

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
March 8, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:03 a.m. on Thursday, March 8, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Tonja Brown
Sherry Powell
Patty Pruett
Alecia D. Biddison, The Busick Group
Garret L. Idle
Vincent A. Consul, State Bar of Nevada

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Bruce T. Beesley, Vice President, State Bar of Nevada
Bridget Robb Peck, Former Judge
Richard J. Morgan, Dean, William S. Boyd School of Law, University of Nevada,
Las Vegas
James W. Hulse, Common Cause/Nevada
Janine Hansen, Nevada Eagle Forum
Lynn Chapman, Vice President, Nevada Families
David K. Schumann, Nevada Committee for Full Statehood
John L. Wagner, The Burke Consortium
Sheila M. Ward
Lewis Shupe
Keith L. Lee, Sutton Place Limited
William R. Uffelman, President and CEO, Nevada Bankers Association
G. Barton Mowry

CHAIR AMODEI:

The hearing is opened on Senate Joint Resolution (S.J.R.) 2.

SENATE JOINT RESOLUTION 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

SENATOR WILLIAM J. RAGGIO (Washoe County Senatorial District No. 3):

I will read my prepared testimony in support of S.J.R. 2 ([Exhibit C](#)), which is not a major change in the procedure approved under the *Constitution of the State of Nevada* for filling vacancies. It extends the procedure to the initial selection and retention of higher court judges of the Nevada Supreme Court and district courts.

Those who oppose this type of procedure believe it takes away people's right to vote, but that is not the case because judges or justices stand for retention elections. This procedure is different than that proposed in the past. This matter came before the Legislature several times, passed and was put on the ballot. Similar proposals before the Legislature and electorate in past years were defeated in 1972 and 1998. I am a lawyer practicing over 50 years in Nevada who believes this process is superior to the election process with respect to the judiciary.

Times have changed since I first proposed this type of process. Elections have become nasty, uncivil and subject to partisan politics. That aspect should be removed from judiciary retention or selection, and judges should be fair, impartial and not make promises. It is necessary to change the way Nevada judges are initially selected and retained.

I have been part of the political process for a long time. I have seen judicial candidates sitting in outer offices soliciting contributions from attorneys. Recently, there was a series in the Los Angeles media which was termed an exposé of the judicial system in Clark County. It gave examples of political solicitations and contributions alleged to have crossed the line. I will not repeat these allegations; however, they are in the public's memory and did not do the judicial process any good. It brought down the respect necessary to accomplish a fair, impartial judiciary which is important to the democratic process.

Judges and justices selected through the Commission on Judicial Selection process to fill vacancies have been superior and, in most cases, extraordinary. Times have changed, as well as the perception of the public. Most surveys indicate this is the preferred method of initial selection of judges. These surveys can be made available to the Committee.

Events occurring since these measures were considered justify submitting the issue to the people of Nevada. In view of the new aura, concern and perception, voters need the opportunity to express themselves again on this issue. The resolution would pass the Legislature in two separate sessions and then go on the ballot. Let the public have their say. If they turn it down again in view of the current perception and what has occurred, that is fine, but they should be given that opportunity.

I stress an independent judiciary. Too many special interest groups want to place undue pressure on the judiciary to follow their issues. Some groups want to jail judges if they do not go along with what they perceive to be an appropriate decision. Judges should not live in fear or favor in making their decisions. If they are wrong, a retention election can be decided by the voters.

Some say a judge will never be removed. That is not true. Supreme Court judges have been removed in California. There are cases in which judges have not been retained through this process. The public would be given full information to make a decision, which they do not have at present in the

confusion of rhetoric and political damage in campaigns with contested elections for judges.

This is not a perfect system. Lawyers agree the jury system is not perfect, but it is far better than any other throughout the world to try civil or criminal cases. This resolution is a better process to select a fair and independent judiciary that will not have to look over its shoulder every time it is called upon to make a judicial decision.

I do not disparage any particular judge or justice, but those judges who have been appointed to fill vacancies in the process measure up better than many judges who are initially elected. Nevada has excellent elected judges, but the process to fill vacancies results in better-qualified judges to serve in these positions.

SENATOR RAGGIO:

What can a judge promise? Legislators run for office and have positions, biases and issues on which they take sides. Judges are expected and anticipated to be impartial. Although judges have the ability to comment on issues, they should act impartially and listen to every side. Judges should not promise anything to get a vote or solicit contributions.

There is a lot of language in S.J.R. 2, but it essentially extends the same process to the initial selection and retention of judges to fill vacancies in judicial positions. The system would be improved and enhanced by a commission to evaluate, interview, report and recommend retention of a judge who has filled that position to the public. If I sound passionate—I am.

I provided the Committee a list of states that have the process of selection through a nominating commission for the state supreme court as well as judicial selection for appellate and general jurisdiction courts ([Exhibit D](#)).

TONJA BROWN:

I support S.J.R. 2 because the time has come for corrupt judges to stop protecting their families and friends. I base this statement on personal experience. I have a letter ([Exhibit E](#), original is on file in the Research Library) written in 1996 to former Judge Mills Lane from Detective Niles Carson stating that Judge Lane, Detective Carson and former Judge Charles M. McGee conspired to conceal the disappearance of deoxyribonucleic acid (DNA) evidence

in a particular case. Judge McGee was aware his public defender at a 1991 post-conviction hearing committed perjury, yet he based his decision on this woman's perjured testimony.

On March 2, 2003, I appeared, presented evidence and testified before the board members when Shelly O'Neill was considered for a new program with the public defender's conflict unit. Ms. O'Neill did not dispute my testimony. In 1993, Ms. O'Neill told me she committed perjury and lied about investigating the prime suspect and all the evidence that cleared my brother of his crime. Judge McGee dismissed the case, and the Nevada Supreme Court affirmed their decision.

The fight to prove my brother's innocence has cost me a great deal, not only in Washoe County but Carson City as well. A petition containing 5,400 signatures of registered voters was sent to the grand jury and panel to investigate Carson City judges. The judge did not like what the grand jury said about him, recused himself and passed the case on to Judge Michael R. Griffin. Judge Griffin did not like it either, recused himself and sealed the records. After a hoopla in Carson City, Judge Mark Gibbons came from Las Vegas. He did not like what the grand jury said about their judges and had records rewritten and sealed, where they remained for some time.

I protested at the Carson City Justice and Municipal Court with a sign that said "5400 People Can't Be Wrong." When I entered the building and tried to sit down, I was assaulted and arrested for trespassing in a public building because of my sign. I hired an attorney who argued the constitutionality of the ordinance on trespassing was vague. Due to the plight of my brother, Judge William A. Maddox violated my due process when he stated in print on July 17, 2002, that they did not agree with my version of the story. I had not even had a chance to plead not guilty to the charges. It took two and one-half years to bring me to trial for the trespassing charge. During that time, Judge Griffin refused to recuse himself when Judge Steven McMorris ruled in my favor and the Office of the District Attorney appealed. I went to Judge Griffin who refused to recuse himself, overturned Judge McMorris's decision and turned the case over to Judge John Tatro.

I will read some of the testimony ([Exhibit F](#)). According to Judge Tatro, the testimony of the two bailiffs involved in the assault and wrongful arrest was concise, consistent and credible. Bailiff Roy Eddings, when asked about sitting

on the bench, responded, "We told her it was not her right to sit there. I cannot remember if it was Ann or Robert who tried to explain to her that if she went through the metal detector she could sit there, but she would have to go through the metal detector first." Bailiff Ann Jones was asked, "Did you or anyone else tell Ms. Brown she could clear the security area and sit on the bench on the other side?" Her response was, "No Sir, we did not." They both said it was all right for me to sit on the bench in the foyer.

Bailiff Eddings is the one who assaulted me. He was asked, "Is it your testimony here today that Ms. Brown did not claim she had a back injury and was handicapped while you were handcuffing her?" At the time, I complained while she was arresting, handcuffing and putting my face down on the floor. She answered, "Not that I recall." Bailiff Jones, when asked the same question, answered,

I know she was screaming and yelling, and I remember her saying she had a back injury and was handicapped. Then Officer Eddings actually had to take her down because she was resisting. Take her down and take the other arm, and yes, she was saying you are hurting me, ouch, you are hurting me.

CHAIR AMODEI:

What we have before us is S.J.R. 2, and I know you are in favor of it. It is relevant you tell us why you are in favor of it, but in the interest of time, please complete your testimony.

MS. BROWN:

A Website entitled <<http://courthouseforum.com>> is the nation's repository on court information. This Website tells more about the way I was treated. Judge Tatro ruled against me in favor of the two bailiffs because they were consistent and concise. Throughout their testimony, they contradicted their previous testimony; in fact, Bailiff Jones backed me. I was found guilty. It was appealed on the claim that the constitutionality of the ordinance was vague. The case went to Judge Mark Gibbons, the brother of Douglas County Judge Michael P. Gibbons, who upheld Judge Tatro's decision. There were no further appeals because we got Justice Mark Gibbons, the original judge who was angry about the grand jury report and sealed the records.

This was conflict of interest and judges protecting one another, their families and friends. In the grand jury report, one of the persons indicted was Assistant District Attorney Anne Langer for Carson City, who was the juror in my brother's case. Over the years, information came out they did not like. In conclusion, the time has come for judges to be held accountable for their actions. We, the people, are tired of it.

SHERRY POWELL:

I am a paralegal certified legal assistant and held by the same ethics as attorneys and judges. In the past ten years, I have witnessed some appalling behavior. I head a group called the Ladies of Liberty, consisting of women who have suffered political injustices, many at the hands of judges.

Cindy Ball was shot in the face by her husband who was released from jail. Her children were taken from her and raped. Her daughters killed their father. Several times, the domestic abuse case was brought before a judge, but nothing was done. It is now hidden. Ms. Ball suffers financial loss, emotional problems, and her children are destroyed. All this was at the hands of judges. In the last Lyon County campaign, two judges used her as an example, exploited her and her children, and acted as though they helped her in some fashion. I assure you, nobody helped her at all.

The second example is the murder of my children's father, which was covered up by two Elko County judges. In the last ten years, I have met some of Nevada's finer judicial people. I attended the ethics meeting wherein they said all complaints are processed and reported to the public. That is false. If you are not part of the judiciary and file the complaint as an attorney or a judge, your case is thrown in the trash.

Last, but not least, is Anne Langer who ran for Storey County District Attorney. Ms. Langer received a full report of the rape of my daughter by a 53-year-old man. Ms. Langer not only did nothing but exploited my daughter over the Internet. My daughter is a juvenile and cannot report it to the public. On my daughter's sixteenth birthday, I went before the Commission on Judicial Selection. I commend them for an excellent job. I like that the people on the selection board were split between the bar and appointees—with bar individuals and attorneys on one side and people appointed by the Governor on the other—to make a legitimate selection for judges. They were replacing Judge Michael Griffin and listened to what I had to say.

The illegal seizure of my children went before Judge Griffin, and the case went nowhere. I spoke to Senator Amodei when my three children were illegally taken from me. No law supports seizure of my three children. It took three years. One of my children died last Friday because he could not take the betrayal of the system. I am not going to give up on judicial reform. Judges and judicial discipline should be looked at seriously. It would be like putting sex offenders on a jury for serial killer Ted Bundy. Judges and attorneys protect each other.

Complaints before judicial discipline have been thrown in the garbage. I do not care where they come from. If they come from a paralegal, you still need to look into it. You are supposedly higher trained, know more and have degrees. Look into it because the average citizen can tell they are wrong. There is a Churchill County judge who has 112 ethics violations. He pleaded guilty to 107 and was still allowed to sit on the bench. His violations were fixing his wife's traffic tickets, his son's drug convictions, and postponing 19 sexual offense cases in Carson City. One case in particular involved a little girl who talked to boys on the Internet. She went to their house and four boys gang-raped her. She was told she should not have gone over to the house. What kind of justice is that?

My daughter took three polygraphs, and the district attorney lied. She was not only a victim once, but was made a victim three times after that. She took three polygraphs and passed them all. They still have not arrested the man who has a record of molesting an eight-year-old child. This is disgusting. If you think I am the only case, think again. There are many. People come to me because they have no other recourse. I am not an attorney and cannot represent anybody, but I can come here and lobby on their behalf.

There are many mothers such as Cindy Ball, Zach Warren's mother, and Andrea Wollman, who lost their children to situations that could have been prevented. The judiciary handled the cases improperly. In the Zach Warren case, a \$10,000 bail was set on a man who had a record of violence. He was a felon carrying a firearm who shot Zach Warren in the head. It is that simple. They are not keeping these people incarcerated and following up on the research. They appointed Judge Steven McMorris, who set \$1-million bail on this man. That is how it should have been in the first place.

PATTY PRUETT:

I submitted a series of articles regarding bad actions on the part of judges ([Exhibit G](#)). I am also a victim of the system and a witness to some of the events in Ms. Powell's testimony. I saw a detective in the sheriff's office tell Ms. Powell her daughter passed three polygraphs. One was given by a detective who was not certified to administer the test, and she was not charged. That is obstruction of justice and tampering with evidence. It all falls under ethics. Judges grant protective orders against people without evidence. A judge granted a protective order against me on behalf of a sheriff's deputy, who happens to be her brother. The brother has a protective order on her as well. I was not allowed to have witnesses testify, the judge refused to look at my evidence and granted the protective order. In his testimony, the judge said since Judge Robey Willis of Carson City granted this order last year, he might as well uphold it. If I could afford \$90 to get my transcripts, I would show them to you.

Judges grant temporary protective orders for their pals. I have no criminal background, have never been arrested and did not stalk an armed officer. I never spoke to that officer. One judge granted the protective order against me that was upheld by two other judges in the last year and one half. I am tired of it. I am tired of Ms. Powell's daughter being victimized and ignored by the sheriff and judges, which includes Anne Langer passing out information.

SENATOR NOLAN:

Legislators rely on factual and honest testimony of witnesses to make decisions. A prevailing statute says nonfactual and dishonest testimony constitutes perjury and those who testify are subject to the penalties of perjury. The previous testimony is disturbing if factual, and we assume that is the case. We should request staff to investigate allegations, and if they are true, we have an obligation to take a different direction. Senate Joint Resolution 2 does not address some of the issues raised; however, if the testimony was not factual, we should pursue the course of action to take with people who lead us in the wrong direction.

CHAIR AMODEI:

Ms. Eissmann, please obtain information on the allegations and present them at the work session on S.J.R. 2.

ALECIA D. BIDDISON (The Busick Group):

I will read my prepared testimony ([Exhibit H](#)) supporting S.J.R. 2. This system gives the public two opportunities to weigh in on the judge before whom they may appear—once prior to the Governor appointing the judge and again within two years when the judge comes up for retention vote. Voters will be provided knowledge and information in order to make the best decision. It is my hope you will support S.J.R. 2 and embrace a significant step towards achieving a stronger judiciary.

GARRET L. IDLE:

I will read my prepared testimony ([Exhibit I](#)) in support of S.J.R. 2.

VINCENT A. CONSUL (State Bar of Nevada):

I submitted a letter dated March 6, from myself to Senator Amodei with an attached article entitled, "Do We Really Elect Our Judges?" ([Exhibit J](#)). I support S.J.R. 2 and have some statistical information. Senator Raggio indicated this change switches the appointment system from one in which judges are appointed to open judicial seats to appointment at the front end. This is not a drastic change. The current system under the *Constitution of the State of Nevada* provides for the appointment of judges when a seat becomes vacant. This resolution would appoint judges up front. Statistics show Nevada already does this to a significant degree.

Approximately 18 months ago while serving as president of the State Bar of Nevada, I contacted Ron Titus, the Court Administrator and Director of the Administrative Office of the Courts. Mr. Titus oversees the Nevada Supreme Court as well as district courts, which are the subject of S.J.R. 2. I asked Mr. Titus to provide information on all judges of those courts and how they attained their first judicial position. The statistics were interesting.

When I did this analysis in September 2005, four out of seven Nevada Supreme Court Justices had attained their initial judicial position through the appointment process. They went on to rise from district court seats to the Supreme Court through elected positions, but the key here is their initial attainment of a judicial position was through the appointment process. I perused the numbers and four of seven Supreme Court Justices as constituted today attained their initial position through the appointment process, which is a rate of approximately 57 percent.

With regard to the district court, which is the other component of the judicial system addressed by S.J.R. 2, my September 2005 analysis showed of 61 district court judges, 24 attained their initial judicial position through the appointment process. That is an appointment rate of 40 percent. Two more judges must be added who, while elected to district court, attained their initial position either in municipal court or justice court through the appointment process, which raised the rate to 43 percent.

The Nevada Supreme Court initially appointed two judicial seats at the rate of 57 percent and district court judges were appointed at the rate of 43 percent. The total in 2005 was 68 judgeships between district court and Supreme Court with 30 attaining their initial positions through the appointment process. This is what S.J.R. 2 requests. Overall, the appointment of a judge to the initial judicial position is 44 percent; justice court, 40 percent; and municipal court, 47 percent. All numbers combined gave an appointment rate of 43 percent.

We are already halfway there. The practical application of the process in place has resulted in appointments of Nevada judges to their initial positions at the rate of 44 percent. I will provide the letter from Ron Titus containing the statistical information ([Exhibit K](#)).

SENATOR MCGINNESS:

Do the statistics also show how many times the judges have been elected since their appointment?

MR. CONSUL:

Yes, the chart prepared by Mr. Titus shows the history of how each judge attained their initial position, and subsequent elections to district court and the Nevada Supreme Court.

SENATOR MCGINNESS:

I look forward to seeing that information.

BRUCE T. BEESLEY (Vice President, State Bar of Nevada):

I submitted a position paper from the State Bar of Nevada in support of S.J.R. 2 ([Exhibit L](#)). The State Bar Board of Governors overwhelmingly voted to encourage S.J.R. 2 because of significant difficulties in judicial campaigns and public perception. An effective judiciary must be impartial and not subject to

improper or outside influence, and the public should perceive it as such. A system requiring hundreds of thousands of dollars in the case of district court judges and approaching \$1 million in the case of Nevada Supreme Court Justices lends itself to citizens, who appear before those judges and justices, perceiving that their opponents, who contributed to those judges, have an unfair advantage. That is a bad situation for our judiciary.

In 2002, the U.S. Supreme Court made a ruling, *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), that allowed judges to comment specifically on their position on a particular issue during their campaign. I anecdotally heard the justices of the U.S. Supreme Court felt the decision would lead to a debate on merits of various positions as well as candidates. Unfortunately, that has not proved to be the case. It has led to candidates promising their position as such and such on unions, child support or criminal defendants, which is inappropriate. You will not feel the judge with whom you are appearing is impartial if that judge, during his campaign, indicated his position on unions. The public needs to perceive the judiciary is impartial and the election system is injurious to that perception.

There is a problem with the considerable amount of time devoted to campaigning and raising funds in judicial campaigns. In his State of the Judiciary address, Chief Justice William Maupin indicated Nevada adjudicates 750,000 cases a year, which are a lot of cases for the limited number of judges and justices. Judges should be working in their offices, chambers and courts resolving those issues rather than raising hundreds of thousands of dollars to support their campaigns every six years and devoting their eight-to-five time to meetings and so forth.

Judges in the State of Nevada are allowed to solicit money directly from campaign donors, which is not allowed in many states. They are also not required to recuse themselves or give notice to participants who appear before them if the lawyer representing either party has contributed to their campaign. If judges believe they will not be affected by contributions, they are not required to disclose those or recuse themselves. This fact, as highlighted in *The New York Times* and *Los Angeles Times* articles, harms the perception of whether a person receives a fair shake in front of a particular judge for their position.

All of those things would be mitigated by passage of S.J.R. 2. It is time in Nevada, as well as the rest of the country, to get rid of contested elections for

judges. It would also make it easier to remove incompetent judges. A judicial evaluation committee composed of lawyers and members of the citizenry could do a studied evaluation of judges' qualifications and behavior over the last term and present it to the voters. Rather than 50-plus percent of the voters to get rid of a judge, it would only take slightly over 40 percent to get rid of a nonperforming judge. Voters would receive better information as to judges' qualifications and practices.

SENATOR CARE:

Is there any data regarding jurisdictions where certain campaign contributions are not permitted?

MR. BEESLEY:

Nevada judges are allowed to solicit campaign contributions. The fact that a judge has received a campaign contribution from a party appearing before him or a lawyer representing a party appearing before him does not have to be disclosed and does not necessarily disqualify the judge. I will see if there are statistics to that regard and submit them to you.

SENATOR CARE:

Do other jurisdictions have restrictions on campaign contributions to judicial candidates?

MR. BEESLEY:

Many jurisdictions do not allow judges to directly solicit campaign contributions.

SENATOR HORSFORD:

Please speak more about the Commission on Judicial Performance section of S.J.R. 2, specifically the makeup, appointment and value.

MR. BEESLEY:

The permanent Commission on Judicial Performance would consist of a certain number of lawyers who appear regularly before the judge, members of the public appointed by the Governor, some component representing the dean of the law school and a group of people in a position—either through involvement in the community or practice in the courts—with some idea of the judge's activities. The Commission would be required to undertake due diligence to determine the judge's reputation for: judicial temperament, practices, appearances by the people and time frame for resolving caseloads and matters

under submission. The Commission would be required to interview the judge and take input from the public regarding the judge's performance. Using standard criteria, the Commission would come forward with a recommendation whether to retain the judge. Criteria would indicate a strong recommendation to retain, a recommendation to retain or a recommendation not to retain. Those things exist in other states.

SENATOR HORSFORD:

Page 3, line 1 of S.J.R. 2 says "Not later than 6 weeks before the general election" the Commission will issue this report. Early voting starts within 30 days; does this mean only a 2-week notice of that provision? This may not be the appropriate panel for this question. I would like to clarify from whence that language came because the logistics sound difficult to implement.

MR. BEESLEY:

That is a valid point. Perhaps when this resolution was drafted, the early voting component was not considered. In a judicial evaluation, the Commission could begin its task earlier and report to the public in time to allow people to evaluate the results before early voting.

SENATOR HORSFORD:

Why do 60 percent of votes cast mean the judge is retained rather than 50 percent plus 1?

MR. BEESLEY:

I do not know the answer to that question.

MS. BIDDISON:

I participated in the drafting of S.J.R. 2 and can answer those questions, although Senator Raggio is the best person to answer. A 60 percent versus a 50 percent gives a more qualified and better performance picture of whether the judge should be retained. The 60-40 split is a percentage used successfully in other states, which is the reason I gave statistics on the Tennessee case with the 27 judges achieving 70 percent based on their retention vote. Timing of the review can be changed through a Committee amendment to ensure information is provided to the public in advance of early voting.

SENATOR WASHINGTON:

Are certain standards and criteria within the judicial review?

MS. BIDDISON:

The standards and criteria will be developed. One suggestion was to use an evaluation entitled CourTools, which has been used successfully in a number of states. A test case was done in Clark County, and a study is available.

SENATOR WASHINGTON:

The Committee would like a copy of that study.

MS. BIDDISON:

I will make the report to Clark County on using the performance measuring device called CourTools available to the Committee. Although used successfully in Clark County, it received resistance from judges. It is a thorough review process.

SENATOR WASHINGTON:

Would the review be available to the general public prior to the retention election?

MS. BIDDISON:

Yes, the performance review would be available to the public.

MR. BEESLEY:

Judges would all be evaluated by the same standards. A disparate amount of money would not be available for spending in one campaign or another. It would be an apples-to-apples comparison across the group of judges being retained.

BRIDGET ROBB PECK (Former Judge):

In April 2006, I was appointed by the Governor to district court and went through a contested election. The selection process was rigorous and the questionnaire came to 45 pages after completion. The questions encompassed my areas of practice, published cases to appellate bodies, scholarly articles, lawsuits against me, disciplinary complaints leveled against me, health, background and recommendations from attorneys, judges and the general public.

The selection board included the Chief Justice of the Nevada Supreme Court, members selected by the Board of Governors of the American Bar Association, and members selected by the Governor. During the interview, the panel

investigated my background, qualifications, education and judicial temperament. The panel was even-handed, politically neutral and equipped to study the candidate's background. The political process does not permit that type of activity.

During my campaign, I walked door-to-door in Washoe County. Voters frequently asked why the public votes for judges. They did not understand the process, did not particularly want to vote for judges and, many times, did not know the court for which I was running. I spent time educating people on the difference between the justice, municipal, and district courts and the Nevada Supreme Court, as well as the various duties of those judges. If we want an educated, experienced and well-tempered judiciary, we must do more than elect judges because the electorate is not informed.

It is difficult being a candidate for the judiciary. *Republican Party of Minnesota v. White* gives me the ability to speak on certain cases or issues before me but judicial ethics prevents that. It is improper and difficult for a candidate to speak out when he or she is in a position to make determinations. One side or the other will consider the judge partial and biased when or if their particular issue comes before him or her. That perception is damaging to our judiciary.

Judges need to make hard and unpopular choices. The third branch of government exists to safeguard citizens. It is difficult to make hard choices when a judge faces a contested election every six years. Senate Joint Resolution 2 solves the problem and provides Nevada an impartial and unbiased judiciary.

I welcome the evaluation process. Only Clark and Washoe Counties evaluate judges. The evaluation in Washoe County is done by a limited number of attorneys from the Washoe County Bar Association who appeared a number of times before the judge and had knowledge of the judge's performance. Clark County's evaluation is done by a newspaper. Judges across the state would benefit from one uniform evaluation.

SENATOR WASHINGTON:

I received numerous e-mails concerning S.J.R. 2, and most are against the resolution. Please respond to one particular comment.

Please vote no on S.J.R. 2. I do not want our judges to be appointed. I want to maintain the right to vote for our judges, for the Supreme Court and the district court. It seems our local and state and federal representatives are working hard to return our republic to a socialistic monarchy.

This is the voting public. How do you reply to individuals who say their right to vote for Nevada Supreme Court and district court judges is being taken away?

JUDGE ROBB PECK:

That is not my perception of S.J.R. 2. The voting public still has the retention vote, which is important. I went to law school in California when there was a contested retention election with regard to a Supreme Court justice who was not retained. Citizens have an important role. The 60-percent number is significant. The retention vote is taken seriously, and this resolution preserves it.

SENATOR MCGINNESS:

You indicated people were unable to make an informed decision in selection of judges. Why is the decision to select judges more difficult than selecting governors or state senators?

JUDGE ROBB PECK:

In the case of governors or senators, candidates may talk with the electorate regarding their position. Judges are not able to do that. *Republican Party of Minnesota v. White* gave judges the ability to speak on issues before them although they cannot speak on specific cases. The problem is taking sides. When a judge takes sides, has a platform and becomes a candidate as opposed to a judicial officer, there is no longer an unbiased judiciary and the system is damaged.

SENATOR CARE:

Would the Commission contemplated in this resolution be free of the external political process? For example, someone of influence in the state might have a friend who sits on the Commission and says, "Let me make a phone call."

JUDGE ROBB PECK:

I am not in a position to guarantee the Commission would be free of that type of political pressure. In my experience, when the evaluating committee consists

of more than one or two people and the members are from varied backgrounds, those concerns are alleviated. The way the resolution is drafted contemplates the Commission consisting of six individuals. I suggest that number be expanded by a couple of positions. Mr. Beesley's suggestion that the Dean of the William S. Boyd School of Law serve as a member of the Commission also alleviates concern. More members narrow the chances of one member hijacking the Commission. People appointed to Commissions do their best.

SENATOR CARE:

In striving for judiciary independence, there would also be independence among those responsible for appointments.

JUDGE ROBB PECK:

I assume members of the evaluation and selection committees would be the same. The selection committee would be balanced to include only so many members from each political party to make it well-rounded for this type forum.

RICHARD J. MORGAN (Dean, William S. Boyd School of Law, University of Nevada, Las Vegas):

I speak as an individual because the Boyd School of Law does not take a position on this matter. I support S.J.R. 2 because an independent, impartial judiciary is essential to the preservation of the freedoms and rights of all voters. In the final analysis, taxpayers are at the hands of the courts. The Legislative Branch and Executive Branch are the majoritarian branches of government, elected in partisan campaigns by the majority, and you do the will of the majority a great deal of the time. It is supposed to be that way.

Judges are the third, non-majoritarian branch of government. They take unpopular positions and uphold the *Constitution of the State of Nevada* and the nation in the face of legislative excesses, police abuses and so forth. We want a good, strong and independent judiciary. I would say to Senator Washington's constituent, "By electing judges, you ultimately weaken your protection as a citizen of the United States because a judge who is elected will have two eyes on the electorate and not on the Constitution and the rights and freedoms of the people."

In this day and age, our rights and freedoms are threatened in all sorts of ways. Externally and internally, a fair, impartial, strong and independent judiciary is required. Judges should not be politicians—but they are at the moment. Judges

campaign, raise funds, call each other names and cast aspersions. As soon as the campaign is over, they don black robes and have the majesty and dignity of the court after having been called every name in the book by their opponents. It will only get worse. *Republican Party of Minnesota v. White* will lead to partisan judicial elections, and there will ultimately be no difference between elections for judges and senators.

Another aspect of elections is fund-raising, which takes a tremendous amount of judicial time and results in the appearance of lack of impartiality. If a judge raises a substantial amount of money from a lawyer or a party appearing before him or her, the losing side doubts the judge's impartiality. People want to get a fair shake from the courts.

Senate Joint Resolution 2 is a better approach. Although some politicking affects the selection process, the money and negative campaigning will be eliminated, making two steps in the right direction. The Governor is politically accountable for the selection of bad judges. No one is held accountable for selection of bad judges. The voting public is responsible for selecting mediocre or bad judges. This resolution holds the Governor politically accountable.

JAMES W. HULSE (Common Cause/Nevada):

I am a retired professor from the University of Nevada, Reno and, for many years, the president and vice president of Common Cause/Nevada. We worked on this issue for a long time. Much of what I have to say has been eloquently said by Senator Raggio, members of the State Bar of Nevada, Judge Robb Peck and Dean Morgan.

I will read a paragraph from a report issued by the Progressive Leadership Alliance of Nevada (PLAN) entitled "The Supreme Jackpot II—A Study of Campaign Contributions to Nevada Supreme Court Candidates 2004" ([Exhibit M](#)). It is a bit out of date because it focuses upon the 2004 election. In the report, a recommendation is made that a commission or study group be appointed, which has been trumped by Senator Raggio and S.J.R. 2.

The report says:

As this fine study by PLAN shows, the amount of money pumped into the campaigns for Justices of the Nevada Supreme Court has escalated in recent years. Justices typically receive substantial

campaign contributions from special interest groups who often have legal cases pending in the court. This happens even when incumbent justices are unopposed!

Something needs to be done. We have gone beyond the appearance of corruption. The public, attorneys and judges are disillusioned with the current way Nevada selects and elects judges. I join Senator Raggio in saying Nevada has been fortunate in having good justices and judges, and many came in by the appointment process.

Laurance M. Hyde, Jr., retired dean and founder of the National Judicial College at the University of Nevada, Reno, said S.J.R. 2 has been well-conceived and drafted, which is strong testimony in favor of the resolution.

SENATOR WASHINGTON:

Please explain why the United States founders considered appointing judges a better procedure than voting for them.

MR. MORGAN:

In the federal system, judges are appointed for life by the United States President, subject to Senate confirmation. There is no retention election, and judges are removable only on impeachment. The reason for this was to maximize the independence of the judiciary. The framers of the U.S. Constitution and authors of the Federalist Papers wanted judges to be strong and independent in the protection of the constitutional rights and freedoms of the citizens. In the checks and balances scheme, the two majoritarian branches, the executive and legislative, are checked by the judicial branch, which is non-majoritarian.

States have a different kind of scheme with separation of powers. The executive, judicial and legislative branches have assigned duties and responsibilities and do not usurp one another's powers. Many states choose to elect judges. Nevada made the choice when its Constitution was adopted. We suggest voters of Nevada be given the opportunity to join other states that have amended their constitutions to move away from the election process toward the federal system. Although this would not be the federal system, it would provide an opportunity for voters to cull out mediocre or poor judges in a retention election every few years.

SENATOR WASHINGTON:

Several election cycles ago, a petition was on the ballot to institute term limits on both legislators and judges. Judges deemed that provision in the petition unfit and unconstitutional. Based on the *Constitution of the State of Nevada*, why would it be unconstitutional for judges to have term limits but not legislators?

MR. MORGAN:

It may have been a separation of powers issue.

SENATOR CARE:

At times, a candidate wins office but has campaign debt. Has PLAN considered contributions to judicial candidates who win but need to retire their debt?

MR. HULSE:

Paul Brown of PLAN in Las Vegas did the study, although we helped fund and distribute it. I was not privy to the study and do not know whether Mr. Brown addressed the problem of retiring debt. Common Cause deems collecting money to retire debt as potentially corrupting and appearing as a possible conflict of interest. Common Cause worries when a public official receives money for elective office. Judges suffer from the perception that money can buy influence.

JANINE HANSEN (Nevada Eagle Forum):

The national president of Eagle Forum is Phyllis Schlafly, an attorney who wrote a book titled *The Supremacists* which addresses the imperial judiciary and national abuses by unelected federal judges. Two issues are the Pledge of Allegiance and Ten Commandments. The Nevada Eagle Form is concerned S.J.R. 2 will create a system similar to the federal judiciary, which is unscrutinized, and the concerns and will of the people are ignored. It is an undemocratic way to select judges independent of the people.

A time frame of six weeks before the general election is not adequate with the primary three months ahead. We publish the voter guide shortly after the primary and always include the Nevada Supreme Court. We ask the Committee to consider the time frame issue in order that voters receive some nominal information.

Page 4 of S.J.R. 2 addresses the manner in which individuals will be selected for the Commission. Line 15 indicates there should not be more than one member from the same political party. Once again, we see minority parties left out of everything, and they will be left out of this as well because there will be one Republican and one Democrat.

The Independent American Party has over 44,000 members and is the third largest party in Nevada; the Constitution Party is the third largest in the nation. The reason we have almost tripled in the past few years is due to people's dissatisfaction with the status quo, which ignores the will of the people. The discussion of the uninformed electorate was interesting. We all feel that way at times when running for office or working on issues, but many issues do not surface to people's awareness. One issue in regard to the courts was *Governor v. State Legislature*, 119 Nev. 277, 71 P.3d 1269 (2003). It was due to fear that the Chief Justice did not run again and the reason one of the justices who wrote the decision was defeated. The public understood what happened well enough and decided to change judges.

Senate Joint Resolution 2 will secure the good-old-boy system as a closed shop allowing no outsiders. My brother, Joel Hansen, ran for the Nevada Supreme Court and led in the polls until the Governor went on automated calling to support my brother's opponent. A person like my brother, with a history of battling controversial issues in the courts, including the Nevada Supreme Court, would never find acceptance in this closed shop.

MS. HANSEN:

Previous testifiers said the Governor would be the one to blame, but that is not the case. This legislation requires the Commission on Judicial Selection to allow the Governor three appointments. If he refuses those three, he is allowed three more. He is limited to those three appointments. The Governor is not to blame; the Commission is to blame. Appointee names will probably be unbeknownst to the public at large, thereby keeping them an uninformed electorate because they cannot vote on appointees.

Senator Care brought up the issue of whether the Selection Commission will be political. You bet they will. There is no way to avoid it. You do not live in the real world if you think they will not be subject to political appointment. Controversial people who do not fit the mold will be excluded.

It is important to look at review standards with which people are not necessarily concerned. An example was their opposition to those who supported the *Governor v. State Legislature* decision. The Nevada Supreme Court was embarrassed by that decision and rewrote it to no longer use that standard. They were influenced by public concerns. It is good for them to be scrutinized by the public and subject to their direction.

Do we want stability? If stability is corruption, we do not want stability. Do we want impartiality? Not if impartiality does not expose what is really happening. We want to protect the right of people to be judged by those who reflect their particular point of view. In states such as Massachusetts and New Jersey where people have supported traditional marriage, judges have forced things such as same-sex marriage and civil unions in opposition to the desires of the legislature and people. We do not want an imperial judiciary that is not subject to review by the people who are subject to its decisions.

We voted on this in the past and are glad to vote on it again. We heard a political action committee will be established to promote taking away people's right to vote. We will do what we can to preserve that right. Although we understand the problems in the judiciary, we do not feel S.J.R. 2 is the answer. The discussion today might help without radically changing the present system that allows people the right to vote.

SENATOR CARE:

The e-mail read by Senator Washington is typical of some I received. The refrain is, "You are taking away our rights." Let me ask you about the will of the people. Let us suppose a candidate for state court judge is bankrolled. He knows it will be a popular issue and proclaims, "I promise if you elect me, at every single bench trial for drinking under the influence, I will convict the defendant; I do not care what the evidence says." Or the family court judicial candidate who says, "I will always give custody to the mother because that is the way it ought to be." Would that bother you?

MS. HANSEN:

Certainly, it would bother me. Those problems exist at all levels wherever people are elected and might be scrutinized at some point in time. There have been abuses in a system that apparently is 44-percent appointed. There are abuses in government, which is why the price of liberty is eternal vigilance. We

must always be vigilant in electing judges. Citizens are not always as vigilant as they should be.

LYNN CHAPMAN (Vice President, Nevada Families):

The City of Ashland, Oregon, published a white paper on election versus appointment in 2005, which stated the election of judges connects government to the citizens. The community retains more control over local justices, and an elected judge can better withstand political pressure. I am neither Republican nor Democrat, and I am not picking on anybody. An interesting example of things that can happen was illustrated by an August 8, 2003, article in the *Gotham Gazette*:

In order to become a state Supreme Court Judge in Brooklyn, a candidate must be selected by Chairman Norman. Those candidates are then referred to a screening panel that is also appointed by Chairman Norman. The 42 Democratic District leaders, who often have strong ties to the party, 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 might be a better way to invent a wheel that has been working for a long time, but it does not always work. The International Association of Women Judges, at their eighth biennial conference in May 2006, said:

Let's not forget that 150 years ago many states changed to election of judges to avoid politics, to keep the governor from appointing only his buddies or his largest campaign contributor as a judge. Many have argued that an elective system favors women and minorities who are not "insiders" and would never be appointed to the bench. When these outsiders are competent and talented, they can win elections. Deborah Agosti, former Chief Justice of Nevada, favors election of judges, saying she could never have become a judge, much less Chief Justice, in an appointive system.

I ran for Washoe County Public Administrator and neither raised nor spent any money, had no signs, did not campaign and received more than one-third of the

votes. I am not in favor of S.J.R. 2; most of my other concerns were addressed by Janine Hansen.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood):

In the state of Vermont, if you rape a little girl or molest a little boy, you get 60 days in jail. There have been several of those cases in the last couple years. That type of thing follows a merit selection through nominating committee. Corruption is terrible, and the Legislature needs to do something about it. It does not have a thing to do with how judges came to their positions. They, personally, are corrupt. There will be no magic bullet in going to this Commission on Judicial Selection.

Senator Care's hypothetical phone call takes place in states with that type of system. The idea that bad influences come out of this is nonsense. The idea that I can buy a judge for \$100 or \$1,000 is not true. We need laws that deal with judicial misconduct, and we do not need to change the selection method to accomplish it.

Pennsylvania has partisan elections—we have nonpartisan elections. Pennsylvanians run as Democrats and Republicans and try to convince people they will be decent judges. You can sense what a person is by talking to him or her. It is good for judges to muddy their skirts and talk with the peasants to see what they are thinking. The notion that people who are not lawyers cannot have informed decisions on judicial affairs is nonsense.

JOHN L. WAGNER (The Burke Consortium):

Senator Raggio made good arguments; when he speaks, I listen. There are abuses in the system. I am concerned with Senator Nolan's comments that we investigate charges made by the three earlier testifiers in regard to certain judges. Judicial misconduct should be rectified; however, S.J.R. 2 will not take care of it.

In the last election, State Question No. 9 concerning appointment of the Board of Regents was voted down by a majority of voters. People will not pass appointment of judges because they did not approve gubernatorial appointment of certain members to the Board of Regents.

SHEILA M. WARD:

I will read my prepared testimony ([Exhibit N](#)) opposing S.J.R. 2.

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CHAIR AMODEI:

The hearing is closed on S.J.R. 2 and opened on S.B. 148.

SENATE BILL 148: Revising certain provisions of the Uniform Principal and Income Act (1997) governing disbursements made from principal and income. (BDR 13-903)

LEWIS SHUPE:

I will read my prepared testimony ([Exhibit O](#)) in support of S.B. 148.

SENATOR CARE:

I would like a copy of your remarks for my review. You are seeking an amendment to a Uniform Principal and Income Act adopted in 2003. As a Uniform Law Commissioner, I know something about this. I forwarded your proposed legislation to the Chicago headquarters for the National Conference of Commissioners on Uniform State Laws (NCCUSL). We are allowed flexibility in the language on uniform acts from state to state, but it is discouraged. Please send a copy of your statement; I will forward it to Chicago for review to see whether NCCUSL is amenable to changing the Uniform Act. Although the decision is ultimately up to the Legislature, we are interested in hearing from Chicago.

MR. SHUPE:

You should have a copy of my letter to Senator Wiener ([Exhibit P](#)), and I will send a copy of my statement. May I complete my statement?

CHAIR AMODEI:

You will be allowed to complete your statement. I will put S.B. 148 on a work session, and you will receive notice. Prior to the work session, S.B. 148 will be reopened, and you will have the opportunity to provide additional testimony on this matter. This gives you a chance to work with Senator Care and confer with Messrs. Lee, Mowry and Uffelman, who are present to testify on S.B. 148. Those gentlemen also have the opportunity to testify upon the reopening of the bill.

Mr. Wilkinson is available to coordinate discussions between now and the work session and will inform you of the activities.

KEITH L. LEE (Sutton Place Limited):

I represent Sutton Place Limited, which is a Nevada limited liability company. Accompanying me is G. Barton Mowry who also represents Sutton Place Limited. I discussed a proposed amendment ([Exhibit Q](#)) with Senator Care, which would amend two different provisions not included in Senator Wiener's bill. Mindful of Senator Care's interest in the uniform laws, he forwarded the amendment to Chicago for NCCUSL's comment. We understand they heard from our people on this issue as well. I will wait for the work session for any further comments.

WILLIAM R. UFFELMAN (President and CEO, Nevada Bankers Association):
The Nevada Bankers Association stands neutral on [S.B. 148](#).

G. BARTON MOWRY:

I direct my comments to Senator Care. I have no objection and understand your reluctance to change any of the uniform acts. In directing comments to NCCUSL in Chicago, please let them know Nevada adopted both the Uniform Prudent Investor Act and the Revised Uniform Principal and Income Act as companions. We also crafted a notice of proposed action separate from the uniform act and I commend this Committee and the Legislature for passing it.

One of the amendments sought on behalf of Sutton Place Limited clarifies the notice of proposed action for a family trustee who would otherwise be disqualified to exercise the power to adjust. The power to adjust, which has been part of this since 2003, would solve Mr. Shupe's problem from the concept of total return investing and the like.

There is ability to take money from the principal component or compartment of a trust and reclassify a portion of it to income. In the past several years, fixed income rates have been historically low on interest rates, and income beneficiaries have suffered. That is part of the impetus for both the Uniform Prudent Investor Act and the concept of total return investing, as well as the power to adjust, both of which were adopted.

CHAIR AMODEI:

The hearing will be reopened on [S.B. 148](#) before the work session and scheduled to convenience Mr. Shupe.

Due to the time, [S.B. 174](#) will be rescheduled.

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SENATE BILL 174: Provides that an expression of apology or regret made by or on behalf of a provider of health care is inadmissible in any civil or administrative proceeding brought against the provider of health care based upon alleged professional negligence. (BDR 4-794)

There being no further business to come before the Committee, the hearing is adjourned at 11:08 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____