

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session
March 28, 2007**

The Subcommittee of the Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 4:25 p.m. on Wednesday, March 28, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Warren B. Hardy II, Chair
Senator Terry Care
Senator John J. Lee

STAFF MEMBERS PRESENT:

Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Olivia Lodato, Committee Secretary

OTHERS PRESENT:

Morgan Baumgartner, Nevada Resort Association
Shaun E. Jillions, City of Henderson
Scott Scherer, Freemont Street Experience, Limited Liability Company

Chair Hardy opened the Subcommittee hearing on Senate Bill (S.B.) 13. He said the Subcommittee was not rehearing the bill today. He asked Senator Care to discuss his ideas and possible resolutions for the bill.

SENATE BILL 13: Restricts local governments from enacting or enforcing certain local laws which regulate signs held, carried or displayed by persons on public sidewalks on the basis of content or viewpoint. (BDR 19-123)

Senator Care stated he reviewed the solicited responses. He said he had not discussed them in detail with the people who submitted the responses. He said

he was planning to discuss the issues in the same order as the handout issued to the Subcommittee. He opened the discussion with the Nevada Resort Association's response. He said he interpreted the letter as having two objections. He said the first objection was the definition of sidewalks.

Chair Hardy asked representatives of the groups to come forward to participate in an interactive discussion.

Senator Care said Michael J. Stewart, Committee Policy Analyst, requested comments and amendments to S.B. 13 from people who testified on the bill at the earlier hearing. He said the Nevada Resort Association had concerns with the definition of "sidewalk." He said in the hearing of February 14, he was not thinking of sidewalks in terms of skywalks. He said he had not contemplated skywalks as public sidewalks for First Amendment purposes. He requested language specifying skywalks not be included in the definition of a public sidewalk.

Senator Care said the Nevada Resort Association's second concern involved language that resulted in commercial speech being granted the same protections as political speech ([Exhibit C](#)). He said since the February hearing, the U.S. District Court, District of Nevada, filed an order which struck down a Clark County ordinance as overly broad and vague. He said he did not want to get into the realm of what was commercial and what was expressive in this bill.

Chair Hardy stated he did not want to open debate of commercial speech elevated to the level of protected speech. He said it was the threshold issue for him.

Senator Care said there was case law on that issue. He said there was a history of protracted litigation, primarily in southern Nevada, over the issue. He said it belonged in the courts and could not be resolved in the Legislature.

Chair Hardy asked if the bill was drafted in such a manner to include commercial and political speech.

Senator Care said S.B. 13 did not address commercial versus expressive speech. He said it had been suggested in section 1, subsection 1, paragraph (a), the word "lawful" needed insertion before the word content. He said that eliminated all concerns of the City of Las Vegas about pornography and hate

speech. He said as long as it was lawful speech, there was not an ordinance that regulated that speech.

Chair Hardy asked Ms. Baumgartner if she understood the proposal.

Morgan Baumgartner, Nevada Resort Association, said on the content issue, she had the same concerns as previously. She said her organization was more concerned about such things as vendors selling T-shirts with lawful messages on them. She wondered if that type of activity would become possible again.

Chair Hardy asked if the Committee specifically addressed such kinds of commercial activity. He said there were ordinances addressing that sort of activity.

Senator Care said he wanted to make a distinction between commercial activity and commercial speech. He said selling T-shirts was commercial activity and could be regulated. He said someone wearing a T-shirt with a commercial message was not regulated.

Ms. Baumgartner said if there was any conceivable elevation of an equalization of commercial versus noncommercial speech, Nevada Resort Association became concerned.

Chair Hardy said Senator Care did not have concerns about regulation of commercial activities. He said the Subcommittee was interested in any proposed language Ms. Baumgartner suggested.

Senator Care said the question had been addressed in the context of news racks. He said they could be regulated as to place but not lawful content.

Chair Hardy requested an opinion from Eileen O'Grady, Committee Counsel, on lawful content as related to commercial speech versus protected speech.

Ms. Baumgartner said her organization was concerned about overpasses, underpasses and property where an easement was granted for passage through a casino, as a pedestrian walkway, being regarded as sidewalks. She said the definition was restrictive. She said the court system provided clear definition of what was and was not public sidewalk. She said her organization looked at an

amendment, but the organization's position was the courts had provided an understandable definition.

Senator Care said on line 25 in section 1, subsection 3, paragraph (a), subparagraph (1) in the definition of public sidewalks, it says "... and private property upon which a limited easement of public access has been granted." He said the easement issue was addressed there.

Ms. Baumgartner said the Nevada Resort Association would not block public access, but they have skywalks, underpasses and overpasses and different mechanisms of getting foot traffic from one place to another. She said the organization had concerns they would have protestors inside their properties because they had granted public access to the property.

Chair Hardy said many of the definitions were contained in memorandums of understanding between the property owners and local governments.

Senator Care said an agreement could not ignore the First Amendment rights of the public. He said people who carry a sign normally have a message, and they want an audience to whom they can convey the message. A public sidewalk was one of the traditional places to deliver the message.

Chair Hardy asked Ms. O'Grady if the Subcommittee could accomplish Senator Care's needs without addressing a definition of public sidewalk.

Eileen O'Grady, Committee Counsel, said if the bill left sidewalk undefined, it would be decided on a case-by-case basis if it was an issue.

Chair Hardy said if the bill was silent on the issue, then all the other interlocal agreements would remain the same.

Senator Care said there was much litigation concerning activities on public sidewalks in southern Nevada. He said if the statute was silent, it might be viewed as an opportunity to return to earlier definitions.

Ms. Baumgartner said the definition was clearly defined by case law. She asked if the word "lawful" was the only change proposed.

Senator Care said the wording was intended to say something about lawful. He said it was a futile exercise to define what a sign could or could not say. It was best said as lawful.

Senator Care said the next discussion concerned the City of Henderson's comments. He said their objections were contained in the second paragraph under problematic language of the comments ([Exhibit D](#)). Senator Care disagreed that S.B. 13 had the potential to severely curtail all legal time, place and manner regulations for signs. He said the bill addressed the content of signs. He said the government had a high burden to demonstrate the need to regulate speech. He said he was making a distinction between content and time, place and manner regulations.

Shaun E. Jillions, City of Henderson, said he had some concerns with the language of the bill.

Chair Hardy requested Mr. Jillions ask his attorneys whether the language, with regard to lawful content, changed the concerns of the City of Henderson's attorneys. Mr. Jillions said the use of the words "lawful content" took care of their concern.

Senator Care said the City of Henderson raised a valid concern in the definition of public sidewalk, including crosswalks, medians and traffic islands. He said he was willing to strike the words medians, traffic island and crosswalks from the bill. He said there was a safety issue involved in those places. Senator Care said it was line 25 in section 1, subsection 3, paragraph (a), subparagraph (1).

Chair Hardy said he had a question about the wording of private property where limited easement had been granted. He asked if that wording could be eliminated. He asked if it was necessary to demonstrate on all the property on The Strip.

Senator Care said a case, *Venetian Casino Resort v. Local Joint Executive Board, Las Vegas*, 257 F.3d 937, 942-43 (9th Cir. 2001), involved where a public sidewalk moved onto private property. He said the problem was it was still a public sidewalk. It was on Venetian property, but an easement existed and the public was invited to use the sidewalk. He said demonstrations would be on public sidewalks that might be on private property. He said that was traditional First Amendment law.

Chair Hardy asked if the statute could be drafted so the local government could not enact or enforce an ordinance. He asked if the bill could say everyone had to be allowed or nobody in a limited public access situation.

Senator Care said he did not know if it was possible. He said S.B. 13 was in response to the arrest of two street ministers pursuant to an ordinance that made an exception for labor activities. He said labor picketers fell under federal law and could not be changed by Nevada law.

Chair Hardy asked if the court had sustained or overturned carve-outs for labor law.

Senator Care mentioned another case: *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784 (9th Cir. 2006), where the opinion was filed in October 2006. The court examined the exemption for labor picketers under the same federal statute. He said the plaintiffs argued the exception rendered the tabling ordinance unconstitutional because it violated the Fourteenth Amendment's equal protection clause. He said the bill had to be content neutral.

Chair Hardy asked if labor could be prohibited. Senator Care said he did not think that was possible.

Chair Hardy asked if the definition of public sidewalk could specifically exclude private property upon which a limited easement of public access had been granted. He said the owner would have control of the property. However, the owner could not allow specific access; he had to allow all or none.

Senator Care said the evolution of First Amendment law and what was a traditional public forum always included sidewalks. He said there may be limited exceptions.

Ms. Baumgartner said the Nevada Resort Association was comfortable with the traditional definition of sidewalk as defined by the courts. She said the concern was the nontraditional sidewalks.

Chair Hardy said he did not understand why the statute had to have a definition of public sidewalk.

Senator Lee asked the status of bus shelters. He said they did not appear to be sidewalks or roadways, but they were areas where people could congregate. He asked if police were allowed to act if protestors were at a bus shelter or waiting in a taxi line.

Ms. Baumgartner said if the bus shelters were located on a sidewalk in front of hotels where an easement had been granted to the county, First Amendment rights allowed them to stand with their signs. She said if it was private property upon which no easement was granted, the property owner was able to control who was there.

Senator Care said the issue of the bus shelter was raised by Clark County. He said the City of North Las Vegas was neutral on the bill ([Exhibit E](#)). He said Clark County had objections concerning commercial versus expressive language ([Exhibit F](#)). He said the amendment about lawful conduct and lawful speech would cure any concerns of Clark County. Senator Care said Clark County also raised the issue of benches and bus shelters. He said the difficulty arose with shuttle buses located on private property. He said he did not consider that a public forum.

Ms. Baumgartner said she agreed because it was located on private property that had not been granted an easement for public access. She said it was different from the public shelter.

Scott Sherer, Freemont Street Experience, Limited Liability Company, said the labor exemption came from U. S. Supreme Court case law which stated labor could go onto private property for purposes of organizing workers. He said he was not sure the Ninth Circuit Court of Appeals could overrule the U.S. Supreme Court case.

Chair Hardy said anything identified by the National Labor Relations Board (NLRB) as organizing activity was protected. He said it did not necessarily include banners, wildcat strikes or other things not recognized by NLRB.

Mr. Sherer said it was specifically for organizing purposes to reach and communicate their message to employees. He said it was a complex balancing test when permitted under the National Labor Relations Act.

Senator Care said the Supreme Court case did not discuss First Amendment rights, it was labor activity. Chair Hardy said Clark County had problems with the word "billboard." He said he was willing to strike the word from the bill. He said Clark County also wanted to strike the phrase "reasonably close proximity," but he did not want to strike the phrase.

He said objections from the City of Las Vegas ([Exhibit G](#)) could be handled with whatever words were crafted into "lawful or otherwise lawful" speech conduct.

Senator Care said the final written objections he received were from the Freemont Street Experience. He had a letter from Mr. Scherer which discussed concerns of the main industry in southern Nevada ([Exhibit H](#)).

Mr. Scherer said the concerns were about commercial activity. He said they were concerned about too narrow a definition of commercial activity, [Exhibit H](#).

Senator Care asked for a proposed amendment from the Freemont Street Experience.

Mr. Scherer said a benefit of leaving things to the courts said different things change according to interpretation. He said standards change from venue to venue. The courts had the ability to look at all facts and circumstances and give a reasonable interpretation.

Senator Care said Carson, Lyon and Douglas Counties had the same objection. They were concerned about the phrase "within reasonable proximity" ([Exhibit I](#)). He said it appeared there was a problem in northern Nevada where members of the construction industry found themselves the subject of banners. He said the bill was not intended to address such subjects.

Chair Hardy said part of the concern was the NLRB and the courts were working through the issue of bannerling. He said the banners were not necessarily related to a labor dispute. He said the NLRB and federal court case law were trying to resolve the issue. He said bannerling was used in cases where companies were not unionized,

Senator Care said he had also received a copy of the City of Sparks' ordinance which was content neutral. He said he had read it, and it was an example of how an ordinance can be content neutral.

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Senator Care said the American Civil Liberties Union of Nevada (ACLU) submitted an amendment on February 14 ([Exhibit J](#)). He said the ACLU submitted one suggested change in subsection 3, paragraph (a), subparagraph (2). The ACLU wanted to strike "has been granted" and insert "exists" and add "or any other area deemed to be a public forum." Senator Care said it was going to be deemed a public forum by a court anyway. He said it was not required by statute.

Senator Care said he wanted to walk the Subcommittee through all the suggestions received concerning S.B. 13.

Chair Hardy said the Committee might have to seek an exemption from the deadlines for this bill. He said the bill needed ample time for deliberation by the Committee.

Chair Hardy asked if there was any further discussion for the Subcommittee. As there was none, he adjourned the meeting at 5:12 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____