

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

**Seventy-Fifth Session
February 12, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:51 p.m. on Thursday, February 12, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)) 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/75th2009/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:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Harry Mortenson, Chair
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

Assemblyman Ty Cobb (excused)
Assemblyman William C. Horne (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Judie Fisher, Committee Manager
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

None

Chairman Mortenson:

[Roll called.] If anyone in the room has noise makers like cell phones, please silence them. Remember, the meeting is being audio recorded; it is also being broadcast live on the Internet, and if you speak, even if you are not speaking into a microphone, your voices might be picked up. I encourage testimony before the Committee from lobbyists and concerned citizens because they provide us with important information. If you plan to testify in front of the Committee, please sign the attendance roster just inside the door. If you sign that roster, even if you are not going to speak, we can get in contact with you to see if you would like to receive information about any measure you may have expressed interest in. If you have materials to distribute to the Committee, please be sure to provide 17 copies. I would like to remind everyone that *Nevada Revised Statutes* (NRS) 218.5345 makes it a misdemeanor to knowingly misinform any of the Legislators, whether it is here in this building or outside it, on any particular measure that we may be considering. If you are testifying before the Committee, be sure to turn the microphone on prior to speaking and speak clearly. If there are several people at the witness table and they interchange speaking, they must re-identify themselves each time they speak so the secretary, when transcribing the meeting, will know who is talking because it is not always obvious.

Since we are going to be here in Carson City for about 120 days and this is going to be a short meeting, I would like to ask our Committee staff to introduce themselves and give us a short résumé. For instance, tell us how long you have been in the Legislature and what your duties have been.

Patrick Guinan, Committee Policy Analyst:

I have been with the Legislative Counsel Bureau since 2002. I started working in Constituent Services and then moved over to the policy-side. Initially, I worked with the Senate Transportation Committee and this will be my second

session as Policy Analyst for the Assembly Elections, Procedures, Ethics, and Constitutional Amendments Committee.

Chairman Mortenson:

Next and very important is Judie Fisher, my Committee Manager and also my personal attaché.

Judie Fisher, Committee Manager:

I have the honor of working for you, Chairman Mortenson. I am a "newbie." This is my first session, so be patient with me and, hopefully, we will work our way through.

Chairman Mortenson:

How long have you been in Carson City? Do you have a husband and children?

Judie Fisher:

I am a native Nevadan. I have seven grandchildren; three from scratch and four adopted. I have a husband and am just a typical, everyday person. I sell eggs because my granddaughter is a "clover bud" in 4-H, so if you need fresh eggs, I have fresh eggs.

Terry Horgan, Committee Secretary:

I have had a kind of checkered career here. My first session was in 1995. I was going to be someone's personal attaché but was asked to be a committee secretary instead. A little voice told me to say, "Yes," and it worked out well because that is what I am definitely suited to do. At the end of that session, Bob Crowell approached me and asked if I would help him lobby the next session and I stupidly said, "Yes." I did not like it, but I helped him in 1997 and 1999 and then came back here to what I think I do best.

Cheryl McClellan, Committee Assistant:

I spent 20 years working for the California Assembly and Senate. I worked for Congress in Washington, D.C. This is my first session working for the Nevada Assembly, so if you will welcome me and be patient, I will catch up.

Chairman Mortenson:

Now, we will move on to the Committee members. We have a lot of new members who I do not know very much about.

Assemblyman Settlemeyer:

I am the representative for Assembly District 39 which includes all of Douglas County, 730 acres of Carson City which does not have even one eligible voter,

and also those individuals in Incline Village who have lake front property. I am also Chair of the Carson Valley Conservation District as well as Chair of the Small Business Administration of Region 9. In my free time, I run a ranch.

Assemblyman Hambrick:

I represent Assembly District 2 which is in the northwest portion of Las Vegas. It encompasses a part of Peccole Ranch called The Lakes, a good portion of Summerlin, and a third of Sun City. In my professional career, I started with the United States Secret Service assigned to the White House in the early '70s. I spent 30 years in federal law enforcement, then worked for the Departments of Commerce and Environmental Protection, along with a few others. My last assignment was with the Department of Veterans Affairs in Los Angeles where I was in charge of the investigative unit that covered 11 western states. I was involved with Little League Baseball for 32 years and am currently Chairman of the Nevada Juvenile Justice Commission.

Assemblyman Ohrenschall:

It is an honor to be on this Committee again. I got to serve on this Committee last session, but as a freshman I did not know very much about it and did not think it was very important. However, I learned last session and also during the election, when I saw attorneys outside just about every polling place in Las Vegas, how important the work of this Committee is in ensuring people's right to vote and having their votes counted. One of the things that inspired me to run for office and go to law school was an election worker in Las Vegas who did not really know the law. The election worker told an elderly voter that he could not have who he wanted in the voting booth with him to help him use the new machine; he had to have a staff member help. Ever since resolving that issue, I have been inspired to help resolve similar problems. It is great to be here with you again, Mr. Chairman.

Assemblyman Segerblom:

I represent District 9, and this is my second session. My claim to fame is that I am a fourth-generation legislator. All of us on this Committee keep coming back. I do have an interest in the Legislature itself, the institution; and this time I have a bill to have annual sessions. I doubt it will go far, but eventually I would like to get that passed. This is a great institution, but it could be made greater with annual sessions.

Assemblyman Munford:

To me, it is really an honor to serve on this Committee and also to be serving in my third term. I appreciate the confidence and positive feeling my constituents have in me. Elections and Constitutional Amendments is a very valuable

committee and why I made it part of my "wish list" to return to it. I have enjoyed every aspect of it and look forward to continuing with the work this session.

Assemblywoman Gansert:

I am Heidi Gansert, representing Assembly District 25, and this is my third session on this Committee. I really like this Committee and appreciate being here because I like elections and constitutional amendments. I am from Reno. I was born in Reno, my father was born in Reno, and my family were miners from Round Mountain originally. I have been married for 22 years and have four children.

Assemblyman Conklin:

I am Marcus Conklin and have been on this Committee for four straight sessions. I am Chair of the Commerce and Labor Committee and am glad to be here. You can always count on me to argue with you on just about anything, so I look forward to another one of those sessions.

Assemblywoman Koivisto:

I am Ellen Koivisto and I represent District 14 in northeast Las Vegas, south of the air base. This is my seventh and final session in the Assembly. I have 4 children; have been married 47 years; and have 13 grandchildren.

Assemblywoman Smith:

This is my fourth term. I represent Assembly District 30; I live in Sparks and the District includes a part of Sparks, a part of Washoe County, and a part of Reno. This is my first time on this Committee, and I am excited about sharing some new experiences. I have a lot of learning curves in this session with my new assignments, so you will have to be patient. I have been married a long time and have three children and two granddaughters.

Assemblyman Kihuen:

I have been in Las Vegas for the last 15 years. I was born in Mexico and have been in elected office since 2006. Prior to being elected, I worked at the College of Southern Nevada. I also worked for many political campaigns, and that is part of the reason I enjoy being a member of the Elections Committee. I am not married and I have no children yet, but I am looking forward to a time when I will have kids. I am happy to be here.

Chairman Mortenson:

I came to this state 47 years ago with Los Alamos Scientific Labs as a nuclear physicist. We were going to build a rocket to go to Mars, but Lyndon Johnson

did not like that program very much; so, after eight and a half years, he cancelled it. I did various things for a while including scientific consulting for Lockheed and for the State of Nevada before I became an Assemblyman. I have been married 51 years and also have 13 grandchildren.

This is an informational meeting. We will hear a short history about the initiative and referendum process from Patrick Guinan, and then you will hear from me.

Patrick Guinan:

You should all have copies of a document entitled "A Short History of Nevada's Initiative and Referendum Process" ([Exhibit C](#)). Chairman Mortenson asked me to put this together based on the understanding that this Committee will be dealing with the initiative petition process this session. [Mr. Guinan read from ([Exhibit C](#)) to the Committee.]

Assemblyman Conklin:

Are you familiar with the states and the types of initiative signature-gathering criteria that they have?

Patrick Guinan:

I am. I do not know the numbers verbatim but I have lots of charts I can refer to and can probably answer some questions for you.

Assemblyman Conklin:

Not every state has a geographic signature requirement, but most do. Twice our laws have been struck down by the Ninth Circuit District Court. Both times that Court ruled a violation of equal protection—one person/one vote. But they have not struck down other state's laws such as Utah's, Idaho's, Washington's, or Massachusetts'. Three of the states I just mentioned are in the Ninth Circuit and all three of those states have systems either like the one that was just struck down or the one that was previously struck down. It is odd to me that the State of Nevada has struggled so hard for something that has been in our *Constitution* for 80 years or more, yet we are the state that is losing the battle while other states have the same protections for their population that we cannot have. Do you have any idea why that might be the case?

Patrick Guinan:

The case that struck down Nevada's geographic signature requirement was based on a case in Idaho where their geographic distribution requirement was also struck down. I believe Utah had a similar problem although they may have alleviated that. At present, I believe Idaho no longer has a geographic

requirement. I believe Idaho and Nevada are in the same boat on that subject. You are correct. There are a lot of states across the country that have geographic signature requirements, for instance, you named Massachusetts. As far as I can tell, the reason they have not been struck down at this point is they have not been challenged. There is also an issue of population distribution. In a state like Massachusetts, the population distribution may be so close from county to county that there is not enough variation in population for them to find it disproportionate. It depends on lots of factors. Typically, states that have dense, urban populations and dispersed rural populations have more problems with this kind of issue than states that are densely populated from border to border. You must take into account the distribution of population and the sheer size of the state. Another factor is whether or not anyone feels as though they want to challenge it. In Nevada, we are a fairly fiercely independent group of folks and tend to challenge things in court that we do not like. That may have something to do with it, too.

Assemblyman Conklin:

An issue we dealt with last session was how to balance the will of the majority with the rights of all human beings, including the minority. The framers of the *U. S. Constitution* had the same problem. We have that issue now because our signature gathering process was struck down. Now, we have a 10 percent signature collection requirement, and all those signatures can be collected in Clark County. One county can rule all. We had a rule which required obtaining the necessary signatures from 13 out of our 17 counties, so at least you had to capture a few more people; some urban and some rural. Last time, you had to go to all the counties, and each one was equally weighted based on its population. That met the one person/one vote legal standard except for the Ninth Circuit Court of Appeals' standard. The only thing left to review this session is a resolution from the last session that concerns congressional districts. Again, from a sheer numbers standpoint, all the signatures could come from Clark County. How is that any protection for the minority? Has the court ever taken up that issue? We dealt with it in the *U.S. Constitution*. We created a bicameral legislature; representation in one House that was based on population and representation in the other that was based on having the same number for every state so that the highly populated urban bases would not run over the rights of the rurals. The options we have before us, and they seem to be the only ones remaining to pass, simply trample upon the Founding Fathers' beliefs and the issues they had in forming our government. Who is going to stand up and protect that?

Chairman Mortenson:

I think what the courts want is districts that are equal in population because if one is very small, a few thousand in one small county can essentially veto what millions of other people want in the state. Assembly Joint Resolution No. 1 of the 22nd Special Session was a measure that was created in a panic by our leadership. I think it is an excellent and well balanced measure. It uses congressional districts, but the largest majority in Congressional District 2 is in the north. I doubt seriously if you could collect all the signatures in Clark County. Two-thirds of the population in Nevada is in the south and one-third of the population is in Congressional District 2. If we were to pass A.J.R. No. 1 of the 22nd Special Session, the north would have a one-third say and the south would have a two-thirds say, which is sort of in proportion to the population.

Assemblyman Conklin:

Mr. Chairman, with all due respect, I have run the numbers. It is based on voting in the previous election. There are enough qualified electors in Clark County, based on 10 percent of that district, that you could easily gather all the required signatures from every congressional district in Clark County alone.

Chairman Mortenson:

Let us leave discussion on this issue for another session when we are considering some of these measures.

Assemblyman Segerblom:

To address Mr. Conklin's issue, when the original *Constitution* was created, each state had two Senators and the Representatives were apportioned by population. Then, the 14th Amendment was passed with its equal protection clause. In the 1960s, the Supreme Court ruled that the 14th Amendment required one man/one vote in the states. Even though under the federal *Constitution*, voting for United States Senators does not equate to one man/one vote, in state elections, which includes referenda, you must have one man/one vote. Unfortunately our law, which was designed to protect the smaller counties, does not meet that criterion. Back in the early 1960s, each county in Nevada had one state senator, but that was ruled unconstitutional. That obviously would not meet the one man/one vote rule today, and that is what we are living under. That is the reality, and I do not know how we are going to address the issue and go back to where we were. We are just going to have to deal with making sure that, whatever form we use, each person's vote counts the same.

Assemblyman Munford:

When I arrived in Nevada in the 1960s, even Assembly districts in the south were run at-large. Then that was changed into districts to give each person one vote. We are wrangling with this problem just as the Founding Fathers did.

Chairman Mortenson:

I will continue with the Committee Brief that was prepared by Patrick Guinan. [Chairman Mortenson read from the Brief ([Exhibit D](#)).] I have been a member of this Committee since its inception; this is my sixth session on the Committee. One thing I have learned in this Committee is that the voters of Nevada are very, very cautious about constitutional amendments. They are very skeptical and rarely are constitutional amendments approved. Another thing to remember is that there can be what the court perceives as "impermissible" burdens even if the criteria seem as though they would be okay. If you burden the initiative system too much, it has a good chance of being struck down.

Looking ahead this session, I have a request still in bill draft form that proposes to amend the *Nevada Constitution* to authorize the Legislature to convene special sessions of the Legislature under certain circumstances. This measure passed twice in previous sessions and went on the ballot a year ago, but the people rejected it. I thought it had a very important purpose. One of my arguments at the time was that if you have a rogue Governor and you need to impeach him, he certainly is not going to call a special session to impeach himself. That did not respond with the voters a few years ago, but I put that bill draft request in again and perhaps it will go through. We are the Legislative Branch of government. If an emergency arises, we should be able to call ourselves into session and address that emergency.

Another measure will be Assemblywoman McClain's measure, originally requested by Assemblywoman Womack. That resolution proposes to amend the *Nevada Constitution* to allow a statewide lottery under certain circumstances. That hearing should draw a lot of attendance.

Senator Washington has a resolution to remove term limits. The Assembly Minority Leader proposes to amend the *Constitution* to revise the procedure for reapportionment. Finally, we have a Committee bill draft request that would revise provisions governing a petition for an initiative or referendum and would fill the vacuum that was created when the courts struck down our constitutional provision for initiative petitions.

I have always enjoyed this Committee. We do not have a lot of bills, but I think our bills are extremely important because once they are passed they become part of the *Constitution*, which is the most stable part of our legal system.

Assemblyman Munford:

I always thought a referendum meant a measure that would be referred to the Body and did not need a vote of the people. It was just referred to the Legislature, and we voted on it almost like an initiative, but it did not need signatures. Is that correct?

Chairman Mortenson:

If you want to develop legislation as an individual, you find your Assemblyman or Senator and ask if that individual will sponsor it. If you use the petition process, you are essentially trying to force it onto the Legislature. You still have to follow the procedure of collecting 10 percent of the signatures of the people who voted in the previous general election. Because we have a void in our *Constitution*, you can collect signatures from anywhere you want to in Nevada. There is no geographic requirement at all, and that is what they are doing now.

Assemblyman Munford:

It seems all the emphasis is on initiatives, but people never say too much about the referendum process.

Chairman Mortenson:

This is called an indirect initiative. Ten percent of the people can come up with a law and send it to the Secretary of State, and he presents it to the Legislature. If the Legislature chooses to enact it, then it becomes law. If the Legislature refuses and rejects it, the Secretary of State puts it on the ballot at the next general election. If it is passed a second time, whether the Legislature likes it or not, it becomes law. That law then cannot be changed in any way for three years.

Are there any other comments? [No answer.] If not, I am going to adjourn the meeting of the Committee on Constitutional Amendments; however, Mrs. Koivisto, Chair of the Committee on Elections, Procedures, and Ethics, would like to introduce a Committee bill draft.

Chair Koivisto:

This is a concurrent resolution that needs to be approved as a Committee introduction.

BDR R-756—Directs the Legislative Commission to conduct an interim study of issues relating to women incarcerated in Nevada. (Later introduced as [Assembly Concurrent Resolution 5.](#))

ASSEMBLYMAN CONKLIN MOVED FOR COMMITTEE
INTRODUCTION OF BDR R-756.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
Is there any discussion or comments on the motion? [No answer.]

THE MOTION PASSED. (ASSEMBLYMEN COBB AND HORNE
WERE ABSENT FOR THE VOTE.)

That is all the business we had. We are adjourned [at 4:41 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair
Constitutional Amendments

DATE: _____

Assemblywoman Ellen Koivisto, Chair
Elections, Procedures, and Ethics

DATE: _____

EXHIBITS

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

Date: February 12, 2009

Time of Meeting: 3:51 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	C	Patrick Guinan, Committee Policy Analyst	"A Short History of Nevada's Initiative and Referendum Process"
	D	Patrick Guinan	Committee Brief