

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

**Seventy-Fifth Session
March 26, 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, March 26, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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:

Assemblyman Harry Mortenson, Chair
Assemblywoman Ellen Koivisto, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

Assemblyman Harvey J. Munford (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

James Hardesty, Chief Justice, Supreme Court, State of Nevada
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada
Cam Ferenbach, Vice President, State Bar of Nevada, Las Vegas, Nevada
Vicenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada
David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State
Alan Glover, Clerk/Recorder, Carson City, Nevada
Larry Lomax, Registrar of Voters, Clark County, Nevada
Juanita Clark, Member, Charleston Neighborhood Preservation, Las Vegas, Nevada
Michael Alonso, Reno, Nevada, representing Terrible Herbst, Inc., South Las Vegas, Nevada
Lesley Pittman, Reno, Nevada, representing Station Casinos, Inc., Las Vegas, Nevada
Lynn Chapman, Vice President, Nevada Families, Sparks, Nevada
Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada
Pilar Weiss, Las Vegas, Nevada, representing the Culinary Workers Union Local 226, Las Vegas, Nevada
John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada
Russell Rowe, Las Vegas, Nevada, representing Boyd Gaming Corporation, Las Vegas, Nevada
Tom Clark, Carson City, Nevada, representing the Nevada Tavern Owners Association, Las Vegas, Nevada

P. Casey Sullivan, President, Independent Gaming Operators, Reno, Nevada

Jeffery Siri, President and Chief Executive Officer, Club Cal Neva Hotel and Casino, Reno, Nevada; Member, Independent Gaming Operators, Reno, Nevada

Chairman Mortenson:

[Roll was taken. Committee rules and protocol were explained.] As there are so many people here this afternoon, the room next door is available for overflow. You may go into that room, listen to everything that is being said, and see what is happening on the television monitors. I will call the names of people who have signed up to testify or be heard, and you can walk back into this room, sit at the witness table, and testify.

I will open the hearing on Senate Joint Resolution 9 of the 74th Session.

Senate Joint Resolution 9 of the 74th Session: Proposes to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court. (BDR C-661)

James Hardesty, Chief Justice, Supreme Court, State of Nevada:

You have before you S.J.R. No. 9, which comes before the Legislature for a second time, and proposes to amend the *Nevada Constitution* to allow the Legislature to establish a court of appeals, sometimes referred to as an intermediate appellate court. [A PowerPoint slide show was shown as Justice Hardesty made his presentation to the Committee ([Exhibit C](#)).] I do not want to consume a lot of your time, because I know many of you are quite familiar with the subject. In March 2007, the Supreme Court provided a report to the Legislature that identified how the Supreme Court would propose to implement a court of appeals, should the people of the state permit it through constitutional amendment, and the Legislature create it in 2011.

I want to emphasize three features about the court of appeals that was proposed in that report. First, it does not create a separate level of bureaucracy in appellate adjudication. The Court has identified some 900 cases that would be placed before the court of appeals, that would be decided by that court, and that would end the appellate process. It does not make the appellate process longer, it actually shortens it.

Second, it would permit your Supreme Court to work on cases dealing with matters of significance. Currently, as you know, the Supreme Court handles appellate matters on all subjects from death penalty issues to petitions for

judicial review of drivers' license revocations. We believe that the Supreme Court's effort and time would be better spent working on the former rather than the latter.

The final point is a cost analysis presented in our PowerPoint, which illustrates that, for \$1.6 million we could implement a court of appeals in this state. As some of you may recall from my State of the Judiciary Address, we reverted more than that amount in our budget this past year. We believe that it is cost-effective and would provide a significant level of efficiency. It does not create a second level of bureaucracy. It does not add more staff. We propose using the same clerk's office as the Supreme Court, the existing central legal staff, and the existing Supreme Court personnel to support the work of the court of appeals.

One slide compares a few other states. As you can see, we selected Nevada, Montana, Maine, Arizona, Arkansas, Alaska, and Utah as states to use for comparing the number of cases filed per appellate judge per year. As you can see, Utah, which is close in population rank to us, is about 245 cases per appellate judge per year if you combine their intermediate appellate court with their supreme court. Interestingly, Arizona is 252 for their supreme court. Nevada is at 320—one of the largest caseloads of any state supreme court in the United States. The direct impact to our citizens is the delay in the time to disposition to resolve those appeals. We urge the Committee's consideration of this bill, and I would be happy to answer any questions.

Assemblyman Segerblom:

Where would the court be located?

Justice Hardesty:

It would be located on the 17th floor of the Regional Justice Center (RJC) in Las Vegas, and would not incur additional cost. I would put a little footnote on that, however. Our preference would be to get out of the RJC, but it would not change where we would locate the court of appeals. The court of appeals would always be located in Clark County, because that is where the highest number of the cases that would be assigned to that court come from.

Chairman Mortenson:

Are there any further questions? I see none. This is a constitutional amendment coming back for the second time. There is no way to amend it and still have it meet the time frame and go through this House one more time so it can go to a vote of the people.

We will have testimony from the public now.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:

I am an attorney with the American Civil Liberties Union of Nevada (ACLU). We are a civil rights organization, and we frequently litigate in front of all levels of the court system in the state and federal systems.

The reason we fully support this bill is largely because we believe in the right of access to justice for every individual. That is not only the right to a speedy trial, as the Sixth Amendment requires, but also an ability to get the highest court to decide critical cases that affect the citizens as early as possible. I think Justice Hardesty has eloquently explained why caseloads have reached levels that are starting to burden access to justice. We fully support the bill and thank the Chief Justice for presenting it.

Chairman Mortenson:

Are there any questions for Ms. Rowland? [There was no response.] We will have testimony from Las Vegas. Welcome.

Cam Ferenbach, Vice President, State Bar of Nevada, Las Vegas, Nevada:

I would like to report that the Board of Governors of the State Bar unanimously supports the passage of S.J.R. No. 9. In my experience on the Board of Governors, I can say it is rare that there is unanimous agreement among our body on everything.

I have practiced law in business litigation in Nevada for 29 years and, in my personal opinion, an appellate court is badly needed for the proper operation of our judicial system. Despite the hard work of our Justices on the Supreme Court, there are increasing delays and uncertainty in the resolution of business disputes. The consequences of that include harm to Nevada businesses, which in turn hurts our economy. If this trend continues and these delays become endemic, it will actually, in my opinion, deter the location of businesses to Nevada and may even encourage their departure. In a more abstract sense, I support my colleague from the ACLU. Over time, I think the absence of an intermediate appellate court will significantly lower the quality of justice rendered by our courts.

Chairman Mortenson:

Are there any questions for the gentleman from Las Vegas? I see none.

Vincenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada:

I am speaking in favor of S.J.R. No. 9. As an organization, we recognize that an intermediate appellate court is necessary, and Nevada has reached the level of maturity to have such an appellate court. I am an immigration attorney, but not practicing in Nevada, and I recognize the importance of being able to have an appellate court. It will relieve the Supreme Court of a lot of pressures and I believe this will lead to more expeditious judicial consideration. That is the position of our organization, and we support the passage of this bill.

Chairman Mortenson:

Are there any questions? I see none, so I will close the hearing on the bill and take a vote immediately.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS
SENATE JOINT RESOLUTION 9 OF THE 74TH SESSION.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION CARRIED. (ASSEMBLYMEN CONKLIN, MUNFORD, AND SMITH WERE ABSENT FOR THE VOTE.)

We will open the hearing on Assembly Joint Resolution 16. I also want to mention that we will hear the bills today in the order that they are listed on the agenda. We will hear A.J.R. 16, then A.J.R. 7, and then A.J.R. 3. At that time, I will turn my gavel over to Mrs. Koivisto because that bill is an Elections, Procedures, and Ethics bill and is not a state constitutional amendment.

Assembly Joint Resolution 16: Proposes to amend the Nevada Constitution to revise the provisions governing a petition for a state initiative or referendum. (BDR C-1240)

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:

The American Civil Liberties Union of Nevada (ACLU) requested this bill and greatly appreciates the Committee's and Chairman Mortenson's indulgence in putting this bill forward. I do have a version of my written remarks that should be included in your folders ([Exhibit D](#)).

As you all know, we have an initiative process here in the State of Nevada that is extraordinarily robust. It permits the citizens to sign an initiative petition to get something on the local or statewide ballot. The *Constitution* currently

requires that 10 percent of Nevada's citizens who voted in the prior election must sign on to any initiative petition in order for it to be accepted and deemed registered by the Secretary of State. Because the 10 percent requirement is a fundamental and critical component of the initiative process, we believe that it is essential that Nevadans know precisely what that 10 percent figure is as early and consistently as possible. Indeed, the 10 percent requirement is by far the most important rule of the initiative process that is not currently defined or further elucidated in the constitutional language itself.

If you will look in that area of the *Nevada Constitution*, which is Article 19, Section 2, you will see that there is actually a great deal of detail in that section about dates, about procedure, and about how things are turned in to the Secretary of State. What there is no detail about is when or how the 10 percent requirement is calculated. Of course, for a Nevadan looking to begin the initiative process, that 10 percent number is pretty much the most important factor he has to consider, because then he has to mobilize that number of people to sign onto his petition. The lack of clarity, based on the fact that the 10 percent number is not defined, has resulted in the actual deprivation of constitutional rights in recent years and has spawned federal litigation, holding that the Secretary of State has a duty to ensure that this number is consistent and communicated fairly to petition proponents.

We, at the ACLU, brought a case related to this issue and were successful in federal court. I would like to briefly explain that case. In 2004, the Committee to Regulate and Control Marijuana (CRCM) organized an army of circulators to gather signatures in support of its initiative to legalize marijuana in Nevada. More than 69,000 Nevada voters signed the petition, and CRCM filed the initiative with the Secretary of State pursuant to the 2004 "Initiative and Referendum Guide." This was a document published by the Secretary of State to provide an understanding of the guidelines and requirements necessary for preparing and qualifying initiatives and referenda for the ballot. This was an internal Secretary of State regulation that required that the Secretary of State's Office disseminate this number. The initiative guide provided that in order for a petition to succeed to qualify, it needed approximately 51,000 signatures, or 10 percent of the voter turnout from the 2002 General Election. However, after CRCM submitted its signatures, with a full 85,000 qualifying signatures, the Secretary of State's Office changed its mind and decided to use new results, even though that was contrary to their own internal regulations and the guide that was provided to the public. Instead, the Secretary of State chose to follow his own instincts, as well as an Attorney General opinion that interpreted existing state statutes in such a way so as to get around the requirement that the count be made when the initiative is deemed filed.

That Attorney General's opinion was issued on December 20, 2004, and Secretary of State Heller promptly decertified the CRCM petition, even though they had followed every rule that they had been given. So, despite their faithful adherence to the express instructions of the Secretary of State, over 70,000 Nevadans were disenfranchised when that group of signatures was not accepted, even though they had played by every rule of the game.

In this case, which is the *Heller* case, we at the ACLU argued that this "bait and switch" move, with respect to the number of petition signatures, had been made in spite of both the Secretary of State's internal regulations and published guide for citizens, as well as specific statutes that stated when an initiative was deemed to be submitted. We believed at the time this occurred that there was both a clear Secretary of State regulation that was violated, and we also argued that there were state statutes in place that made it clear that such an interpretation was improper. Nonetheless, this happened and, unfortunately, we had to go to court to convince a judge that what had happened was fundamentally unfair and violated those petitioners' constitutional rights. The federal judge did hold that that action had violated both their First Amendment rights to free speech as well as their Equal Protection rights because other petitions had been certified in different manners. That is precisely what this amendment purports to prevent.

What we have done is add a line to constitutional language that requires the Secretary of State to set the number for an upcoming petition cycle at the beginning of that year. That is the number that will apply to every group that comes before them. This will ensure that everyone is playing by the same rules of the game, and that everyone knows what the rules of the game are. That is the bottom line. Unfortunately, this has happened before.

We are certainly eager to avoid going to court on an issue like this ever again. We think it is a simple fix, and it is my understanding, from communications with the Secretary of State's Office, that they do not oppose the general policy of setting a number. They just do not believe that it should be a constitutional amendment. Again, I would reiterate that, based on the history, it is clear to us that statutes and regulations are not adequate to ensure that this does not recur. I would also hasten to add that, of course, we will not have the same Secretary of State forever, and we believe that offices are much greater than the current individual sitting in them. While we never doubt the good faith of the Secretary of State, the problem is that these rules are important so when we do have turnover and new Secretaries, they should know what the rules of the game are and make certain those regulations do not change. From our point of view, this is such a fundamental right. This is the one, key rule that governs

your access to the initiative process, and is something that really should not be constantly shifting.

The Legislature has seen fit to include a great deal of detail and dates in the constitutional language itself, and the one detail excluded is perhaps the most important. We certainly do not think it is frivolous to add this language to the *Constitution* itself. Certainly, we at the ACLU recognize the importance of a constitutional document and, frankly, are not really interested in adding language in the *Constitution* that we do not think needs to be there. But, because of the history here, and because this has occurred when there were regulations in statute that we think would have counseled the opposite, we believe that this critical rule of the game needs to be placed in the same place in the *Constitution* where the 10 percent rule is. We urge the Committee to vote for A.J.R. 16. Again, we thank the Chair and Committee members for bringing the bill. We believe it will show Nevadans that we believe in an open and fair government process that applies equally to everyone, regardless of their point of view, and to make sure the initiative process is fair to all involved.

Assemblywoman Koivisto:

I have several questions. First, I was not aware that the ACLU got bill drafts. Second, calculating the signatures required by congressional district totally leaves out the rural part of the state. The signatures could all be collected in Clark County, and the rural areas would have nothing to say. I think that is obscene.

Lee Rowland:

Of course, the ACLU does not get bill draft requests (BDRs). We requested this of Assemblyman Mortenson, who was gracious enough to put this BDR forward, and that is how it began.

With respect to your second point, the federal courts were very clear in what the initiative process is about constitutionally—it is about one man/one vote. What it cannot be is about the rights of the counties to access the process, because that does undercut the constitutional provision of one man/one vote. You clearly disagree with it, but I can assure you that we have been to court on this twice now, and we have succeeded both times in convincing the federal courts that the county-based system is flatly unconstitutional.

Chairman Mortenson:

Are there any questions? I do not see any, so thank you for your testimony. We do have some comments from the public.

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:

I am here in support of this bill and of the county method of collecting signatures because using Assembly districts would basically eliminate the right to petition. It defines the 10 percent before the process begins, and that is critical and eliminates rule changes a day or two before the process is over. This is a good bill and sets in stone the 10 percent number and the congressional-district method of collecting signatures, which is an important element in circulating petitions in Nevada.

Assemblywoman Koivisto:

Do you think it is all right that somebody circulating a petition, whether you agree with it or not, can get all their signatures in one area of the state? The rest of the state would then have nothing to say about it.

David Schumann:

If we gather signatures using Assembly districts, we would have to walk around with 42 clipboards. We would also have to be able to communicate with the Secretary of State. It is impractical and cannot be done.

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

The Secretary of State's Office is supportive of this bill inasmuch as there is the absence of existing guidance from the Legislature as to the signature requirement. However, we are opposed to the requirement in this bill that by January 1, the Secretary of State publish the number of signatures that will be required for initiative petitions. Our Office, as I have stated in the past, has no problem complying with that requirement and will make every effort to post those numbers as soon as practicable. The fact remains that, should there be a recount or contest in any election, and the best example I can use is in Minnesota where the election did not end until February, our Office would automatically be in violation of the state *Constitution*. We do not think a matter such as this properly belongs in the *Constitution*, and I have maintained that stance since this matter was introduced.

We have a friendly amendment to the bill ([Exhibit E](#)). On page 1 in section 1, subsection 2, the language reads "not less than 120 days before the next general election." We propose amending that language to say "not less than 150 days" before the next general election. That is the date when petitions have to be filed with our office prior to circulation for signatures.

The second amendment is at page 4, in section 2, subsection 4, beginning at line 35 of the bill. The amendment would read, "After its circulation it shall be

filed with the Secretary of State not less than 120 days before any regular general election" As I stated, we propose "120 days" replace the existing "90-day" language. Undoubtedly, we are going to get caught in litigation over ballot questions, and it threatens the ballot process and production of the ballots, every election. To avoid that, we are requesting the entire process, front to back, be bumped up one month.

Assemblyman Segerblom:

Is there currently a deadline by which you identify the number of signatures that are needed? Do you have an informal deadline within your office?

Matt Griffin:

Currently, not less than 90 days is when signatures have to be returned to our office. From that date, we have approximately 12 days to get the final verification of signatures completed.

Assemblyman Segerblom:

I am speaking to the number of signatures that are needed to qualify a petition. Is that not what this bill does? I thought the constitutional amendment we are talking about today would require the Secretary of State's Office to identify how many signatures would be needed to get a petition on the ballot. Do you currently have a deadline, either formal or informal, to get that number?

Matt Griffin:

No, we do not. For this last election, I believe those numbers were out at the end of December or the beginning of January. Our office has no problem complying with the intent of this bill, we just do not know when we are going to have those numbers available, and January 1 is an arbitrary date to set if there is a contest to the election.

Assemblyman Segerblom:

Is there a date you would recommend?

Matt Griffin:

As far as a recommendation in the *Constitution*, there is no date we would recommend. We would not recommend this be placed in the *Constitution* at all. As we sit here, I do not know how long a recount or a contest to an election would take. If the Committee is going to entertain any restriction, I would suggest having some leeway. Perhaps, the language could read "at the conclusion" or "once the final canvass of the election has been completed and no contests remain," within X number of days, the Secretary of State shall publish "X, Y, and Z." We would have no problem complying with that.

Chairman Mortenson:

Mr. Griffin, the reason I allowed this bill to be brought forward was because I talked to a lot of people, including lawyers and the Legislative Counsel Bureau's Legal Division. You said that an election could string on for many, many months, so our Legal Division noted that usually, in a dispute, the numbers of voters involved are fairly small. They suggested that an estimate could be made, and opined that there probably would be no protests because if everyone had the same numbers to work with, what would there be to protest? That was the assumption I used when I went forward with this bill.

Matt Griffin:

Our Office would be hesitant to put out an approximation of the numbers. You are correct; it would be unusual to have a contest that lasted too long, but, as we just saw last election in Minnesota, it went a month and a half longer than this January 1 date we are discussing here. Our fear is that if that occurs, through no fault of our own, we would then be in violation of the *Nevada Constitution*.

Chairman Mortenson:

Suppose the contest goes longer? Are there any further questions for Mr. Griffin? I see none.

Alan Glover, Clerk/Recorder, Carson City, Nevada:

As Mr. Griffin pointed out, and if the Committee agrees, there are two areas we would like to amend to give us more time to process petitions. Last session, the Legislature amended the statute to give us one extra month to deal with petitions. The petition gatherers did not meet the statutory deadline, so that petition was thrown out by the court as being unconstitutional. We thought this bill would provide a vehicle for us to correct that problem, and with the Committee's support, we would like to have those dates changed to give us another 30 days to handle petitions. Petitions are our number one problem.

Larry Lomax, Registrar of Voters, Clark County, Nevada:

I would like to add my support to moving the deadlines 30 days forward. I have been doing this job now for 11 years, and every even-year election, we have ended up in court with some litigation involving a petition. Each time, that litigation has delayed ballot printing. That delay, believe it or not, is extremely expensive for the taxpayers—running anywhere from \$100,000 to \$300,000. Giving us 30 days during which petition litigation can take place, hopefully, would allow us to print ballots on a non-overtime basis and save us that extra cost. This change we are proposing could be incorporated into this bill or any of

the other bills that have been proposed which address solutions to this petition-gathering problem.

Vicenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada:

I wish to speak in favor of A.J.R. 16. We believe that this would provide clarity to the initiative and referendum process. We are agreeable with gathering petitions using congressional districts because then the rurals can be included in the petition-gathering process because they are included in the congressional districts.

Juanita Clark, Member, Charleston Neighborhood Preservation, Las Vegas, Nevada:

We are so excited to hear this bill the ACLU has put forward in A.J.R. 16 because we are so concerned about our ability to have petitions. As you just heard, petitions are a problem. They are supposed to be a significant part of our law. In fact, they are the way our Assemblymen and our Senators become aware of what we, the people, want. We are for this bill, and we are also for using the congressional districts to gather signatures for petitions. We are excited to hear something that promotes, maintains, and is in favor of the petitions and referendums of the people, by the people, and for the people.

Chairman Mortenson:

I remember working with your group on a number of occasions. Are there any other people who want to testify? [There was no response.] I am going to close the hearing, and we will look at this bill and the proposed amendments in a work session where it will be the pleasure of the Committee how they want to handle it.

We will open the hearing on Assembly Joint Resolution 7.

Assembly Joint Resolution 7: Proposes to amend the Nevada Constitution to repeal provisions relating to lotteries. (BDR C-1040)

Assemblyman Paul Aizley, Clark County Assembly District No. 41:

I am here to present Assembly Joint Resolution 7, the lottery bill that does not seem to die. From a website called <luckylotto.com>, which I went on to last night, I have a quote: "In Mississippi and Nevada, state Legislatures have continuously voted down state lottery proposals because they will interfere with the casino industry. In fact, a proposal for a Nevada state lottery has failed 24 times since 1975, and the people have never had a chance to decide."

Some people probably will question the "24 times," but that is the number in this particular article on the Web.

Assembly Joint Resolution 7, if passed by the Legislature this session and again in 2011, would allow voters to decide the issue in 2012. My reason for submitting this bill is to let the voters decide. From the emails I have received on this topic, I would say that a clear majority favors a lottery. Twenty-two other Assembly Members, some Republican, some Democrats, have signed this bill with me, so it is not a partisan issue.

This resolution does not describe the type of lottery to be offered, whether it would be in-state only or a multi-state; whether it would have large, mega jackpots or smaller jackpots; whether it would be state-run or would be a public-private partnership, or just purely private. None of those things are decided in this resolution. Also not decided is whether the proceeds will go into the General Fund or be dedicated for special use. It simply is to allow the state to have a lottery.

Clearly, it is not possible to predict how much money, if any, a lottery will generate for Nevada, but we can look at some numbers from California. California voters approved the California State Lottery Act on November 6, 1984 with 58 percent of the voters in favor. California has more than one kind of lottery, and I will discuss one of them to give you an idea of how they work. One example is "Super Lotto Plus" played by selecting five numbers from the numbers 1 to 47, and then, one additional "mega-number" from 1 to 27. Now, for some arithmetic: There are 1,533,939 ways to pick 5 numbers from 47. When you multiply that number by 27, you get 41,416,353, so the chance of winning the big jackpot is only 1 in about 41,500,000, but still, the people play.

In 2007-2008 in California, there were more than \$3 billion in total lottery sales—a lot of them coming from Nevadans who go to the boarder to play those lotteries. Prizes amounted to a little bit more than \$1.5 billion, and administrative expenses were \$380 million; so, the lottery generated \$1,049,901,857. Nevada in 2008 had a population of about 7.07 percent of California's population. So, 7.07 percent of the revenue just described is more than \$74 million. I know those kinds of comparisons are not exact and that people can find other numbers showing that this is not going to be the case, but I will point out that California probably has more than half a dozen different kinds of lotteries besides the one I just described. There is Mega Bucks, there are scratch pads, there is Daily Three Numbers, et cetera. So, that one lottery I described was not the sole generator of the three-billion-plus dollars. It took several games.

What I do not want to do is go over all the pros and cons of having a lottery in Nevada. It has been done over and over again in past years, and I expect that others will do that. My reason for the resolution is to let the voters decide if Nevada should have a lottery.

Chairman Mortenson:

Are there any questions from the Committee for Mr. Aizley? I see none. We have a number of people in the audience who wish to testify.

Michael Alonso, Reno, Nevada, representing Terrible Herbst, Inc., South Las Vegas, Nevada:

I am here on behalf of Terrible Herbst, Inc. who owns and operates approximately 90 gas station/convenience stores in the State of Nevada, and provides gaming devices, primarily through restricted gaming licenses, at all those locations. For the record, we oppose A.J.R. 7, as we have many times in the past. As Assemblyman Aizley did not go through all the pros and cons, I am not going to either. From our standpoint, we are in the business of convenience gaming. This state is fairly unique compared with other states that have casino gambling. They do not have convenience gaming. It is not present in the grocery stores, the convenience stores, drug stores, or other restricted locations. We oppose A.J.R. 7 for many reasons, one of which is that we think it would directly compete with our business. We do not think the state should be directly competing with its largest industry.

Assemblywoman Smith:

Is there not a creative way that your industry could capitalize on this? People ask me that question all the time.

Michael Alonso:

I have not thought of a creative way to capitalize on this. One scenario would involve selling lottery tickets in convenience stores, which would make them readily available and probably increase ticket sales. That is what they do in California and other states. We might get fees for selling those tickets, but we would be losing something else. Instead of putting money in a slot machine or buying something from the convenience store, the customer would be using that money to buy a lottery ticket. Within the world of lotteries, I do not know a creative solution that could benefit us when competing with the state over those dollars.

Chairman Mortenson:

Many people say that there are so many people who will still spend that money by going to California, or just to the border, and buying those lottery tickets. It is a statistic that is going to be awfully hard to prove either way until it happens, if it happens. Are there any other questions for Mr. Alonso? [There were none.]

Lesley Pittman, Reno, Nevada, representing Station Casinos, Inc., Las Vegas, Nevada:

[Ms. Pittman read her testimony expressing opposition to the bill from prepared text ([Exhibit F](#)).]

Assemblyman Hambrick:

Is there a way we could be certain problem gamblers will not walk out their front doors, go down to their neighborhood convenience stores, and play \$500 in the video lotteries?

Lesley Pittman:

In the commercial casino environment, we have a number of methods by which we either encourage our customers to self-regulate or to sign onto programs in which they no longer receive any sort of promotional material. You could do something along those lines, but that would be something the state would have to administer; so, there would be some administrative costs, I would assume, with that.

Lynn Chapman, Vice President, Nevada Families, Sparks, Nevada:

Did lotteries really help California with their money problems? I do not think so. Did you know that there is a "Teen Gamblers Anonymous?" I have spent a lot of time on the Internet over the years and read a lot of testimony by people who state how their lives were totally devastated because of gambling, and a lot of these people started off as children. Among the world's children, gambling is increasing and many have become addicted to it. Studies done by McGill University show that rates of youth involvement in both legal and illegal gambling have been rising in the United States, Canada, New Zealand, Europe, and Australia. Approximately 80 percent of high school students have reported gambling for money. Four to 8 percent of adolescents have serious gambling problems, and another 10 to 14 percent of adolescents are at risk of developing serious gambling problems. The same study showed that adult gamblers reported that, as children, their parents purchased lottery tickets and took them to play bingo.

One thing I noticed in much of what I read on the Internet was that children become interested in gambling because it was fun to scratch off the cards or pick the numbers. Lotteries are really dangerous. A lot of these children began playing the lottery between the ages of 10 and 19. Gambling among adolescents has been linked to increased delinquency and criminal behavior, as well as the destruction of family and peer relationships. It also negatively affects their school and work performance. Do any of you have children or grandchildren who like their Nintendo and their PlayStations? Do you know how hard it is to get them away from the television set because they love playing the games? Money is not the only reason why children gamble excessively. Adolescents with serious gambling problems report that nothing else matters. It is not the money, it is not winning.

The highest per capita spending on the lottery is among those who have not completed high school, with high school dropouts spending almost four times as much on gambling annually as graduates of college, and what is the dropout rate here in Nevada? Many studies consistently show that, of the adults who gamble, 5 percent of the adults will become compulsive gamblers. The risk for adolescents is even greater, with at least 13 percent becoming compulsive gamblers, which means that these people will have a lifelong gambling problem.

The top 5 percent of lottery players account for 54 percent of total sales. The cost to families is very high. One study shows that between one-quarter and one-half of the spouses, and at least one in ten children of compulsive gamblers, have been victims of abuse. The divorce rate is higher, and at what cost to our families, especially children, will the lotteries bring? What cost? Please oppose this bill.

Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:

I am a native Nevadan. I was born and raised in Sparks, and now I live in Elko. I was raised around gambling, but I never really thought much about it because we were not involved in it. As I grew older, I was married to someone who I discovered had a gambling addiction. This nearly destroyed my life and the lives of my children. There is a great human cost for those who become addicted to gambling. With a lottery, gambling would become even more available. There is also a family cost in terms of divorce, in terms of children who do not have a father, in terms of trying to survive as a single mother. Those issues are all very acute in my mind.

There is also a real cost beyond the personal, human cost, that takes place for those who become addicted to gambling. There is a cost to taxpayers who have to pick up the bill for those families and children who do not have an intact

family to take care of them and who must rely on the services of the government. How much does it cost for us to take care of compulsive and addicted gamblers? An issue in my life was that my spouse was stealing not only from me—the money I had saved to feed my children—but he was also stealing from members of my family in order to feed his habit.

As I said previously, there is a great human cost and a cost to taxpayers to take care of those who are the victims of the devastation of gambling. Do we really want to make money for government by putting more families into devastation and creating more people who are addicted to gambling? If we are going to pass this bill, we certainly need a program available to help those who have devastated families because of compulsive gambling. I know the real cost that can happen to an individual family when someone becomes addicted to gambling.

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:

It makes no sense to me for the state to go into competition with its main business. That is counterproductive and we should not do it. Do not compete with the gaming industry, which is Nevada's number one business.

Pilar Weiss, Las Vegas, Nevada, representing the Culinary Workers Union Local 226, Las Vegas, Nevada:

We, like many people in this room, have spoken on this issue many times in the past. We have been very supportive, especially in discussions regarding using money raised by a lottery for education, which we think definitely warrants increased funding. We continue to be supportive of this bill, especially of this approach, where it would be put before the voters for a decision. Then, as several Committee members pointed to, there would be a very vigorous policy discussion about how to frame the lottery in a way that would not endanger our largest industry and bring revenue to the state. We could learn from other states that have made mistakes, we could come up with solutions and be able to establish lotteries that would be quite beneficial to the state.

John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada:

I, also, do not believe that we should be competing with our number 1 industry.

Russell Rowe, Las Vegas, Nevada, representing Boyd Gaming Corporation, Las Vegas, Nevada:

As you know, Boyd Gaming Corporation has ten properties in Nevada employing over 15,000 workers. I am here today to place on record Boyd Gaming's

opposition to A.J.R. 7. Assemblyman Aizley made the point about odds. There was a recent article in the *Wall Street Journal* that described the odds in a different way. If you took an ant and placed it on a football field, blindfolded someone, then gave that person a pin and asked him to stick it in the ground, the odds of hitting the ant are about equivalent to that of winning the lottery. The *Wall Street Journal* noted that economists call lotteries a "tax on stupidity."

I would like to follow up on a couple of points with respect to marketing and competition. I am not an expert on lotteries, but there was a very good study on them conducted by the National Gambling Impact Study Commission in 1999. Part of that study focused exclusively on lotteries and studied all the lotteries nationwide. I want to focus on two points in that study relating to marketing. They call it "systematic marketing." Every lottery agency in every state that has lotteries engages in this type of marketing, and they state that "lotteries are constantly searching for ways to modify their games or for altogether-new lottery products that will appeal to players." One point I would like to make is that the lottery is a significant concern for the gaming industry, and Boyd Gaming in particular, but what really concerns us is how to continually attract the same players over and over and over again, year after year. We all think lotteries are going to be great revenue sources. We see on the news that the California lottery is at an extreme amount, and it draws Nevada residents to the state line to buy tickets once every two years or so. But, how do you keep them coming day after day when the prize is not that much? The way lotteries have done this in the past and continue to do it today is marketing their products. They have to redesign them and create new ways and new games, which will be in direct competition to the industry here. That is not my assessment; that is the assessment of the study. You can also read an article from the October 2008, *Los Angeles Times* that talked about the 8 percent decline in California's revenue during the last fiscal year from lotteries, on top of the previous year's decline in revenue from lotteries.

The State Senator who oversees lotteries in the State of California says that the decline in revenue argues for updating the game to make it more attractive, which means giving people the product they want rather than doing the same thing over and over again. That is the point behind continually marketing and repackaging the product. In this article, lottery officials go on to say that they agree that changes to the lottery can turn sales around and make them more competitive in a state where more slot machines are being installed in casinos. They admit that California is competing directly with the casinos and Indian casinos in that state. We respectfully disagree with those who do not think that the State of Nevada, by instituting a lottery, is going to compete with its number one industry.

Chairman Mortenson:

Does anyone have any questions?

Assemblyman Cobb:

By way of disclosure, in the 1930s, my great grandfather was one of the first proponents of a state lottery. He was a state Senator at that time. Just as I break with him when he voted against legalized gambling in 1931, I am going to break with him here on the lottery bill as well. My main concern is the competition between the state government and private industry, especially at a time when we have 10 percent unemployment in the state. Have there been any studies, either here or in other states, that looked at the effect on the private sector? This is important, especially now, when so many small operators are on the verge of bankruptcy? How many jobs might we lose if we were to implement a lottery, especially at this time?

Russell Rowe:

That is an excellent question. We, at Boyd Gaming and Station Casinos, requested a study be done by Applied Analysis prior to last session that we submitted at that time. That study showed a job loss of approximately 600 in the gaming industry with the adoption of a lottery. In the end, what we are doing is taking gambling dollars that may go into a casino and putting them into a lottery. That will ultimately impact the bottom line of a casino and the ability to employ more individuals. That is the only study in this state that I have seen. Of course, that was our study so someone could say it was biased, but no one has challenged it. We also had it empirically reviewed by five different professors around the country.

Chairman Mortenson:

Are there any further questions? I just want to make one comment. That was a very interesting analogy about the ant and the football field. I am sure it was probably close, but "hope springs eternal within the human breast" and there is one immutable fact—someone wins. I do not think people are that dumb. They know that the odds are horrendously against them, but they just figure that someone has to win and maybe it will be them. That is why they do it.

Russell Rowe:

This was born out in the study we did a few years back. Nevadans, in particular, are much smarter about their odds than most other citizens in this country, which goes back to the point about competition. The State of Nevada is going to have to do a very good marketing job to get Nevadans to buy a lottery ticket versus perhaps partaking of the other forms of gaming in the state. It is going to be very difficult, and the state is going to have to market and have

to compete against the industry. That is the only way it is going to generate revenue, and that is not a good idea.

Tom Clark, Carson City, Nevada, representing the Nevada Tavern Owners Association, Las Vegas, Nevada:

We represent over 1,500 taverns and bars across Nevada. We have been absolutely crushed, not just by this economy, but by other factors outside our control. Fifty-four of our members closed their doors last year. Already this year, twenty-plus members have filed for bankruptcy or closed their doors. That is a lot of employees, that is a lot of revenue, and that is a lot of good, taxable income that the state is losing. We see the gaming dollar as a precious resource for this state. Every dollar that is spent on a lottery ticket is a dollar that is not going to be spent in our establishments—whether it is in a gaming machine, whether it is for a cheeseburger, or whether it is for a cool, adult beverage. We are very, very concerned about having the State of Nevada be another force competing against us for that precious resource. Please, we urge you not to support this resolution.

Assemblyman Segerblom:

Mr. Clark, if I gamble a dollar in one of your businesses, how much of that dollar comes back to the State of Nevada?

Tom Clark:

It really depends on the tax rate and the win/loss percentages and things like that. It is considerably more, I believe, than what you would get from a lottery ticket.

Assemblyman Segerblom:

If I buy a lottery ticket, do you know how much of that would go to the State of Nevada?

Tom Clark:

I have not been privy to the studies that have been brought forward by the proponents of the resolution.

Chairman Mortenson:

Are there any further questions for Mr. Clark? I see none. Is there anyone else who wishes to testify either for or against the bill?

P. Casey Sullivan, President, Independent Gaming Operators, Reno, Nevada:
We oppose this bill.

Jeffery Siri,; President and Chief Executive Officer, Club Cal Neva Hotel and Casino, Reno, Nevada; Member, Independent Gaming Operators, Reno, Nevada:

I am a member of the Independent Gaming Operators (IGO), which represents approximately 80 smaller casinos in the State of Nevada and I am also here representing the Club Cal Neva. We are here to speak against this lottery bill. I would like to bring up the issue of competition. Competition came to Nevada in the form of Native American gaming in California that occurred in 2000. From 1980 through 2000, gaming revenues steadily grew in Washoe County. Washoe County is a more regional gaming area than Las Vegas is, so our primary markets are California and the northwest. In 2001, Native American gaming was approved in California. That was competition for the State of Nevada. When that occurred, the gaming revenues never hit those numbers again. The peak was \$1,140,000,000. In 2008, gaming revenues in Washoe County decreased to \$930,000,000, which is a \$210,000,000 decrease. A lottery will be additional competition for gaming, especially in Washoe County and in the small, rural areas of Nevada. The impact of a lottery will have a significant impact on our revenues and on our ability to maintain business.

I would like to read the first sentence in a study done by Carnegie Mellon in July, 2008. "Although state lotteries, on average, return just 53 cents on every dollar spent on a ticket, people continue to pour money into them, especially low income people who spend a larger percentage of their income on lottery tickets than do wealthier people in segments of society."

Again, a lottery almost turns into a regressive tax structure that I do not think is healthy for the State of Nevada. Once again, we are talking about competition with and survival of a very important industry to the State of Nevada, and that is the gaming industry. A lottery would just be competition for that industry.

Chairman Mortenson:

Are there any questions for these gentlemen? Is there someone in Las Vegas who wishes to testify on the lottery?

Vicenta Montoya, Chair, Si Se Puede Latino Democratic Caucus, Las Vegas, Nevada:

I am testifying in favor of A.J.R. 7. I have been a resident of Nevada since 1951. I do not gamble; however, I am one of those people in whom hope springs eternal. I would buy a lottery ticket. I know people who travel to

Arizona to buy lottery tickets on a weekly basis. People pool their money, drive to a convenience store, and they buy gas, they buy sodas, they buy snacks, and they buy at least \$20 more than they would have spent for just the lottery ticket. I find some of the arguments made by gaming to be specious. I do not see how anyone who is a gambler is going to stop gambling just because we have a lottery. A person who is a gambler is going to gamble whether it is craps, the slots, or whatever is available. This is just one more venue someone can use. Personally, I do not choose to use any of the other venues, but this particular one, I certainly would use. As I said, I have been here since 1951. I knew when I put my first nickel in a slot machine and I lost, that, as a gambler, the odds were never going to be in my favor. That is going to be true no matter what game of chance you choose—whether it is a lottery or whether it is poker, it does not matter. I am in favor of this, and I think that there are many people who would buy a lottery ticket. If they choose to play those slots that are there, they are going to play those slots irrespective of whether or not they buy that lottery ticket. I think the people of the State of Nevada need to have the opportunity to do this. For too many years, gaming has been the one entity that has directed opposition to this. They have been protected. They are not going to lose out because of a lottery. I think the State of Nevada is going to be able to benefit from this, and it is not going to be in competition with the gaming industry, and we are not going to have the loss of 600 jobs. Yes, I would challenge that study because it was done internally. I would like to have a study done that was done externally, to determine whether or not there would be that negative impact. Talk to gamblers. Ask them whether they will stop gambling if we have a lottery. I think the overwhelming response is going to be, "No, this is one more thing I am going to spend my money on."

Chairman Mortenson:

Are there any questions for Ms. Montoya? I see none. Does anyone else want to testify either for or against?

Juanita Clark, Member, Charleston Neighborhood Preservation, Las Vegas, Nevada:

I just have one statement, which is a repeat of something heard earlier today: High school dropouts spend almost four times as much on gambling annually as college graduates. We will have a great need for the state to care for those adults and their children. It is another way to gamble, as has been stated over and over today. I am thinking of the social cost, and not just for food and clothing, but the cost that cannot be quantified—the social cost. Social costs would include the stability of a home, the stability of a child who is able to go to school and focus on just that, without worrying about mom and dad arguing.

We want to maintain successful neighborhoods and successful people who feel good about themselves.

Chairman Mortenson:

Is there further testimony? If not, I am going to close the hearing on A.J.R. 7 and bring it back to the Committee. I am going to take a vote on it.

ASSEMBLYWOMAN KOIVISTO MOVED TO DO PASS ASSEMBLY JOINT RESOLUTION 7.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Is there any discussion on the motion? If not, we will take a vote.

THE MOTION CARRIED. (ASSEMBLYMEN COBB, HAMBRICK, AND SETTELMAYER VOTED NO. ASSEMBLYMEN GANSERT, MUNFORD, AND SMITH WERE ABSENT FOR THE VOTE.)

I need to first apologize to this Committee. Assembly Joint Resolution 16, the bill in front of you, is absolutely nothing like what I turned in to have drafted. I did not look at the bill before coming to the Committee meeting because I knew exactly what I had turned in. It was on one subject only and had to do with the timing involved in collection of signatures on petitions and the Secretary of State. I am not sure what we will do about this. We may indefinitely postpone the bill, or let the Committee decide what it wants to do during a work session.

I am going to turn the gavel over to Mrs. Koivisto to hear Assembly Joint Resolution 3, since this bill is not a constitutional amendment.

Assembly Joint Resolution 3: Ratifies proposed constitutional amendment relative to equal rights for men and women. (BDR R-793)

Vice Chair Koivisto:

I just received a message that the sponsor of Assembly Joint Resolution 3 has been called away to another meeting. Because of the lateness of the hour, we are not going to wait for her to come back, so we will try to reschedule the bill. This meeting is adjourned [at 5:31 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair

DATE: _____

EXHIBITS

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

Date: March 26, 2009

Time of Meeting: 3:51 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SJR No. 9	C	Chief Justice James Hardesty	PowerPoint presentation
AJR 16	D	Lee Rowland	Testimony in support
AJR 16	E	Matt Griffin	Proposed amendments
AJR 7	F	Lesley Pittman	Written testimony in opposition