

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

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

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m., on Tuesday, May 1, 2007, in Room 3138 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 Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Senator William Raggio, Washoe County Senatorial District No. 3
Senator John Lee, Clark County Senatorial District No.1



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Doreen Avila, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Rew Goodenow, President, State Bar of Nevada, Reno
Bridget Robb Peck, Board of Governors, State Bar of Nevada, Reno
Bruce Beesly, Vice President, State Bar of Nevada, Reno
Robert Payant, Retired Judge, Reno
Richard Morgan, Private Citizen, Las Vegas, Nevada
Alecia Biddison, Managing Partner, The Busick Group, Reno
Tonja Brown, Private Citizen, Carson City, Nevada
Patty Pruett, Private Citizen, Dayton, Nevada
Sherry Powell, Representative, Ladies of Liberty, Carson City
Cam Ferenbach, Board of Governors, State Bar of Nevada, Reno
John Wagner, Representative, the Burke Consortium, Carson City
Warren Russell, County Commissioner, Elko
Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks
Janine Hansen, Representative, Independent American Party, Elko
Sharron Angle, Private Citizen, Reno, Nevada
Keith Lee, Counselor, Sutton Place Limited, Reno, Nevada
Lewis Shupe, Private Citizen, Las Vegas, Nevada
Douglas E. Smith, Chief Judge, Justice Court, Las Vegas Township
Michael Bell, Manager, Judicial Education Division, Administration Office
of the Courts, Carson City
Kimberly J. McDonald, State Legislative Affairs Officer, City Manager's
Office, North Las Vegas

Chairman Anderson:

[Meeting called to order. Roll called.] We are going to hear the bills out of order today. We are going to start with Senate Joint Resolution 2.

Senate Joint Resolution 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C177)

Senator William Raggio, Washoe County Senatorial District No. 3:

I am pleased to appear today as a sponsor for S.J.R. 2, which is a version of what is normally called the "Missouri Plan." This involves the initial selection of

judges. I have had some requests from members of the Assembly who are supportive of this measure. They have indicated that they would like to be named as co-sponsors. If any Assemblymen and Assemblywomen would like their name added as a sponsor, I will gladly welcome them. I also have distributed copies of my testimony and related materials ([Exhibit C](#)) to which I will refer.

I am a member of the State Bar of Nevada and have been an attorney since 1952, a legal career in excess of 50 years. For 18 years I served as a prosecutor, and I have been active on both the criminal and the civil side of law. Coming from that experience, I can tell you that my thoughts on how judges are selected and how vacancies are filled probably have changed over the years. In my experience, the judges who have been appointed are more qualified than judges who are initially elected. Please do not take that the wrong way because we have good judges, both elected and appointed. Let me remind the Committee and some of the public who do not realize it, we already have in the *Nevada State Constitution* a commission that is utilized for the filling of vacancies in either the Supreme Court or District Court.

Senate Joint Resolution 2 proposes to amend the *Nevada State Constitution* to provide for the initial appointment by the Governor of justices of the Supreme Court and judges of the District Court. This bill would also cover, if we were to establish an intermediate appeals court, judges who would serve in that court. This bill is a real improvement over previous versions of the "Missouri Plan", which has been considered and passed by two successive legislative sessions, then placed on the ballot. After the initial appointment, if a justice or judge wishes to serve another term, he or she must make a declaration of candidacy for a retention election. If 60 percent or more of the votes cast are in favor of the retention of the justice or judge, he or she will then serve a six-year term and must run in a retention election if another six-year term is desired. Nevada presently has six-year terms, so that is not a change. The change is that instead of running in a competitive election, where anybody can go in and file, it would be a retention election to determine whether or not the judge should be retained. If the justice or judge does not make a declaration of candidacy for a retention election, or if that justice or judge receives less than 60 percent of the votes cast in favor of retention, then a vacancy is created at the end of the term, which must be filled by appointment by the Governor. I have had some question as to why it is necessary for 60 percent—why not just make it a majority? If a judge or a justice running in a retention election without opposition and based upon a record and review of that judge's performance cannot receive 60 percent of the vote, then I would say that there is a serious concern about whether that judge is qualified to be retained. I am not going to

argue about that, but 60 percent when you are not running against a live body is a decent measure.

Senate Joint Resolution 2 also requires each justice or judge who has made a declaration of candidacy for a retention election to undergo a review of his or her performance. This resolution creates the Commission on Judicial Performance and requires the Commission to perform such review. The review of each justice or judge—a new provision in this process—is required to consist of a review of the record of the justice or judge and at least one interview by the Commission. At the conclusion of this review, the Commission is required to prepare and release to the public a report containing information about the review and its recommendation on the question of whether the justice or judge should be retained.

I have proposed this amendment of the *Nevada State Constitution* because too often judicial elections become embroiled in politics. Unlike the rest of us, people who are running for judge and justice are supposed to be unbiased. They are supposed to be able to look at any issue that comes before them with fairness—not as a Democrat, Republican, or Independent. This appointment system with retention elections would remove judges from partisan politics and would free judges from the necessity of soliciting political contributions from attorneys, law firms, litigants and potential litigants—the usual source of financial contributions in judicial elections. In that situation and particularly where we want the perception of judges to be impartial and not obligated, it is a rather demeaning process for judges of the Supreme Court or the District Court to be sitting in law offices of litigants or potential litigants with their hat in hand waiting to ask for money.

The District of Columbia and 23 states, which are among the most progressive in judicial reform, have adopted a nominating commission plan for appointing judges to an initial term on the bench. Fifteen of those states also hold retention elections at the expiration of judges' terms. The resolution before you was designed to pick up the best aspects of all those plans that are in effect in determining judicial elections and selection in filling vacancies. The people of Nevada have already approved an amendment to the *Nevada State Constitution* which provides for a Judicial Selection Commission to make recommendations for filling vacancies at the Supreme Court and District Court levels. That has worked well over the years. It is that Commission that is supposed to make nominations for the initial appointments by the Governor.

Senate Joint Resolution 2 contains the best features of all of the merit selection plans. Similar proposals have been before this Body in past years and were defeated by voters, but S.J.R. 2 is a vast improvement over some of the others.

The events which have occurred since these measures were considered fully justify that this issue be submitted to the people of this State for further consideration. For those who are concerned that this measure is going to take away a right of voters, let us remind ourselves that we have to pass the bill in two legislative sessions. The bill will then go on the ballot where the people will have the right—as they did before when they established the other commission to fill vacancies—to vote on whether it is needed.

In the material before you ([Exhibit C](#)), reference is made to articles in the *Los Angeles Times* about the judicial process and the so-called taint on the judiciary in Las Vegas. The *Times'* investigative series, "*Juice vs. Justice*" stated that "in Las Vegas, they are playing with a stacked judicial deck. Some judges routinely rule in cases involving friends, former clients, and business associates and favor lawyers who fill their campaign coffers." I do not know whether it is true or false, but these articles certainly brought the issue to the attention of the public and caused a great deal of concern. For that reason, it is time to present to the public the opportunity to determine whether there is a better way to select our judges in our highest courts.

Senate Joint Resolution 2 is intended to ensure, insofar as possible, an independent judiciary. It will enable a judge to devote his or her entire time to the business of the court since the judge will not take part in the usual political campaigns. Certainly they do have to participate in what is termed a retention election. There is a cost to that. The plan ensures that full consideration will be given to the ability, character, and qualifications of a judicial candidate before that person's name is permitted to go on the ballot through this review and recommendation process, and will cause the attention of voters to be focused on a judge's record, making it easier to remove incompetent judges from office and to retain judges whose records are meritorious.

Senate Joint Resolution 2 will encourage well-qualified people to serve on the bench who would not submit themselves to the ordeal of campaigning for the office under the current system or who lack the means of financing such a campaign. I know a lot of qualified attorneys who have said they would not subject themselves to that kind of process. This bill will attract people who would be willing to serve and to go through this appointment process. I believe it is time to give the people of this State an opportunity to ensure a more independent judiciary.

I have also given to the Committee a copy of a recent editorial that appeared in the *Reno Gazette-Journal*, which endorses this resolution. There is also a list of the states where these merit-selection plans are in effect. There is a letter from the State Bar of Nevada which has endorsed this proposal.

I am not sure if anybody else is here to testify on this measure today. I am not sure if any representative from Justice at Stake Campaign is here, but they have put together good materials if any member has an interest in pursuing this issue further.

Chairman Anderson:

We will have the testimony of Senator Raggio, dated May 1, 2007, submitted for the record.

Assemblyman Horne:

I can see how this might put more qualified judges on the bench, but I question removing the money, giving the appearance of impropriety of attorneys appearing before judges to whom they have given contributions. I envision a retention election in which at the very least a judge is going to have to get his message for retention out to the public. However, if you have a judge who has given an unfavorable ruling for whatever reason, and now there is a group or groups whose mission it is to campaign against retaining that judge, this retention election has become more expensive. That judge is still going to go to the very people who appear before him or her in order to obtain funds to defend his or her election. The bill does not accomplish getting that out of the mix, does it?

Senator Raggio:

That is a good question. We have a jury system, it is not perfect, but it is the best system anywhere in the world. The bill being proposed does not create the perfect system either, but it does, as I indicated, take out the fact that a judicial candidate, a judge seeking retention or appointment, is not running against an opponent. There could be some cost involved. However, it is far less than running in a campaign with two or three other candidates involved. I am aware of several instances where judges have faced opposition. Somebody, perhaps a group, has not liked a decision at either the Supreme Court level or the District Court level, and has backed an opposition candidate with a great deal of money. As an attorney, I resent that, and I believe the public, whether lawyer or not, should resent it as well. A judge ought to be able to make a decision without fear or favor. Legislators have term limits; federal judges have lifetime appointments, but to the extent that we have an independent judiciary, a judge should not be concerned about whether he or she will be reelected or retained because of a decision they render. That could happen, but it is less likely in a retention election, and not to the extent it does currently.

Assemblywoman Allen:

Two years ago I made a big issue in this Committee about how the process currently works and the potentially compromising way judges seek the bench, so I am glad to see your resolution before us today. The portion I have some concern with is the 60 percent or more of the votes you spoke of earlier. Some of the research I did on this process during the interim on any type of hybrid "Missouri Plan," yielded many scenarios where, as Mr. Horne outlined, a judge made a decision, and it was upsetting to a specific industry. The way we do campaigns now there is a two-week process before the general election where early voting starts and negative attacks happen during this period. A judge may not think that he needs to solicit campaign contributions and have a real active campaign because in the three months prior to the election, there is silence; however, during the last two weeks there are very aggressive attacks. With this 60 percent barrier, if a judge acquires 58 or 59 percent of the vote—probably something of value when one is under such tremendous attacks in those last two weeks of a campaign—is there no way to appeal this process?

Senator Raggio:

There is no scientific reason for the 60 percent; it is a value judgment of a number of people and entities that support these kinds of processes who feel that a judge ought to at least be able, in a retention election with a recommendation from a judicial performance commission, to receive 60 percent. If one cannot do that, I would suggest there was something missing with that judge's performance. I guess it could be 55 percent or 75 percent, but 60 percent sounded reasonable and that should not be hard to achieve if one has the review and recommendation from a judicial commission and no opponent. Newspapers in both northern and southern Nevada do polls on judges, and while it is not a mandatory requirement, it is probably persuasive to the public. If a judge in those polls did not attain at least 60 percent, he would probably have trouble getting reelected. A low percentage in the polls would probably be an invitation for candidates to run against him.

Assemblyman Segerblom:

Assuming that a judge was running for retention and a group decided to oppose him, would there be any financial limitations if they formed a committee to vote no on that judge, or would there be any financial reporting requirement?

Senator Raggio:

I would assume that the reporting requirements in place would also apply to a retention election—that is, the reporting of contributions. A judge would have to report contributions as well as anyone who was running against that judge. I am only giving you an attorney's opinion.

Assemblyman Segerblom:

Mr. Conklin, we sent you a proposal to require limitations on spending on referendums, and the like, so if this got to that stage perhaps we could add judges into that process.

Rew Goodenow, President, State Bar of Nevada:

I am an attorney. I practice law with Parsons, Behle and Latimer in Reno, and I am here in my capacity as President of the State Bar of Nevada. We are a membership organization to which lawyers in Nevada are required to belong as a requirement precondition to practicing law in this State. We are a quasi-governmental organization that is required to speak on legislative issues only insofar as they might affect the administration of justice.

Senate Joint Resolution 2, in our judgment as the Board of Governors, profoundly affects the administration of justice in Nevada, and so the Board of Governors of the State Bar Association voted to take a position on Senator Raggio's proposal. We support wholeheartedly the proposal as written. Senator Raggio has effectively covered the proposal before you. I would like to add a couple of things that the Senator did not touch on.

First is the intense media attention that has been given in the recent past to the election of judges, not just in Nevada but nationwide. Newspapers on both coasts and in our State have covered the problems that exist with judicial elections. We are not the only state where media attention has focused upon our election system. The State of Ohio, which I often use as an example of why there are problems with the system, has also experienced the same issues that we have with their elective system, if not worse. The problems they are experiencing are coming here. The second point is the reason that I feel the problems have worsened in the recent past, and why Ohio, and soon Nevada, will experience more problems. Further, more public displays of negative advertising will impact the respect for the laws that this Body enacts and their enforcement by our court system. In 2002, the United States Supreme Court decided a case called *The Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), in which the Supreme Court spoke to the question of whether or not judges have free speech rights and the extent to which they have them. In that case, the court decided that judges could not be prevented from speaking their mind on issues, or announcing their views on issues that might come before them. That is a difference that has occurred since the voters last considered this type of a measure in Nevada, and it is one that is of profound significance. If the judge in Nevada—which is the only state in the country in which judges may directly solicit campaign contributions—can at the same time announce his or her view on a particular issue, I think that it does not take long for us to reach the conclusion that that is a very dangerous situation.

In *The Republican Party of Minnesota v. White*, the second important point to be observed in reading it is that each of the Supreme Court Justices wrote in concurring or dissenting opinions. Justice O'Connor, most especially, wrote in her concurring opinion that while she believed that judges enjoyed the ability to speak their minds on issues that might come before them, and that the canons that prevented them from doing so, while they are an attempt to ameliorate the problems with judicial elections, simply are not constitutional. Also, I do not think that judicial elections are a wise public policy; I believe they are an unwise public policy, and I recommend the Missouri system, or some form of the Missouri system, be adopted. That is what is before you and that proposal improves on the system that even Justice O'Connor was looking at.

For those reasons and many others, we believe that now is the time for the State to take action and change our system. I want to note that present with me are Bruce Beesly and Bridget Robb Peck, who are members of the Board of Governors of the State Bar of Nevada. I will be happy to address any questions the Committee may have.

Vice Chairman Horne:

This issue seems at least in small part to be in the purview of the State Bar of Nevada and the Supreme Court in dictating how attorneys and judges interact with the contributions made to judges. Have the Nevada State Bar and the Supreme Court collaborated to try to find other ways in which to ameliorate this perception of favoritism for those who give contributions to judicial candidates?

Rew Goodenow:

As a State Bar Association, we do promote the adherence to the canons of judicial conduct. As recently as Friday, April 27, 2007, I spoke with the Clark County Bar Association concerning Judicial Elections Canon 5, which addresses the judges' conduct in judicial elections. We have a Judicial Ethics and Election Practices Committee that is charged with addressing questions regarding judicial conduct in elections and complaints regarding that conduct, and disputes between candidates for judicial offices. Unfortunately, and this is the reason that I have described the United States Supreme Court's decision in *The Republican Party of Minnesota v. White* here today, the efforts to prescribe conduct for judges in this process are constrained by the constitutional limitations and simply do not go far enough. Moreover, efforts have been cut back by the Supreme Court's decision, and decisions following it since 2002, to the extent that I do not believe we are able to regulate judicial conduct in a way that effectively addresses the concerns that you see from the numerous news articles and commentators that have talked about the problems in our system.

Assemblyman Ohrenschall:

Is there is any polling data that shows that there may be a more favorable outcome this time if the Missouri Plan does go to the voters?

Rew Goodenow:

This is a question I am often asked—do you think it will pass this time. I do not know of any polling data at present. However, my anecdotal information, having spoken with numerous reporters and news outlets, is that there is a different attitude now among the media on this particular issue. A number of people within the media believe it is time to address this because of the reasons expressed in the *Los Angeles Times* articles, and the ones I just referred to that were also mentioned in the *New York Times* articles focusing on Ohio. There has also been a great deal of buzz on this subject on several shows in Las Vegas. I think that when we do that polling, you will find that there is more of an appetite among the voters for change.

Assemblyman Ohrenschall:

Would the State Bar, or would any attorneys' group, be able to fund a campaign to support this if it went to the voters to try to keep it from going to the third defeat?

Rew Goodenow:

Yes. I believe that the State Bar Association is committed to seeing this legislative effort through. I also am aware of private entities that will fund a campaign to support this proposal.

Assemblyman Carpenter:

When the names are submitted to the Governor, the way I read this is that if the Governor does not make an appointment, then he cannot make an appointment to any other public office. I do not know what that means. Does that mean that the rest of the State is going to shut down if he needs to appoint somebody to a very important post within the government?

Rew Goodenow:

I did notice that. It was my understanding that the way the process would work is that if an appointment was not made from among those recommended, that the Governor could then ask for additional names to be submitted. I am sure that the committee would do that.

It has just been pointed out to me by someone who has been through this process that that is also the way that the system currently works. If the initial proposed candidates are not selected, it then goes back to the committee for further recommendations.

Assemblyman Carpenter:

What I am talking about is that part of the bill that says if the Governor has not made the appointment required by subsection 3, he shall make no other appointments to any public office until he has appointed a justice or judge from the list of additional nominees. My concern is that if he cannot make other appointments until he makes the appointment for the judge, that will reverberate through the whole system.

Rew Goodenow:

I believe that is similar to the language that we currently have on page 7, and if that is a concern of the Committee, I think there is a way to draft around that without violating the bill. I think that it is simply in there in order to force an appointment, not to be held hostage, and to require that appointments be made in a timely fashion so that we avoid the situation that we see sometimes on the federal level.

Assemblyman Carpenter:

It does not happen very often, unless a judge passes on or is removed because he has done something wrong.

Chairman Anderson:

Mr. Carpenter, let us turn to the Legal Division for help with the language on this.

Risa Lang, Committee Counsel:

I think that the provision they are referring to, which is similar to what is being added, is being removed in subsection 8, where it says that "after the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to a public office until he has appointed a justice or judge from the list submitted." I think it is similar to what we have currently, but it is being revised to work with this new system.

Chairman Anderson:

On page 8, lines 17 through 20, we are moving it from the existing law to make it also applicable in that section. We are not creating new language here.

Assemblyman Carpenter:

I know that it is in there now, but as I stated, it does not happen very often. If the Governor had to make an appointment to every judgeship in Nevada, that would be quite a few.

Rew Goodenow:

There are two things I would like to mention in response to your question. First, the majority of the replacements in open judicial seats are currently made, by appointment. I am not aware of a circumstance currently where the governor has not selected one of the three nominees that came from the current Commission. I think that you point out a procedural position that is created both in the existing statute and in the proposed statute, which would probably not, as you have observed, under ordinary circumstances come into play. I am not aware of it ever having come into play in the 18 years I have practiced law in this State.

Risa Lang:

I am not advocating one way or another, just addressing Mr. Carpenter's concerns. The judges are not going to be selected for initial terms since they are already in office. It would just be current when a vacancy occurs, as it is now.

Rew Goodenow:

The proposal is that there would be an initial appointment, then approximately one year later the retention elections begin.

Chairman Anderson:

If I am currently seated as a judge and this were to pass the electorate, the appointments would come up, and if my seat were up for appointment, I would be at the pleasure of the Governor?

Rew Goodenow:

No. The way I understand it, the judges who are currently sitting as of the effective date of the vote of the people adopting S.J.R. 2 would be required to sit for retention elections. The open seats—those opening after the time period when the statute becomes effective—would then be filled by appointment first under the system that you see here.

Bridget Robb Peck, Board of Governors, Nevada State Bar Association:

I am here in a unique position in that last year when Judge Green retired I was appointed by Governor Guinn to fill his seat. I have also run for election, so I have been in both positions, and I think I may be able to enlighten the Committee with regard to those experiences. With regard to the selection panel, having gone through that process, if you know what the composition of that panel is, I cannot think of a more even-handed way to handle this, and it has filled vacancies in the judiciary in a very fine fashion for many years in this State. It is, as Senator Raggio pointed out, something that the electorate thought would be a good idea. The panel is chaired by the Chief Justice of the

Supreme Court of Nevada. It is then filled with a set number each of Republicans and Democrats, so that it cannot be swayed by one political party or another. Half of the panel's composition is filled by the Board of Governors, the other half is appointed by the Governor; again, there is no opportunity for a particular constituency to control that board. There is also a requirement that a certain percentage come from northern Nevada and a certain percentage come from southern Nevada, and that there be representatives from the rural counties as well. That selection panel is about as even-handed and as inclusive as any panel can be. Having been through that process, I can tell you that the application itself is a rigorous process. My completed application ran to about 45 pages. They asked me questions ranging from what my experiences were in law school, as an undergrad, and back to what I did in my high school career. They really take a look at the candidate's academic career, from the time they started to have one. They also asked me about how I functioned as a lawyer. They asked questions about whether I had malpractice suits, whether there had been discipline complaints. Again, this is something that tells about the qualifications of a person. They take a look at the letters of recommendation that come from people in all walks of life; only three can come from judges and other legal colleagues, plus another three letters from people who have known you in some capacity other than professional. There are health questions; I had to tell the panel about all of the physicians I had consulted over the last five years. In short, the selection process does something that an election could never do. They look at the myriad components of a human being and they weigh and balance those things. Finally, there is an interview with the selection panel itself. Because of the rigorous nature of that process, the three candidates that go to the Governor are all going to be people who should be considered. I think that you can have some confidence in the way our judges would be selected in the future and know that we would have qualified judges.

Given what Mr. Goodenow said with regard to the pressures of *The Republican Party of Minnesota v. White*, and the counter balance with the Judicial Canon of Ethics, I can tell you that also was something when I was called upon to run for this position that was very difficult for me to balance. *The Republican Party of Minnesota v. White* says that a candidate has the ability under the First Amendment to the United States Constitution to take positions on certain issues. *The Judicial Canon of Ethics of Nevada* says precisely the opposite—that judges are not supposed to take positions on matters that could come before them. Thus, there is a direct conflict between the two most significant precedents that would govern one's conduct as a judge—The United States Supreme Court and *The Judicial Canon of Ethics*. *The Judicial Canon of Ethics* is probably the most significant for a judicial candidate. It is important for the electorate to believe that a judge has an open mind, is not biased, and would be able to make the hard call because that is what we want our judges to do. We

never want our judges to look at an issue and ask how their decision would look to the voters. We want them to weigh the case before them on the facts and arguments presented and be able to make the call, no matter what the political fallout is. If what we are looking for is a truly independent judiciary who can make unpopular decisions when necessary, the proposed legislation will go a long way toward doing that.

Bruce Beesly, Board of Governors, Nevada State Bar Association:

The problem, as I see it, is confidence in the judiciary. For a judicial system to be effective, it has to be impartial, but more important than that, the people who come before it need to believe it is impartial. The way elections are currently run, people do not believe it is impartial. What takes place are several months where candidates—instead of engaging in discourse about their qualifications—slam their opponent with half-truths, innuendos, and unflattering photographs. It is a situation where all the media is saying both of these people are not only bad candidates but horrible people, and then ultimately one of them is elected the judge. The situation worsens if one goes before the judge for whom there is now a preconceived negative image. When major litigants, such as casinos or banks, or their attorneys appear before a judge, they do not have to disclose whether they made campaign contributions to that judge nor does the judge have to disqualify himself. The current system makes it very likely that the citizens of Nevada are not going to have confidence in the judges.

What we are asking is that the Legislature let the voters decide if they are willing to change the system we currently have.

Chairman Anderson:

One of the questions that continually plagues me is the apparent lack of trust by the public. We tout ourselves as living in a democracy, and as a student of history I recognize that at the Constitutional Convention, the founders only allowed the people to elect the members of the House of Representatives. The President was elected by the Electoral College, United States Senators were elected by the state legislatures, and judges were appointed by the President for life. There clearly was no trust. Here at the state level, however, there has always been a founding concept and idea that people should be trusted. We allow them and always have allowed them to select the judges and the governor, as well as county and city officials, and state legislators. My view of that has always been that this is the government that is closest to the people. How do we foster trust in the judiciary if, in the initial selection, we do not trust them to put a judge in place? I can understand the 60 percent retention required for a judge to continue on the bench, but if the initial selection is not open to the people, how can that foster confidence in the judicial process?

Bruce Beesly:

I think it will foster trust in the judiciary because to a large extent it will eliminate the name calling and unflattering criticism leveled upon every candidate in the race. The reason that occurs is because it has proved to be an effective way to get elected. One does not get elected by talking about how hard one works, how educated one is, and so on. One gets elected by slamming the opponent. I believe there is a fundamental difference between judges now and other members of the government. All, except the Governor, have fairly limited districts to which they have to appeal. Judges have to appeal to everyone in their county. That works well in the rural counties but it is a problem in the larger counties. Judges cannot know or be known to the 400,000 people in Washoe County, or the 1.5 million people in Clark County, well enough to make a very good decision about their character. With respect to the people in the Assembly and in the Senate, it is easy enough to get out and become known to your rather limited group of constituents.

It is not a perfect system, but I think the elimination of contested elections would focus more on the judge's qualifications with the committee approval as opposed to one decision that some judge made that is offensive to a particular group who is willing to come after that judge.

Judges are supposed to make hard decisions, and hard decisions always leave someone aggrieved. Aggrieved people are often ready to mount substantial and costly campaigns to try to remove a judge who makes a decision that, while legally correct, they did not like.

Rew Goodenow:

There are two points I would like to make. First, 40 percent of the judges are appointed now under our current system. The people are not electing the judges, and we are not removing the vote from them. We are simply providing for a retention election. As Assemblywoman Allen pointed out, whether it will be easier or harder to get judges out of office remains to be seen. The second point, and more profoundly relevant to the system, judges should not have constituencies. Members elected to the Legislature have constituencies—Republicans and Democrats—that is how our system works; it is a good system, the best ever devised. Judges are sent to their judicial office expressly not to have a constituency, but to apply the law to the facts of each case in an impartial way. The problem in voting for a judge is that one may be presented with the outcome of a particular case, usually presented in a sound bite such as "this judge decides cases in favor of rapists and murderers." But one does not get to know what the facts of that case were. A judge has to look at those facts and, no matter how difficult the decision may be, decide the case, regardless of the political fallout.

Robert Payant, Retired Judge, Reno:

[Read from prepared statement ([Exhibit D](#)).]

With regard to Assemblywoman Allen's question on the 60 percent level, in my brief research I found it was only done in Illinois up to this point. Illinois has retention election for all of its judicial officers. I would be concerned about the 60 percent because we are told that about one-third of the people even in the 25 retention states vote no. For a candidate to move from one-third up to 60 percent, I do not know what may happen.

Chairman Anderson:

In Illinois, where you stated all judicial posts are on a retention basis, do they also include municipal judges and justices of the peace?

Robert Payant:

The study that I have seen was done by the American Jurist Society, and it only had high-level courts—the Supreme Courts, and the general jurisdiction courts. This proposal does not touch upon the justices of the peace or the municipal judges; that would not be changed by this resolution.

Chairman Anderson:

I was here when we moved the justices of the peace (JP) from a four-year term to a six-year term, and I heard them say that it would never happen to the municipals, and of course, we now know that the other judges felt that if it was good for one group it was good for them too. Why would this not be a good idea for municipals and JPs, in your opinion?

Robert Payant:

There would be no reason that it would not be a good idea. The professionalism of the JPs and the municipal judges in Nevada has moved steadily upward. I think that we have a good bench in the so-called lower courts, so it could happen. This piece of legislation does not do it, and perhaps it would not be attractive to a lot of people.

Chairman Anderson:

We will have your written testimony ([Exhibit D](#)) included in the record.

Richard Morgan, Private Citizen, Las Vegas, Nevada:

I am the Dean of the William S. Boyd School of Law, and an *ex officio* member of the State Bar Association Board of Governors. I am speaking today as an individual. Though I certainly endorse the State Bar's endorsement of S.J.R. 2, I am not speaking on behalf of the law school.

I want to make three points: The first is the importance of the independence and integrity of our judiciary. An independent judiciary is the bedrock of our freedoms and our constitutional rights, and the judiciary—unlike the Legislative Branch and the Executive Branch—is a non-majoritarianism branch of government; it is fundamentally different. It is not a matter of trusting the people; it is a matter of developing a branch of government which has true independence and true integrity. Second, I agree that getting the money out or at least getting most of the money out of judicial elections would be a very good thing. There are conflicts of interest and appearances of impropriety that the current fundraising practices engender, and we need to get away from that as much as possible. It is my understanding that in states that have the retention system, such as the "the Missouri Plan," it is relatively infrequent that there is a campaign mounted to oust a judge, so I think there is much less need to raise money and get the word out in those elections. I would also point out here there will be a report of the Judicial Evaluation Committee, which, if favorable, would give the candidate who is standing for retention a great leg up in terms of the electoral process. Third, I agree very strongly with Bruce Beesly that getting the mudslinging out will also be a very good thing. I think the judiciary injures itself, and loses the confidence of the people when candidates engage in the kind of mudslinging that goes on. I think we should lessen that, and this bill should to a large extent eliminate that.

Chairman Anderson:

Dean Morgan, my concern rests with the lack of confidence the public has currently in the judiciary. While I know that the canon and the judges that I deal with and have a great deal of respect for, I often do not hear that same level of respect when I am in the community. When I am speaking at public gatherings, it is not unusual for someone to come to me with a complaint relative to the way they were treated in court or some other question of ethical concern.

I recognize the money factor in terms of election; it is really going to be there, regardless of whether they are appointed or have to stand for retention. That is still going to amount to some type of campaign going on. That is an unfortunate factor of the reality of American life.

How do we shore up confidence in the judicial process by appointment? If we put them into this select group of people, the press is still going to pick on you. I do not think the stories in newspapers are going to change because of that. There is a focus made, but they are still going to find fault with those people who are dissatisfied with the system.

How do you perceive this as making it better in terms of public image if it does not have to go to the public?

Richard Morgan:

I believe that, to a large extent, the money will be removed from the process. I do not think retention elections are going to be contested very often by a funded campaign to kick a judge out. We can look at the states that have the "Missouri Plan" already and see how frequently that happens, but I think it is fairly infrequent.

A sitting judge standing for retention is not going to have to raise a lot of money. That fact will help increase the public's confidence in the judiciary. When people have an unhappy experience in a court room they are often looking for a reason, whether it is real or a matter of perception, for why they fared badly in that court room. They like to believe they had a just cause and were treated unjustly in the court room. They want to know why that was.

One of the reasons people seize upon is because the fix was in. The other person, or the lawyer for the other person, gave more money to the judge than my lawyer gave to the judge. To a very large extent, this joint resolution, if it is enacted into the *Constitution*, will fix that by taking most of the money out. I hope there will be much less judicial fund raising in connection with retention elections than there is now in connection with contested elections.

Chair Anderson:

Is there anyone else in support of S.J.R. 2?

Alecia Biddison, Managing Partner, The Busick Group, Reno:

[Read from prepared statement ([Exhibit E](#)).]

Tonja Brown, Private Citizen, Carson City, Nevada:

As a private citizen I want you to know that I spoke before the Judicial Selection Commission on October 23, 2006. It is a wonderful process. I was heard, they listened to what I had to say, and the people that I did not want to become judges did not get the positions.

Tonja Brown:

When I testified before the Judicial Selection Commission I had my input and I am not the only one. You are given the opportunity as a private citizen to voice your concerns either in writing or in person. They listen to what you have to say. They ask you questions. You are allowed to provide documents as to why you do not want this individual in office.

Justice Rose and I had a conversation. We were able to interact along with the other members of the panel. By the time it was done this person was not even in the running. I think the S.J.R. 2 bill will help eliminate the corruption that

goes on behind locked chamber doors. People will have a little more freedom to expose these judges for their wrongdoings and not have to fear their retaliation in the courtroom.

There will not be any more favoritism for defendants who have money or come from a well-known family. If the judges do not maintain the 60 percent retention election, then maybe now some more of the judges will follow the laws and not break them themselves.

In regard to accountability, S.J.R. 2 is a step in the right direction. I am in favor of it. In essence we still get to vote on it. If the judges are doing their jobs properly there should not be a problem with them getting the 60 percent vote.

Chair Anderson:

Are there any questions for Ms. Brown? [There were none.]

Patty Pruett, Private Citizen, Dayton, Nevada:

I am in support of S.J.R. 2. I am a housewife, mother, citizen, taxpayer, and I watched the after-effects of my two friends being able to use the Selection Commission. It was a good tool. It was effective. My friends were able to hand-in evidence and talk about the issues with a panel of people that came up with the right decision.

I would rather have a bunch of people take evidence and hear your testimony about your issues with the judiciary and understand that your evidence speaks for itself. The Commission can come to that conclusion on their own and act on the part of the people.

A lot of residents, taxpayers, and voters do not understand a lot about the judicial system. I did not until the last nine years of my life. I never needed it until recently. I would rather have a lot of people who know what the canons are, what the laws are, and what ethics are making decisions rather than a bunch of people that step into a voting booth and, because their neighbor likes someone, they will vote for that person. That is what I have seen for the 30 years that I have lived here.

I can just speak from my own experience and I will not name the judges, but there are three judges that I would not vote for if my child's life depended on it. That is because of favoritism, cronyism, and unethical behavior that I have seen with my own eyes.

I am in favor of this bill.

Chair Anderson:

This is changing the *Nevada State Constitution*. It has to go through this Body, and then goes through this Body again. Then it goes to the electorate.

Patty Pruett:

I understand that.

Sherry Powell, Representative, Ladies of Liberty, Carson City:

I represent women of the rural communities who are not as informed as citizens of Washoe County or Clark County.

I participated in the judicial selection process with the last seat in Carson City. It is processed in the paper. The public is given notice that they can respond in writing or in person.

I have voted since I was 18 years old and continue to do so. I can say that in the judicial selection process not only did I get to make comments against one person but also in support of another person. I have great faith in the judicial system.

I am also a paralegal. I have watched numerous judges and district attorneys and I have to say that if you get one bad one it can look bad for everyone else.

I had more power in the judicial selection process than I ever had voting. I believe that you underestimate the average person. I think we can understand certain issues. The judges are going to get bashed in their retention by certain people, but if it is not a major issue the public is not going to pay attention. If it is a major issue such as a bad decision, such as a rape case, it is going to draw attention from women. Right now we hold over 54 percent of the vote. As the other judge said, she was appointed and ran. She did very fine. I believe the citizens will feel more power with this particular bill than they have ever felt.

Chair Anderson:

Are there any questions? [There were none.]

Cam Ferenbach, Board of Governors, State Bar of Nevada, Reno:

Our organization supports S.J.R. 2. I would like to comment on one thought I had while listening to today's testimony. Throughout this process everyone thinks, "We have tried this twice before. Why do we think it is going to succeed this time?" The first answer is that there are modifications to the plan. The most important answer, especially in southern Nevada, is that there have been great changes in our community since the last trying.

One change is that the State Bar and our local County Bar are much larger and more sophisticated. We have a law school. We will be able to find quality participants both from the Bar and from the public who will devote the time required to serve on this Commission on judicial performance. That is going to be a lot of work and I would think as a legislator the question would be how effective can this be?

I believe, based on my experience with my colleagues and the Bar, that we will be able to take on this challenge and form an effective commission that will provide substantive information to the voters in the retention election—much more so than the attorney polls we have in the north and south right now.

Chair Anderson:

We will move to those in opposition.

John Wagner, Representative, The Burke Consortium, Carson City:

I do not think people are ready for this. In another two years when it goes back again, I do not think the people are going to vote for this bill. They have turned down two variations of this bill.

This 40 percent is a bit bothersome, because what is to prevent some judge from saying that the 40 percent is illegal and kick it up to 50 percent. You are still going to have judges putting money in for their reelection. You are going to have retained Judge So-and-so. You are going to have a committee to get rid of Judge So-and-so. It is still going to generate money and still going to be political in a lot of respects.

Chair Anderson:

Are there any questions? [There were none.]

Warren Russell, County Commissioner, Elko:

Elko County Commission has voted unanimously to oppose this particular bill. The comments I make may or may not reflect any particular item. They are my comments.

If the attorneys of the State of Nevada were the members who would decide if this bill would move forward, we would have unanimous consent by the attorneys to move forward. If that does not scare you then you are not as cynical as I am.

I was a classroom teacher and 60 percent is barely passing. So we are going to measure our judges by that barely passing rate and say they are good enough to stay.

I would like to respond to Senator Raggio on this issue as I disagree with him and his views. Senator Raggio commented in a number of cases that this appointment process is far superior to the election process. He gave several reasons. He said the judiciary would be removed from the political process. I suggest that this is not true. Right now the political process would be transferred to a group of people who had a guild mentality. In other words, we are going to make decisions about this. Even though the Governor has to appoint these people to this particular commission to bring appointments, I still think the political process would be involved.

Retention might become a campaign issue. You would have exactly the same situation except you would not be running against another person. You would be running against your own campaign or promoting your own campaign.

Senator Raggio said that judges would not have to solicit contributions from possible litigants and attorneys in cases which come before them. This is a good argument but judges, unlike other elected officials, do not have to disclose their potential conflicts of interest. Maybe the answer would be for them to fully disclose and recuse themselves, if appropriate, if an attorney or litigant came before them in a case.

We have replaced a justice of the peace and he recuses himself if he has been involved with a litigant because he was a district attorney. Why would a judge not do this?

The District of Columbia and 20 other states are progressive and have an initial election process for new judges. I do not look for the ideal for the State of Nevada and the District of Columbia.

Senator Raggio has said this will create an independent judiciary. I would suggest that this resolution could be called the "Great Divorce." It is a divorce between the public and an unscrutinized judiciary. Accountability requires an informed review by citizens, not by a particular group of colleagues who take a look at someone's idea. An independent judiciary is a result of citizen participation. It is the wrong answer to a minor problem.

Chair Anderson:

Are there any questions?

Assemblyman Horne:

Every election many people I know who are not attorneys ask me who to vote for as judge. When I talk to my colleagues they tell me the exact same thing. All of their acquaintances and friends who are not attorneys ask them who to

vote for. There seems to be some sort of disconnect between the general population voting for judges and knowing who they are voting for. Do you not think this matter still allows them to vote? It only has a mechanism to put in someone who may be qualified. That qualification has been vetted and now the voters get to decide whether or not the person with those qualifications have met our desires of a judge on the bench.

Warren Russell:

I would suggest that I have had the same experience and it has been my responsibility to research. We had a number of judges who came two years ago to Elko County and became Supreme Court justices. They came and talked about how it worked. They talked about their positions. It was very informative. We probably had 75 people in the room and most of them were not attorneys. These people were listening and putting out information.

I am also confronted by people asking me who to vote for district attorney? Who should I vote for treasurer? Who should I vote for Assemblyman? It is a matter of being informed. Part of the way citizens inform themselves is to ask people who have some familiarity with the particular elected office.

The right to vote and select those who will rule over us is a part of our history. My relatives signed the *Declaration of Independence*. One of my relatives, a great-great-uncle, was a Supreme Court justice of the State of Ohio. I have a relative who ran for Vice President and lost to Lincoln. This voting right and the ability to select the person who will rule over us—the judges are moving more toward a legislative kind of role and that is wrong. As they move that way if they are going to become legislators, then we should be able to choose who is going to be our legislators.

Assemblywoman Allen:

I spent a few minutes looking online and the 60 percent provision concerns me. Of the members of the Committee here, Dr. Mabey, myself, Ms. Gerhardt, Mr. Goedhart, and the Chair did not acquire 60 percent of the vote in our last campaigns. For those of you who come here before us and say that 60 percent is an easy mark to reach and that any decent judge would reach 60 percent is offensive to me.

Mr. Russell, I looked up your last competitive campaign and you acquired 56 percent in your last primary.

Warren Russell:

It was less than that the first primary. It was 51 percent but my general was 71 percent. That is a passing grade.

Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks:

I have a handout for you ([Exhibit F](#)). Rice University put online an analysis of every state's Supreme Court cases heard from 1995 to the present. They have over 30,000 cases. It has other things like biographical information about the judges, the judge's vote in the case, the outcome, and the legal issues raised. Everyone has a tool at their fingertips to find out about judges.

The Gotham Gazette had an interesting true story about a party chairman named Clarence Norman who decides on a candidate to be Supreme Court Judge in Brooklyn, New York. The candidate, who is selected by Chairman Norman, is referred to a screening panel, appointed by Chairman Norman. The district leaders who have party ties then screen the candidates. Finally the judges are selected by a judicial convention made up of various friends, relatives, business partners, and employees of the party overseen by Chairman Norman. There can be all sorts of corruption by appointment.

I would also like to bring up the International Association of Woman Judges. They had a conference last year and in their synopsis they said that 150 years ago many states had changed to the election of judges to avoid politics to keep the governor from appointing his buddies or his largest campaign contributors.

In this synopsis it also mentions Deborah Agosti who is from Reno. She was also the former Chief Justice for Nevada. She favors election of judges saying she would never have become a judge, much less a chief justice, in the appointive system.

I am not in favor of S.J.R. 2. It is a terrible idea because the judges in the State are the closest to the people. We should have a right to make some of those decisions as the people of this State.

Janine Hansen, Representative, Independent American Party, Elko:

We oppose S.J.R. 2. We support the right of the people to vote for their judges. It is important that we not ignore the will of the people. This bill could lead to less accountability and more corruption.

At the bottom of page 2 of the bill, line 34 we read of the conclusion of the review. On top of page 3 it talks about "not later than six weeks before the general election at which the question of whether a justice or judge shall succeed himself is presented, the commission shall prepare and release a public record..." the issue was mentioned by some of the members of the Senate Judiciary Committee and at that time I testified on this same issue.

That is a timeline which is far too close to the election. We now have early voting more than two weeks before the election. This would put this report only four weeks out from early voting. We now have three months before the general election with regard to the primary election. Many organizations like mine, which prepares a voter guide, would like to have the information available in order to help get it out to the rest of the general public. This is logistically inconvenient for many people who are participating in the election, and if this goes forward that needs to be changed so it would be more in line for people to be able to disseminate the information and have access to it.

On lines 9, 10, and 11 we see that the vote of the individual members of the commission will not be disclosed. We have had a wonderful tradition in the State of Nevada for open meetings, not secret tribunals. I am concerned about the fact that this commission will also be held accountable and open to the public. We should know what their votes are because an open and accountable government is what this body has supported.

On page 6, Section 3 we read that the Governor must appoint one out of the three members that are selected by the judicial review committee. As Assemblyman Carpenter mentioned, if the Governor does not appoint one of the three the first time, then he has three more to select from. If he does not make the appointment he shall make no other appointments to public office.

The Governor's roll in appointing judges will be greatly expanded from what it is now. This will force the hand of the Governor to make the appointment and it will handcuff him in using his own judgment. I am concerned about that. We should be concerned about the kind of politics that goes on behind the scenes in any appointing process. It can be extremely political with regard to that.

The people have done a good job in many ways in electing judges. They were concerned about the decision in *Guinn v. Legislature of the State of Nevada*. They were informed enough that the chief justice who oversaw that felt it important to not run again. The judge who wrote that decision lost at the last election. They were held accountable to the will of the people and scrutinized by the people.

We see that in the case of many federal judges, like in the case of the "Pledge of Allegiance" where they completely ignore the will of the people because they are not held accountable. Oftentimes the campaign process can be messy and political speech can be messy. To say it is demeaning to ask for money would be demeaning for all of us who have been in that position. Free speech is the best way to resolve issues that come out pro or con against someone. What we need is more free speech, not less.

My brother Joel Hansen ran for the Supreme Court. He had a different philosophy than those who would ever be approved by a judicial selection committee. He would have been an independent voice. The powers-that-be got very concerned when he was leading in the polls. This process would be a closed shot.

I should have disclosed before I began that I do come from a family that has three lawyers, and I have on many occasion asked them their opinions on whom to vote for.

Sharron Angle, Private Citizen, Reno, Nevada:

I come representing myself today. I am in opposition of S.J.R. 2. The election and free election system is not broken. What we have in this bill is an attempt to legislate morality. That is truly what is broken in this country. The moral fiber that has given us ethical people as candidates is broken. That is what needs to be fixed. Senate Joint Resolution 2 is not the vehicle that will fix that. It will give us less opportunity to discover what we want in a judge. The pre-election process for all people who run for candidacy is the right system, although not perfect.

In Missouri, where this plan was born, they are now trying to reinstate the election process through legislation. We have 27 states that still elect judges.

This bill also engenders apathy among the voters because a retention election is not a free election. If I ran unopposed I would be delighted because then we could all receive a 70 percent vote in an election. That is what this retention election is. It is not where you get to vet ideas, it is where you select someone or reject them. When you have that kind of election you find that voters do not even vote when there is no opposition. They just say, "Who cares?"

All of us having been in the "People's House" want people to vote, we want them to come out and express their opinions. We do not want to put an end to legislation that engenders apathy.

The Commission is made up of four attorneys, four non-attorneys, and the Chief Justice, who is an attorney. That makes a five to four attorney split. In other states where the system is in place, they find that the non-attorneys actually defer to the attorneys for the same reason that Assemblyman Horne said—is attorneys know about what is happening.

I would say that this bill will engender a more cronyistic system because attorneys will now be choosing attorneys. As I listened to the testimony I was overwhelmed by the attorneys here and their support for this.

Chair Anderson:

Are there any questions? [There were none.]

Is there anyone else who wishes to testify in opposition or as neutral to S.J.R. 2? [There were none.]

I will close the hearing on S.J.R. 2.

I will open the hearing on Senate Bill 148 (R1).

Senate Bill 148 (1st Reprint): Revises certain provisions of the Uniform Principal and Income Act (1997). (BDR 13-903)

Keith Lee, Counselor, Sutton Place, LLC:

Senator Wiener asked me to fill in for her in presenting S.B. 148.

Senate Bill 148 was brought forward by Senator Wiener although it shows as a Senate Judiciary Committee introduction. It was, but it was Senator Wiener's bill. She brought it on behalf of a constituent, Mr. Lewis Shupe.

My client and I got involved after we saw the original S.B. 148, with the concurrence of Senator Wiener and Chair Amodei of the Senate Judiciary Committee, and offered an amendment that resulted in what you see in Section 1. My client, Sutton Place LLC, is a company that is the trustee of a number of trusts that invest quite heavily in other investment trusts and entities. What we are talking about in Section 1 is how any trustee who manages funds for trusts, upon receipt of money from those investments, must allocate that money between the income portion and the principal portion of the trust. This is important because so many trusts these days have beneficiaries of the income piece and beneficiaries of the principal piece. They also have remainder beneficiaries of both of those pieces so it is important for the trustee to try to allocate, within the bounds of law, money it receives between principal and income so there is a reasonably fair allocation of both of those to both of those particular entities within the trust.

Presently Chapter 164 of the *Nevada Revised Statutes* (NRS) is the Uniform Principal and Income Act that was adopted by this Body in 1999 after it was drafted in the mid-1990s and approved by the Uniform Law Commission in 1997.

I have submitted a letter ([Exhibit G](#)) that I ask be made part of the record from a Mr. E. James Gamble, who is an attorney in Michigan. He was the co-reporter and principal draftsman of the Uniform Principal and Income Act of 1997. He was instrumental in drafting the amendment that is now part of Section 1.

At the end of the day what Mr. Gamble and the other Uniform Law Commissioners determined is that the formula they created in 1997 determining what amount should be allocated to income and what amount should be allocated to principal does not accurately reflect the particular investment environment of today. There was an unequal distribution being made to the income portion because there were such tight parameters on determining how much of the ultimate distribution should be allocated to principal.

Mr. Gamble drafted the provision here that more accurately reflects, in his opinion and the opinion of the Uniform Law Commissioners, today's current market and provides for a more equitable allocation. It gives the trustee the discretion, within certain bounds, to make those allocations.

I will close by reading a portion of this letter. It reads:

The financial world has continued to change in the last 12 years, and what we thought would work in 1995 no longer works satisfactorily. None of us who worked on the Act knew about or anticipated the emergence of today's investment funds, usually organized as limited partnerships. The "partial liquidation" label, even as augmented by the 20 percent rule, is unfortunately tied to the notion that it applies only to an action formally identified as a partial liquidation by a corporation's board of directors. Larger than normal distributions are rarely called "partial liquidations" today and, in retrospect, using that term in the 1997 Act was a mistake. As the one who proposed the 20 percent rule in the first place, I will be the first to say that the rule simply does not work properly in today's investment world. That is why I recommend the adoption of the proposed amendment.

Lewis Shupe, Private Citizen, Las Vegas, Nevada:

[Read from prepared statement ([Exhibit H](#)).]

Assemblyman Horne:

In Section 1, paragraph 4 it says "a trustee may determine that money which represents gain upon the sale or other disposition of property described in subsection 5 is a return of capital." This is not my area of expertise, but if you could explain to me when a trustee continues to make the determination that money received from a property's capital, do you not eventually reach and exceed the value of that capital? At some point, with the capital you put into an investment and the income return from that, you are going to reach what that initial capital amount was. You can go beyond that and still identify it as capital, or do I not understand this correctly?

Keith Lee:

I dare say that my knowledge of trust law and the Uniform Principal and Income Act is about the same as yours, Assemblyman Horne, but I will attempt to answer the question.

In the instance of my client who acts as trustee and manages and operates a number of investment trusts for various entities, when that entity invests money into a large equity fund—let us say it is a million dollar investment and let us say that from that investment the company which invested the money gives a return of \$500,000 over a five year period—at the end of five years, \$500,000 is returned. Generally speaking the greatest portion would be allocated to income rather than principal. But what we are talking about here is the ability of the trustee, given these other parameters that are placed in here, to be able to make a determination that out of the \$500,000 maybe only \$250,000 of it is income and the balance should be returned to the capital portion of the trust portfolio.

When it is ultimately repaid is when the clock stops on that particular investment with that company. There would be no more investment beyond that. The maximum amount of capital that could be returned from that investment would only be 100 percent of the capital investment. At some point in time your investment is returned 100 percent and you are not getting anymore return on that particular investment so you are not going to receive any money to allocate between capital and income. The most you could ever recapture out of your investment would be 100 percent of the capital plus whatever would be the return.

What we are talking about now is the interim or partial distributions and how to balance that interim distribution between principal and income so there is a fair allocation to both the beneficiary of the income portion and the principal portion.

Assemblyman Horne:

I guess I am missing the mechanics of how it works. If I put a million dollars into an investment and as I receive income from that investment over a period of time, this trustee would be able to determine what portion of that return on my investment is capital and what portion is income? At some point, after these determinations, if I have hit a million dollars and the determination is that as capital my million dollars no longer exists in the "equity fund," so therefore I am not going to be receiving income from it as well? Is that correct?

Keith Lee:

My understanding is that is correct.

The issue really is when these big investment funds do not bother when they say, "We are going to give Suttan Place \$500,000 on its investment this year," they do not say to Suttan Place, "90 percent of this is income and 10 percent is capital." They just say, "Here is the money, you figure out what to do with it." We asked that it be amended. There were certain parameters that limited the trustee and how to allocate that. It no longer properly reflects the current investment market or what the Uniform Commissioners intended in how this was supposed to be allocated when they developed the Uniform Act in 1997.

What we are trying to do here is give the trustee the flexibility to make these determinations. The trustee is still bound by its fiduciary obligation to the trust as an entity and to every beneficiary. Not only are the trustee's actions limited by the law that we are suggesting, but also by his fiduciary obligation to the trust and to its beneficiaries.

Chair Anderson:

Is there anyone to speak in support of S.B. 148? [There were none.]

Is there anyone in opposition to S.B. 148? [There were none.]

I will close the hearing on S.B. 148 and open the hearing on S.B. 435.

Senate Bill 435: Authorizes the appointment of masters in justice court under certain circumstances. (BDR 1-1356)

Douglas E. Smith, Chief Judge, Justice Court, Las Vegas Township:

[Read from prepared statement ([Exhibit I](#)).]

Chair Anderson:

There is an amendment ([Exhibit J](#)) that is attached to the back of your statement. Was it your intention to ask for an additional amendment to the bill?

Douglas E. Smith:

Yes. We have discussed this with other Assembly members and we worked out a deal.

Chair Anderson:

With whom did you discuss this amendment?

Douglas E. Smith:

The Nevada Network for Domestic Violence and Speaker Buckley. She is satisfied with the amendment and we have reached an agreement.

Chair Anderson:

Has this been approved by the Nevada Judges Association?

Douglas E. Smith:

The Nevada Judges Association is in agreement with us.

Douglas E. Smith:

The amendment specifically eliminates the use of masters in any domestic violence type case. The type of protective orders they would use, if we use them for that, would be protective orders such as one neighbor filing a protective order against another neighbor for fertilizing their lawn and allowing those white little beads to go in front of his driveway, prohibiting him from driving through those beads to go to his own property, so he has asked for a protective order.

We have a situation here where most litigants have about 17 seconds to speak in court because we are handling so many cases. We need some help on those types of protective orders. Another example is the protective order where one neighbor is angry because the cat from next door has gotten in his yard and dug up his plants. They asked for a protective order to keep the cat out of their yard. Or the neighbor who was throwing trash over the fence, while unknowingly being videotaped—he actually threw five leaves over the fence. Those are the kinds of cases a hearing master would hear. It would have absolutely nothing to do with domestic violence.

Chair Anderson:

Are there any questions? [There were none.]

Michael Bell, Manager, Judicial Education Division, Administration Office of the Courts, Carson City:

We are in support of S.B. 435 and the amendments.

The only concern that we have is from the educational standpoint. We presumed that the courts themselves who have the masters would make the provision for the education of those masters.

Chair Anderson:

I am not very pleased with the education. It is not the quality of the education, because clearly the classes are ongoing, but to hear the judges tell me that they do not know what we are talking about because they have never done it that way even though the statutes have been in place for years.

Speaking of domestic violence areas, we have made some modifications over time and we still have justices of the peace and some district court judges who seem to not understand the modifications.

How are you addressing that issue for domestic violence so they do understand? That is a major concern for us.

Michael Bell:

I went back in the last few months and looked at the number of domestic violence related classes that have been provided to limited jurisdiction judges over the past ten years. There were 14 different classes. That was before we provided, and were required by Supreme Court order to provide, domestic violence training to all judges in November of 2006. We did provide a full day of training to all limited jurisdiction judges. There were some masters there as well in domestic violence areas, especially key areas that were problematic.

We will also be providing that kind of education to the general jurisdiction and family jurisdiction judges this year to finish complying with the Supreme Court order.

Our intent is also to continue that domestic violence training to judges at their semiannual conferences and keep the education coming to the extent it has an effect.

Chair Anderson:

Are there any questions? [There were none.]

Is there anyone in opposition to S.B. 435? [There were none.]

I will close the hearing on S.B. 435.

I will open the hearing on S.B. 303.

Senate Bill 303: Amends the Charter of the City of North Las Vegas concerning the qualifications of municipal judges. (BDR S-80)

Assemblyman Oceguera:

I need to disclose for the record that I work for the City of North Las Vegas, but I do not think this bill will affect me in any way.

Senator John Lee, Clark County Senatorial District No. 1:

[Read from prepared statement ([Exhibit K](#)).]

Chair Anderson:

You attended these classes. Do you think you would possibly be a good candidate for Justice of the Peace?

Senator Lee:

In our county you could not be a justice of the peace without being a legally trained attorney, but in the municipal court I do not believe that with the intellect I have and the ability and time to put into it, it would take me two or three years to get up to speed to be an adequate judge.

Chair Anderson:

Currently in North Las Vegas do they not have a non-attorney serving as a municipal judge?

Senator Lee:

We have a judge who was a police officer, who is retired, who became a municipal court judge.

Chair Anderson:

Is it not possible that someone might acquire by background, by the other things they do in life, their life experience, the opportunity to be a municipal judge.

Senator Lee:

That would probably be the only profession that would give you the experience outside of attorneys. But the only ability they would have would be from sitting in court for so long during their careers as police officers, although they probably only heard certain kinds of cases at certain times.

Chair Anderson:

I am always a little suspect at having only attorneys be justices of the peace or municipal judges. We have a law student here, a graduate of law school, and we also have several attorneys. For these positions you have to be a member of the bar, not just have your law degree.

Senator Lee:

At this point in time in Las Vegas, you have to be 21 years old and be in the community for 30 days.

Chair Anderson:

According to the current information, you have to be a resident.

Senator Lee:

Yes.

Chair Anderson:

If this were to pass the permanent residency requirement would no longer be a qualifier, so it could be anyone in the Las Vegas Valley?

Senator Lee:

In subsection 1, "the municipal court judge must have been a resident of the city for a continuous period of at least six months preceding his election."

Chair Anderson:

What if he moves out of the community after he is elected?

Senator Lee:

You have to stay a resident in the community you were elected in.

Chair Anderson:

Are there any questions?

Assemblyman Cobb:

Do municipal judges have a civil docket? Also, could you speak to code enforcement and whether that is considered civil or criminal docket?

Senator Lee:

They would enforce the municipal code and there are instances where they do get civil complaints. They can either handle it in that court or try to move it up to justice court.

Assemblyman Cobb:

Given the fact that they do bleed into the civil realm of law, do you believe there is any particular background that would prepare an individual adequately to handle criminal and civil cases in the municipal court aside from an attorney?

Senator Lee:

I cannot think of anyone who would be more prepared to sit in judgment of a situation or person other than someone who had been trained in law.

**Kimberly McDonald, State Legislative Affairs Officer, City Manager's Office,
North Las Vegas:**

We do oppose this measure. It is our policy as part of our legislative platform that we must oppose any charter changes that are not approved by the city council.

Chair Anderson:

The City of North Las Vegas has a charter committee as part of its city charter?

Kimberly McDonald:

The City of North Las Vegas does not have a charter committee. However, we do have a Legislative Affairs Committee which serves as the same forum for all charter issues and legislative initiative.

As part of our platform we decided that any charter issues, amendments, or issues for discussion should come before the city council first and then obtain their approval.

Chair Anderson:

Is the Legislative Affairs Committee composed of citizens or only elected city officials?

Kimberly McDonald:

The Legislative Affairs Committee consists of two council members, the city manager, assistant city manager, myself, our contract lobbyist, and two other directors.

Our meetings are also held publicly and they are posted.

Chair Anderson:

Are there any questions? [There were none.]

Senator Lee, would you like to respond to as to why you did not bring this bill to that group?

Senator Lee:

I did bring it to their group; they are very aware of it.

Assemblyman Ocegüera:

In the past I have agreed with you on justice of the peace situations in our rural communities, and I still agree with that. With a small town you know that person and can tell if they are doing a good job or not. The City of North Las Vegas is of the size and caseload capacity so that a qualified attorney is the way to go. I agree with Senator Lee that we need to go in this direction.

Chair Anderson:

I will close the hearing on S.B. 303.

[Meeting adjourned at 11:06 a.m.]

RESPECTFULLY SUBMITTED:

Doreen Avila
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 1, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.J.R. 2	C	Senator William Raggio, Washoe County Senatorial District No. 3	Prepared statement
S.J.R. 2	D	Robert Payant, retired judge, Reno, Nevada	Prepared statement
S.J.R. 2	E	Alecia Biddison, Managing Partner, Busick Group	Prepared statement
S.J.R. 2	F	Lynn Chapman, Vice President, Nevada Eagle Forum	Sallyport internet article
S.B. 148	G	Keith Lee, Representative, Sutton Place, LLC	Letter from E. James Gamble
S.B. 148	H	Lewis Shupe, Private Citizen, Las Vegas, Nevada	Prepared statement
S.B. 435	I	Douglas E. Smith, Chief Judge, Justice Court, Las Vegas Township	Prepared statement
S.B. 435	J	Douglas E. Smith, Chief Judge, Justice Court, Las Vegas Township	Proposed amendment
S.B. 303	K	Senator John Lee, Clark County Senatorial District No. 1	Prepared statement