notarized. For the record, you can get a free notary at the Secretary of State's Office. Also for the record, I have discussed this with Dan Burke at Washoe County and Larry Lomax in Clark County and both counties offer free notarization. The Supreme Court decision never discussed whether or not this was a fee on an exercise of a constitutional right. That only pertains to the signer, not the circulator.

Assemblyman Conklin:

Is the Nevada Supreme Court the final word; in other words, there can be no other opinion, or could this opinion be appealed to the U.S. Supreme Court? Do we amend our *Constitution* for something we deem unconstitutional at this moment, but which might not be in the eyes of the final arbiter or decision maker?

Matt Griffin:

It can get very complex, depending on the issue. It is left to the jurisdiction of the Nevada Supreme Court to see whether or not State law complies with the *Nevada Constitution*. Whether or not the *Nevada Constitution* complies with the

federal *Constitution* is a federal question. That question would start in federal District Court and work its way up to the federal Supreme Court. As I understand it, the initiative petition issue is not part of the *United States Constitution*; it is a Western phenomenon. The decisions I have read throughout the federal circuits that deal with this indicate that once a state has the petition process, it is protected. There is no constitutional right to mandate the petition process be part of your state's constitution, but once you do have it, it becomes a protected federal right to petition your government.

Assemblyman Conklin:

Once the right to petition is in our *Constitution*, it is no longer governed by the *U.S. Constitution* but our own; or is it simply that it is within the jurisdiction of the State to decide whether it is in violation of the *Constitution*?

Matt Griffin:

Whether it is constitutional within the State *Constitution* is a question for the State Supreme Court. Whether the State's *Constitution*, or the decision of the State Supreme Court, is constitutional within the federal *Constitution*, is a federal question. You can be in compliance with the Nevada *Constitution* and still be violative of the federal *Constitution*.

Assemblyman Segerblom:

My understanding is that if the Nevada Supreme Court uses the federal *Constitution* to declare something in the *Nevada Constitution* unconstitutional, the U.S. Supreme Court is the final arbiter of that decision. That is what happened in this case. The Nevada Supreme Court used the First Amendment of the *United States Constitution* to rule that this provision was unconstitutional. That could have been appealed to the U.S. Supreme Court but it never was, so we do not know the answer to Mr. Conklin's question.

Assemblyman Ohrenschall:

The Ninth Circuit Court recently threw out the 13-counties rule on initiatives. Will we, as a Legislature, wait to see if it gets appealed to the Supreme Court, or should we go ahead and amend our *Constitution* now?

Matt Griffin:

That is probably better left to the Legislative Counsel to answer. That decision, the one person/one vote decision, did say that it was federally unconstitutional. I hesitate to answer because it is not within my purview to do so, so I respectfully decline.

Sharron Angle:

As signature gatherers, we do not go by the 13-county rule. Because of that decision in Idaho, the last time we circulated a petition we could have gotten all our signatures in Clark County.

Assemblywoman Koivisto:

We have a constitutional amendment making its way through the process dealing with the 13-county rule. I believe we would use congressional districts.

Chair Mortenson:

Mrs. Koivisto is right. We had an Assembly Joint Resolution that passed as an emergency measure during the last special session. It is coming back for the second hearing this session, and will become law if passed in the next general election.

If there are no further questions, and as this is a bill designed to agree with law, I would take a motion from the Committee.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE JOINT RESOLUTION 1.

ASSEMBLYWOMAN GANSERT SECONDED THE MOTION.

Assemblyman Conklin:

I would like to clarify that this is making the *Nevada Constitution* comply with a Nevada Supreme Court interpretation of the *U.S. Constitution*, where the Nevada Supreme Court is not the final arbiter, as far as I can tell.

THE MOTION PASSED UNANIMOUSLY.

Chair Mortenson:

We will close the hearing on S.J.R. 1 and open a work session on Assembly Joint Resolution 2. Mr. Guinan will give a small introduction.

Assembly Joint Resolution 2: Proposes to amend the Nevada Constitution to prohibit the taking of private property for any private use. (BDR C-22)

Patrick Guinan, Committee Policy Analyst:

The Committee heard A.J.R. 2 on March 1, 2007. [Mr. Guinan gave an explanation of the bill from prepared text ([Exhibit G](#)).]

I would note there was a great deal of discussion in the Committee when we heard this bill initially regarding the issues of public versus private use; and blight. There were questions regarding the definition of blight, but no one has proposed an amendment suggesting that blight be addressed by this measure.

Assemblyman Ohrenschall:

During the hearing, we had compelling testimony both here in Carson City and from Ms. Zeigler from the Castle Coalition, the Institute for Justice that actually represented Susette Kelo in *Kelo v. City of New London*, 545 U.S. 469 (2005). They came up one vote short at the U.S. Supreme Court, but they have been campaigning throughout the country to try to reform state law, both through statute and constitutionally. I feel this amendment helps strengthen private property rights in Nevada. I also feel it works with whatever else may be put into the *Constitution*, whether it is a ballot initiative or something that comes through the Legislature. I would urge your support.

Assemblyman Conklin:

Mr. Ohrenschall, as you know, there is a very tenuous agreement working its way through the Legislature right now. Have you spoken with all parties involved as to the already-passed PISTOL (People's Initiative to Stop the Taking of Our Land) initiative and how this might affect any agreement pertaining to that?

Assemblyman Ohrenschall:

I have spoken to quite a few of the parties involved but not all of them. The Clark County representative I spoke with told me they would be happier if the language was changed from "private property shall not be taken for any private use" to "private property shall not be taken for a primarily private use."

Assemblyman Conklin:

If I take a piece of property to build a court house, and I build the court house but in the lobby I put in a juice bar, outsourcing the operation of that juice bar is a private use. In this language for "any private use," do you think that is covered or do you think we need to add for "a primarily private use?"

Assemblyman Ohrenschall:

I do not believe a food court in the court house would be precluded. Basically, what we are doing is restating paragraph 6, Article 1, Section 8 of the *Nevada Constitution* to reaffirm private property rights. We are restating in the negative what is already stated in the positive in the first sentence. To change it would actually weaken the existing language, so I do not feel changing those words helps private property rights. I do not feel the language as it is would preclude the food court. You can never exactly predict what a court will do, but I do not believe it would.

[Dennis Johnson, who testified at the March 1 hearing and was in the audience, was asked to come forward to help clarify the situation.]

Dennis Johnson, Private Citizen, Carson City, Nevada:

I have been involved with eminent domain issues for 23 years and also joined with Don Chairez on the ballot language in favor of the PISTOL initiative, Question 2 in the last election. I have also worked on the agreement with all parties on the other bill currently going through the legislative process.

The language in the agreement between those opposed to the PISTOL initiative and those in favor roughly states that if the property is leased to a private person or entity that occupies an incidental part of a public facility such as a retail facility within an airport or food concession in a court house, those would be acceptable uses. They make use of the space for the benefit of the public who would be using that facility, plus keeping some public property from lying fallow and not being used. You might as well generate what income you can from spaces within a public building.

Assemblyman Ohrenschall:

We do not define the terms "private property," "public use," or "private use" in the *Constitution*, so I believe we are leaving it open for statutory and case law definition. If you look at my proposed amendment, it is actually very flexible in terms of not tying the hands of future Legislatures. If a Legislature wants to enumerate in statute what a private use is or is not, my amendment leaves that open for statutory definition.

Assemblyman Settlemeyer:

I still question the concept that we can create something that strengthens property rights while at the same time being weak enough to allow them to do what they wish. The whole concept bothers me.

Assemblyman Ohrenschall:

What we are trying to do here is prevent a *Kelo*-type occurrence in Nevada. The U.S. Supreme Court ruled that a public use could include taking private property for economic development to increase the tax base. They defined public use that broadly. What we are doing here is, hopefully, trying to head that off, yet leave it open so the Legislature could enumerate what a public use and a private use are. Right now, in statute, we have defined eliminating blight as a public use in addition to the different other definitions that are more traditionally accepted. I think what we are doing is achieving a balance. The *Constitution* is not supposed to be a statute, but the policy statement of the people.

Assemblyman Cobb:

I want to reiterate some of the comments I am hearing from Mr. Conklin. I trust there is no substantive conflict with the other resolution which is a very, very important piece of legislation that is going to mitigate some of the harsher effects of PISTOL while still protecting private property rights. There is also a possible political issue here where you could have multiple ballot initiatives dealing with the same subject. I wonder if this is not going to potentially derail the other resolution. Has anyone thought about that or would like to comment on the issue?

Chair Mortenson:

I was going to ask Legal for an opinion about whether this conflicted, but they were so busy I decided not to. I felt we could get opinions from Legal during the interim and if there is a conflict between the two bills, we will not pass it the second time. At this point, I see no conflict and I believe Mr. Ohrenschall has explored this quite well. We can explore it further during the interim to see if there is any conflict. We can take care of it.

Assemblyman Ohrenschall:

We heard the other resolution in the Judiciary Committee and I believe it is going to be amended, so I do not know what the final version of it will be. Looking at the current version, it enumerates what a private use is and what a public use is in the *Constitution*, so I do not see a conflict in basically reaffirming that private property shall not be taken for a private use. I would be very open to see them merged into one question so neither derails the other. I do not know if that will happen, but anything that strengthens private property rights would be a benefit, especially after the *Kelo* decision.

Assemblyman Cobb:

I was hoping there could be a single bill, since we are not dealing with substantive issues. I am confident they do not conflict and am worrying more about political issues and having to put this on a ballot and win support for it.

Assemblyman Conklin:

When there are two competing ballot initiatives, the one with the most votes wins. Even if they both pass, the one with the most votes, reigns supreme.

Chair Mortenson:

That is true, but they both must pass twice, so we can eliminate one if there is a conflict.

Assemblyman Conklin:

We do have Ms. Guinasso from the Legislative Counsel Bureau. Maybe it would help to have her come up and clarify that.

Kim Guinasso, Committee Counsel:

The provisions in the *Constitution* address conflicting measures. As the two resolutions exist right now, I do not believe they would be considered to be conflicting, thus the requirement that the one that gets the larger number of votes wins, would not apply.

Assemblyman Ohrenschall:

If there are concerns and the Committee would like to see if the two can be merged, I would be happy with that, too.

Chair Mortenson:

I do not believe A.J.R. 2 is in conflict and I am intending to take a vote on it today.

Assemblywoman Kirkpatrick:

I will support the bill to move it out of Committee, but because I have some questions, I reserve my right to change my vote on the Floor.

Assemblyman Settelmeyer:

We are being told that blight is an acceptable public use, correct?

Assemblyman Ohrenschall:

As defined by the *Nevada Revised Statutes* (NRS).

Assemblyman Settlemeyer:

Then "blight" still allows me to take someone else's property and develop it to increase its value for public use. For instance, I am going to take someone's home, bulldoze it, and put a Wal-Mart in its place. I have increased the value because it was in a blighted situation. Is that not exactly what *Kelo* was about?

Assemblyman Ohrenschall:

That is where we step in as a Legislature and enact statutes to forbid takings under the guise of economic development.

Assemblyman Settlemeyer:

If I vote for it, I will also be reserving my right to change my vote on the Floor.

Assemblyman Munford:

What if you want to get rid of blight? In my district, we are trying to get rid of blight. We never got a definition of what constitutes blight. How would we know in what situations it would be acceptable to remove buildings because of blight? My understanding is that blight is an undesirable condition that makes your community look run down and dilapidated. There is a lot of that in my district, and I would like to see some of it gone as long as the property owners receive just compensation.

Chair Mortenson:

I do not think Mr. Ohrenschall's bill addresses blight.

Assemblyman Munford:

If someone takes private property to invest in a type of structure that is going to help improve the community or improve the tax base, that is what *Kelo* is all about.

Assemblyman Conklin:

Blight is dealt with exclusively in NRS. If you have questions about blight, you should speak with Assemblyman Horne. Last session we really tightened up the use of blight for the taking of private property. It is not something we want to put into the *Constitution*, because situations can change.

Chair Mortenson:

I would be willing to take a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO DO PASS ASSEMBLY
JOINT RESOLUTION 2.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

If there is no further business, this meeting is adjourned [at 5:16 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair

DATE: _____

EXHIBITS

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

Date: March 22, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
AJR 4	C	Tom Case, Private Citizen, Reno, Nevada; Ind. Bd. Member, Buffalo Family of Mutual Funds	Written testimony in support
AJR 4	D	Mike Sears, Vice President and Trust Officer, Great Plains Trust Co., Overland Park, Kansas	Written testimony in support
AJR 4	E	John Kornitzer, Chmn. and CEO, Kornitzer Capital Management, Shawnee Mission, Kansas	Letter in support
SJR 1	F	Sharron Angle, Private Citizen, Reno, Nevada	Example of "Affidavit of Circulator" on a petition
AJR 2	G	Patrick Guinan, Committee Policy Analyst	Work session document