

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

**Seventy-Fifth Session
May 8, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:13 a.m. on Friday, May 8, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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 Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen B. Spiegel, Clark County Assembly District No. 21
Assemblyman Joseph (Joe) P. Hardy, M.D., Clark County Assembly
District No. 20
Senator Dennis Nolan, Clark County Senatorial District No. 9
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Gail Anderson, Administrator, Real Estate Division, Department of
Business and Industry
Kimberly Surratt, Attorney, Reno, Nevada
Rev. Neal T. Anderson, Minister, Unitarian Universalist Fellowship of
Northern Nevada, Reno, Nevada
Richard Morgan, Private Citizen, Las Vegas, Nevada
Pamela Brooks, Private Citizen, Reno, Nevada
Paula Petruso, Private Citizen, Henderson, Nevada
Rev. John Emerson, Pastor Emeritus, First United Methodist Church,
Reno, Nevada
Pam Roberts, Private Citizen, Reno, Nevada
Michael Knight, Private Citizen, Henderson, Nevada
Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada
Lynn Chapman, Vice President, Nevada Families, Sparks, Nevada
John Wagner, State Vice Chairman, Independent American Party,
Elko, Nevada
Richard Ziser, Las Vegas, Nevada, representing Nevada Concerned
Citizens and the Coalition for the Protection of Marriage
Juanita Clark, representing Charleston Neighborhood Preservation,
Las Vegas, Nevada
Tony Dane, Political Consultant and Pollster, Las Vegas, Nevada
Father David Hoff, representing himself and Saint Paul's Charismatic
Episcopal Church, Henderson, Nevada
Robert Wells, Private Citizen, Las Vegas, Nevada
Olaf Vancura, Private Citizen, Las Vegas, Nevada

Nicole Lamboley, Chief Deputy, Office of the Secretary of State
Chuck Calloway, representing the Las Vegas Metropolitan Police
Department, Las Vegas, Nevada
Kristin Erickson, representing the Nevada District Attorneys Association,
Reno, Nevada
Lee Rowland, representing the American Civil Liberties Union of Nevada,
Reno, Nevada
Ben Graham, Administrative Office of the Courts, Carson City, Nevada

Chairman Anderson:

[Roll called. The Chairman reminded Committee members, witnesses, and members of the audience of protocol on testifying before the Committee.]

I have a bill draft request (BDR) to be introduced.

BDR S-963—Ratifies certain technical corrections made to NRS and Statutes of Nevada. (Later introduced as [Assembly Bill 554](#).)

ASSEMBLYMAN MANENDO MOVED FOR THE COMMITTEE
INTRODUCTION OF BDR S-963.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

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

I will open the hearing on [Senate Bill 254](#).

[Senate Bill 254](#): Makes various changes relating to ethical standards in real estate transactions. (BDR 1-31)

Senator Dennis Nolan, Clark County Senatorial District No. 9:

[Senate Bill 254](#) relates to attorneys and provides that attorneys who perform the functions of real estate brokers in transactions would have to comply with the same ethical standards with which real estate brokers must comply. That would seem logical, but the way the statute is written it does not provide that. By way of disclosure, I am a commercial real estate broker. I will share an example with you, something I am sure happens occasionally, and why we need the legislation.

Real estate brokers are held to two separate ethical standards. One is in statute under *Nevada Revised Statutes* (NRS) 645.635, which delineates a number of ethical behaviors, which real estate brokers have to abide by. They include not

making fraudulent appraisals or not refusing a client because of race, color, national origin, sex, ethnicity, et cetera. It requires that brokers do not fail to submit all written and bona fide offers to a seller when an offer is received. It prohibits brokers from failing to reduce a bona fide offer into writing and provide that to the purchaser. There are a number of other very similar, ethical things that you would expect a real estate broker to do.

In a real estate transaction, an attorney may represent a client and is not subject, under statute or anywhere else, to those same types of ethical standards. I had a client who was interested in purchasing a piece of property and asked me to make an offer. Using information on the sign on the property, I made contact, and it was an attorney who was representing a family trust. We met and looked at the property. I said, "I like it, and I want to make an offer." We negotiated something verbally. I put it in writing and provided it to the attorney representing the trust. The attorney accepted the offer. We went into escrow. Normally, once you do that the seller's broker may, in most cases, still accept offers, but he cannot entertain those offers at the same time. To do so would be leveraging one deal against another deal to try to work the price up. In this case, that is exactly what happened. We had no knowledge that the attorney was using our offer to leverage the real estate deal and say, "Well, I got an offer for this. Would you guys come back at that?" It was kind of like running a mini-auction. In fact, neither of the people was represented fairly. My client was not represented fairly and neither was the other side. In the long run, the deal fell through; my client had a different interest and bought a different property. Apparently, the person with whom he had leveraged the offer ended up in escrow, but that deal fell through, also. To this date, the property is still for sale. So there is a family trust that also lost out, and there was nothing to protect either the family trust or the buyers in that transaction.

This bill applies the same ethical standards for real estate brokers to those attorneys who are representing a client in a real estate deal, and we left it up to the Bar Association to police it if there is a complaint. We had no opposition on the other side.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:

The Real Estate Division supports S.B. 254. We definitely support ethical standards in real estate transactions. The Division does have the authority, should a complaint from a constituent come into the Division which might involve an attorney representing a client, to forward that complaint and any information to the appropriate jurisdiction—the State Bar.

Chairman Anderson:

In essence, this bill merely clarifies that the State Bar has a responsibility in this to discipline its own?

Gail Anderson:

Yes, sir, it does. Constituent complaints tend to come into the Real Estate Division. We are allowed under law to redirect that information.

Chairman Anderson:

I will close the hearing on S.B. 254.

Assemblyman Carpenter:

I do have a broker's license, but I do not think this bill will affect me any more than anybody else, so I will be voting.

Chairman Anderson:

I will entertain a motion.

ASSEMBLYMAN MANENDO MOVED TO DO PASS
SENATE BILL 254.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE, MORTENSON,
AND PARNELL WERE ABSENT FOR THE VOTE.)

Before I open the hearing on the next bill, I want to explain how this will play out. [Discussed protocol on the hearing for Senate Bill 283 (1st Reprint).]

I will open the hearing on Senate Bill 283 (1st Reprint).

[Senate Bill 283 \(1st Reprint\)](#): Revises provisions governing domestic relations contracts. (BDR 11-1100)

Senator David R. Parks, Clark County Senatorial District No. 7:

This morning I have S.B. 283 (R1), which establishes domestic partnerships. I have a handout. It is a three-part document. There is a mock-up of a proposed amendment to the bill ([Exhibit C](#)), and there are two other documents, one of which has letters of support for the bill ([Exhibit D](#)) and the other has some general information ([Exhibit E](#)).

Senate Bill 283 (1st Reprint) is a bill regarding equality and fairness. It establishes a domestic partnership as a new type of civil contract recognized in

the State of Nevada. Under the provisions of this bill, domestic partners have the same rights, protections, benefits, responsibilities, obligations, and duties as do parties to any other civil contract created pursuant to Title 11 of the *Nevada Revised Statutes* (NRS). The bill also clarifies that a domestic partnership is not a marriage for the purpose of Section 21 of Article 1 of the *Nevada Constitution*.

Domestic partnerships have been upheld as legal across the country where states have passed marriage amendments. A domestic partnership is a social contract between two persons who have chosen to share one another's lives in an intimate and committed relationship. The requirements for a domestic partnership are as follows:

- Both persons share a common residence.
- Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated or dissolved.
- Both persons are not related by blood in any way that prevents them from being married to each other in this state.
- Both persons are at least 18 years of age.
- Both persons are capable of consenting to the domestic partnership.

Senate Bill 283 (1st Reprint) establishes the rights and responsibilities of domestic partnerships. To become valid, a domestic partnership must be filed with the Secretary of State's Office. The Secretary of State will provide domestic partners with a certificate of registered domestic partnership upon the payment of a fee, which would be established by regulation.

In the documents that have been handed out to you, one has an editorial from the *Las Vegas Review-Journal* [Page 2 of [\(Exhibit E\)](#)]. I think you will find that very enlightening. Next in that document is a letter from the Legislative Counsel Bureau (LCB) indicating that domestic partnerships are not a violation of Section 21 of Article 1 of the *Nevada Constitution*. That letter is followed by a very detailed description provided by the American Civil Liberties Union (ACLU) of Nevada. The last page of that document is a copy from the listing of the top 50 bills that are being tracked for opinion as of last night. In that, 76 percent of the respondents are in favor of S.B. 283 (R1) while 24 percent are in opposition.

The next document ([Exhibit D](#)) has letters of support. The second page of that document shows the great number of employers in the State of Nevada that currently offer domestic partnership benefits. A number of the corporations have national prominence. I might add that, of the top 100 U.S. companies,

83 offer domestic partner benefits. You will see that there are letters from former dean of the William S. Boyd School of Law, Richard Morgan, from Wynn Las Vegas, and from Marybel Batjer, who is now with Harrah's Entertainment as vice president for public policy and communications, and a number of other letters that I hope you will have a chance to read. The last letter is from Dr. Jerry Cade. I think many of you know Dr. Cade. He relates a specific incident that happened a couple of weeks ago which he faced. I hope you will have a chance to read that.

Chairman Anderson:

We will enter those documents into the record.

Senator Parks:

Finally, I would like to ask if you would permit those persons who are in the audience in support of the bill to momentarily stand to be recognized.

Chairman Anderson:

Those who are in favor of the bill, please stand.

Senator Parks:

That concludes my prepared remarks.

Chairman Anderson:

Do you wish us to utilize the mock-up that you are suggesting, or do you wish us to use the original bill in terms of discussion?

Senator Parks:

I would prefer that the Committee use the mock-up.

Kimberly Surratt, Attorney, Reno, Nevada:

I have been specifically requested to appear from the angle of family law and to discuss the differences between what we do now and what we can do after this bill becomes law.

What I do now for my domestic partners is go through a rigorous number of steps and procedures in order to protect their rights. When they come in to see me, I tell them there is no "be all, end all" that I can do to help protect them, but that it is about layers of protection. It depends on the complexity of the parties in front of me. The end result is that it is a very costly experience for them. It is not foolproof. I have been in litigation when these things have not worked out in the end, and the outcome is not always pretty. We have very specific statutes that reference marriage and make it more difficult for us to proceed.

Assemblyman Cobb:

What specifically is in this bill that cannot be achieved right now through private contracting?

Kimberly Surratt:

The best example I can give you to start with is, if you look at the premarital agreement statute, which is NRS 123A.030, and is also referenced in NRS 123A.060, premarital agreements become effective upon marriage. When most people think about what it is we are going to do now, they think of premarital agreements because you are laying out what debts you will be responsible for and what property you will co-own without changing title to property. That is what we do in premarital agreements. But premarital agreements are ineffective until marriage. The statute is very clear about that. The question becomes at what point can you contract it? I do contracts now. A lot of people are downloading and completing them off of the Internet. The Internet ones are risky, like anything else in the legal industry. In order for us to have any hope that these contracts will be upheld and that there will not be problems with them down the road, we have to keep them as dry and businesslike as possible, because there is a potential that it might fit closer to this category of a premarital agreement and not be valid because there was never a marriage. There is the risk that you violate other public policy provisions.

We can take a very businesslike stance, but we have to keep it down to very dry, simplified property issues. When we do that, the problem is when you obtain new property. That agreement, unless you drafted it very carefully and precisely, may not continue to work for you. In a premarital agreement, once you are married, the title of community property, which means everything you have obtained within the marriage with exceptions, is going to be community property. You have that title over you at all times, and that title protects you from anything else that you have obtained, debt or asset. With agreements, you can complete new agreements, additional agreements, add them together, and so forth. You can try to draft carefully to cover everything that happens in life, but nothing is going to protect you as well as just having that title over the top of you.

That is one example. I can go on. There are many other examples within adoption statutes, child support statutes, surrogacy statutes, and many other statutes where marriage is a key element within them. You cannot contract your way into all of those statutes. I have tried, and I have had our judges say to me, "This statute is clear. It needs marriage to apply." When you run that risk, it affects many other areas. You cannot contract for all of that. Estate planning only covers death. It does not cover life. Estate planning is one of the

basic needs, but that is some of the expense part of it. If we had this bill, it would save a tremendous amount of money for these individuals. Estate planning alone is outrageously expensive, depending on how many assets you have. It can be simplified. You can go online, download the forms, and run the risk of not doing a good job on your own estate planning. When the average population undergoes that expense—and who knows what age they are when they finally start doing their estate planning—they are not as young as these individuals because they must plan now in order to protect their families, assets, and interests.

Assemblyman Cobb:

You mentioned the public policy that you run up against. Is that the constitutional prohibition against any type of marriage other than one between a man and a woman?

Kimberly Surratt:

I do not run up against too many constitutional issues within the family law arena, no. For example, premarital agreements limit what you can contract about regarding the adoption of children or how far you can go with children. You cannot do child support through premarital agreements. It is not allowed. If the parties are already married, and it is a postnuptial agreement, you cannot do spousal support. You run into more of the family law arena, what you can contract about, not constitutionality.

Assemblyman Cobb:

But that is prohibited in marriages as well. What would this bill change in terms of being able to avoid running up against those public policy prohibitions that you described?

Kimberly Surratt:

That is the difference. With marriage, you do not have to worry about contracting for those things because you are protected and covered. Those rights come to you automatically. You do not need to worry about it. With these couples, because they do not have those rights automatically, they have to start thinking about whether they can contract for those things to protect themselves.

Chairman Anderson:

Section 12 of your amendment, Senator Parks, provides that this is not a marriage. Thus, a domestic partnership is not a ceremony but merely the filing of paperwork for recognition with the Secretary of State. Is that what we are really trying to accomplish here with this piece of legislation?

Senator Parks:

Yes, that is exactly what section 12 does. It is strictly clarification.

Chairman Anderson:

We are concerned with making sure that the Office of the Secretary of State is equipped and able to take on the responsibility of the legislation.

Senator Parks:

I have had several conversations with those concerned at the Secretary of State's Office; they informed me that they are fully prepared.

Assemblyman Ohrenschall:

To Ms. Surratt, as I understand it, right now two strangers—a man and a woman—can meet in a coffee shop, get married that afternoon, and for whatever the fee for the license and the ceremony, avail themselves of all these protections. But if two people who are not permitted to get married under the *Nevada Constitution* want to find an attorney like you and privately contract to receive some of the benefits that this bill provides, can you give us an estimate of what you or any other attorney might charge?

Kimberly Surratt:

The range is large, for obvious reasons. The same thing is true with divorces and anything else within the legal industry. On the high end, I have had couples come to me—these cases are uncontested, no battling attorneys or experts—and just my attorney's fees cost around \$60,000. That is the extreme, the top end, but that is to give them every protection I can get my hands on. When contracting, we have to go through all of the assets, re-title everything—not just within the estate planning world but also the current world—guardianships, adoption proceedings, and anything else I can get my hands on to help protect them. The range is large, though. I have had litigious cases, which cost much more in attorney's fees; go awry because of a split up. It becomes a civil lawsuit and very contested. Civil lawsuits can entail juries which the family law arena is not accustomed to. It is not something we do within the family court.

Chairman Anderson:

Of the clients you deal with, what is the age group? Are these young people, middle-aged people, or older people?

Kimberly Surratt:

All of the above. All age groups. Everybody. I cannot define it by any means. I see a lot of elderly couples coming to me. Estate planning is something a lot of people put in the back of their minds and do not like to address. They hate to think about death. They are finally getting around to it. The word is getting

out that there are some tools to try to help them. Within the family arena, and regarding the children that I deal with, it is younger couples—20s, 30s, even 40s.

Chairman Anderson:

Is this the only issue that you usually deal with, or do you also deal with medical questions, living wills, and other kinds of legal documents that come up? Perhaps there is a medical condition, and because your clients do not have the legal document of a marriage certificate, they fit into kind of a strange world. When you are dealing with family law issues, do you usually have to deal with other legal issues simultaneously?

Kimberly Surratt:

Although I am a family law attorney, because we are not dealing specifically in the family law chapter of NRS, the cases that come to me run the gamut of all areas of law. I do pull in other resources and try not to commit malpractice, for obvious reasons. It covers so many aspects of law, it is unbelievable.

Rev. Neal T. Anderson, Minister, Unitarian Universalist Fellowship of Northern Nevada, Reno, Nevada:

As a Unitarian Universalist and a person of faith, I am called to speak out this morning against injustice and for civil rights. Thus, I am here today to let you know that there are people of faith who are in favor of domestic partnership legislation. We as a denomination understand that the right to have long-term, committed, heterosexual and homosexual relationships, supported and acknowledged by faith communities and governments, is a civil right. Homosexuals are born, not made. One's sexual orientation is as much of a birthright as one's race. Homosexuals, like heterosexuals, want to be left alone to love their mate, to raise their children, to care for their home, to contribute to society, and to find a faith community that will nurture their deepest longings. Of course, our society has struggled, and continues to struggle, with many so-called moral issues, from slavery, desegregation, interracial marriage, child labor, the death penalty, abortion rights, and the rights of the disabled, to, now, gay, lesbian, bisexual, and transgender rights. Faith communities, of course, also struggle with these issues. We religious leaders expect our governmental leaders to seek equitable and just solutions to these issues that are not solely based on one particular faith's point of view, because we know that Americans and Nevadans are not of one faith. We ask you as our elected officials to look deep into your hearts and do what is just and what is fair. These are times when it is necessary for you to act with deep courage. Because other legislators before you acted in this way, we no longer have segregation separating the races, and women have the right to vote, just to name a few examples. Love is sacred in America, and so is commitment.

Loving relationships form the foundation of family and society. There is sanctity in these committed, long-term, loving relationships. I believe that it is a religious imperative that we strengthen all relationships, including same-gender, loving relationships, with the benefits and responsibilities that all couples should have access to. We all know that discrimination is wrong, and it is unfair. It is simply wrong to deny any loving couple or family the important tangible and intangible protections and responsibilities. Finally, all couples have the right to have their commitment honored and respected by society. This domestic partnership bill takes the first step toward full equality. I ask you to do all you can to ensure the rights of same-gender, loving couples and others to have the full benefits, protections, and responsibilities that heterosexual married couples currently enjoy.

Richard Morgan, Private Citizen, Las Vegas, Nevada:

I have been a resident of Clark County for 12 years, the first 10 of which I was the dean of the Boyd School of Law. I speak today only for myself. I want to express my reasons for supporting S.B. 283 (R1). First, it will help committed couples to manage their lives and affairs in an orderly way. It will make it easier to implement major life decisions affecting each other and eliminate some of the cumbersome aspects of the contracting process that were spoken to a moment ago by the family law expert.

Second, I think this bill, if enacted, will make Nevada a fairer and more just state. Not every committed couple can marry. This provides an alternative for those who cannot avail themselves of marriage. I think in that respect it increases the fairness and the justness of our state in its treatment of its citizens.

Third, I see this bill as bringing positive economic effects to the state. Many highly productive people will be attracted to, or retained in, Nevada by this sort of legal recognition of domestic partnerships. Some of those people will be couples who will avail themselves of the benefits of the domestic partner legislation. Others will be people who are attracted here because this sort of legislation and treatment of Nevada's citizens sends a good signal that this is a fair state and one in which people should come to work and be productive.

Finally, I see this legislation as reaffirming the state's policy of encouraging committed relationships between responsible adults. We want, as a matter of public policy, to encourage long-term, stable, committed relationships between adults as opposed to quickie marriages, promiscuity, and other hedonistic behavior. Providing legal recognition of such relationships through a domestic partnership, or a marriage in the cases where marriage is available, I think furthers that public policy interest.

I do not see this bill as interfering with the institution of marriage. It is an alternative to marriage for couples for whom the institution of marriage is not suitable or available. Marriage remains available to all who are eligible for it and want to use it, and indeed I would expect that the vast majority of folks who are eligible for marriage would use that arrangement as opposed to a domestic partnership arrangement.

Marriage and domestic partnerships do differ significantly, in my view. The marriage statute devotes itself very substantially to the solemnization of marriage, to the celebratory nature of it, how it will be solemnized, and whether it will be a religious solemnization or a civil solemnization. There is a good deal of that statute that is given over to that subject. Domestic partnership is a much more legalistic, formalistic kind of arrangement involving documentation with the Secretary of State, and saying nothing about solemnization. And, of course, a domestic partnership differs from marriage significantly in that it does not confer the higher social status of marriage upon the participants in a domestic partnership arrangement.

It is true that many of the same benefits of marriage are conferred through the domestic partnership bill, if and when it becomes law, but that does not mean that marriage and domestic partnerships are the same thing. As I have said, there are significant differences. In the law, there are examples of statutory arrangements for human association which are very similar in their outcomes, but get there by different mechanisms. In the business world, for example, corporations, limited liability companies, and limited partnerships are always about people coming together to organize their business arrangements in ways that will produce an aggregation of capital, a centralization of management, and a limitation of owners' liabilities, but they are not the same vehicle. They are similar, alternative arrangements that the Legislature has provided for as a matter of good public policy. It seems to me that alternative arrangements can be provided here in the same way as a matter of good public policy.

Whether or not S.B. 283 (R1) passes, couples who are not eligible for marriage are going to continue to fall in love and make lifetime commitments, and we should help them with those commitments in an orderly and legal way through S.B. 283 (R1).

Assemblyman Cobb:

You had mentioned the costs involved in some of these private contracts that are currently entered into to achieve some of these goals. Can you give another example where the government provides this type of legal service to private parties because of the costs associated with it?

Richard Morgan:

I must have misspoken if I referred to the cost. What I meant to say is this kind of arrangement will have good public policy effects. I do not know about the costs involved other than what I have heard from family law practitioners, such as Ms. Surratt, who spoke this morning.

Chairman Anderson:

I once heard that the marriage contract itself is really a function of the state to make sure that the proper transfer of property goes from point A to point B. In ancient times, it was in fact reserved for people of property rather than for everybody within the community. Is that a misunderstanding of the origins of this tradition?

Richard Morgan:

I think that may be correct. I do not hold myself out as an expert on the history of marriage. I do know that the institution of common-law marriage arose to allow the masses the opportunity for a legal recognition of their life commitments, when the formal benefit of marriage was not available to them.

Chairman Anderson:

Usually a public ceremony of some sort.

Assemblyman Hambrick:

You mentioned public policy. We currently have a constitutional amendment dealing with the marriage issue. Are public policies ever at odds with each other and how would a freshman legislator overcome the conflict in public policy questions that deal with this specific issue?

Richard Morgan:

Certainly public policies can be at odds with each other, and the way that you deal with it is by considering your own view of what is principled, what is right, and what you think would best serve the interests of Nevada. Obviously, you take into account the wishes of your constituents, but, in my view, those wishes do not decide the matter. What decides the matter for you is what you think is the best principled approach to drive the best interests of Nevada.

I do not see a conflict between this bill and Section 21 of Article 1 of the *Nevada Constitution*. That provision deals only with marriage. It says that only a marriage between a man and a woman will be recognized and given legal effect in this state. It does not go on to say anything about domestic partnerships or civil unions, even though civil unions were much in the press back in 1998 and 1999 in Vermont. At the time that the drafters of Question 2 put it together and submitted it to the people, they did not deal with anything

other than marriage. Civil unions and domestic partnerships are something different than marriage, in my view, and that is a view that has been sustained in many places across the country.

There are 19 or 20 other states that have enacted defense-of-marriage provisions in their constitutions that went beyond saying that marriage shall be between a man and a woman. They went on to say that there will be no recognition of domestic partnerships or civil unions as well. The drafters of Question 2 did not do that. They put a limited question before the voters of Nevada, and what the voters of Nevada approved in 2000 and 2002 was a limited amendment which says that only a marriage between a man and a woman will be recognized and given legal effect. This bill does nothing to interfere with that. Whether or not this bill passes, only a marriage between a man and a woman will be valid and recognized in Nevada. This bill creates domestic partnership rights, but it does not create married status.

Pamela Brooks, Private Citizen, Reno, Nevada:

[She read from written testimony ([Exhibit F](#)).] A couple of years ago, I had a partner who I had had for nine years. Her name was Marie, and she died unexpectedly one night. I was led by a nurse into the emergency room where she died. After she was declared dead, I was given maybe two or three minutes to stay with her, say goodbye, and absorb what happened. I was very shocked and devastated, but the nurse pulled me away and said that we had to go deal with the legalities. Because I was not a spouse, I had no right to be with her. It was really difficult. I think most spouses would normally be given some time to grieve and absorb it, but I was not. I was told by that nurse that the next of kin had to be notified, and since I was not the next of kin, I could not be with her. I could not be left alone in the hospital room. She took me, put me in a small room with a telephone, and said that the next of kin had to be notified and, if I was not willing to notify that person, she would have to.

It was about 11 o'clock at night, and I had to call her father on the other side of the country in the middle of the night. This was a man who I had met only once during that nine-year relationship because he did not fully accept that she was gay. He did not really want to have anything to do with this, but I was at his mercy. I called him, explained it to him, and had to pray that he would help me take care of the situation because I had no rights. Even though he did what he needed to do, he never came to see her. He never said goodbye to her. He never spoke to me again, and that really angered me. I should have been the person to take care of things; I was with her for nine years. Our relationship was really no different than any other, and I should have been the one carrying out her final wishes. I should have had the right to make those decisions and not be at someone else's mercy who did not even care to speak to her.

During our relationship, we could not afford the expensive paperwork that we heard about today; I wish we had. It made me realize that many people can come here to our state, get married on a weekend whim, and have more rights with that spouse than I did with someone I was with for nine years. It is not fair. I felt like I was treated like a criminal; and I am not a criminal.

After the initial declaration, I never saw her body again because I had no rights to her. I know the nurse was following the law as required, and I respect that. But the law is inadequate here, and we need to make this change. I am an American who should have the same legal rights and protections that my straight friends have. Passage of S.B. 283 (R1) would be the right thing to do, and I am asking you for that help. It would grant us more equal footing in situations like this, and help us protect the love we have for and commitments we make to each other. I am not asking for special rights; I am just asking for equal ones.

Paula Petruso, Private Citizen, Henderson, Nevada:

[She read from written testimony ([Exhibit G](#)).] I worked for the Nevada Division of Welfare and Supportive Services for 29 years. I administered public assistance programs and managed three district offices, Hawthorne, Carson City, and Henderson. I retired in 2004. I support S.B. 283 (R1) and firmly believe that our state needs the Nevada Domestic Partnership Act.

I saw in my years of public service the sad consequences of the dissolution of unsanctioned partnerships. Nevada provides most of its public assistance to women and children. These are the very ones left behind when a relationship dissolves. When one partner suffers a medical incident, dies, or goes to jail, the remaining partner is often left with nothing. Women are the most likely dependent partner in these cases, and they have little hope of recovering anything from a dissolved relationship, no matter how many years it existed.

One story that I recall is that of a middle-aged woman who came to the Henderson office for help. She had spent 20 years in a partnership with a man who owned a business in our city. She had worked as his bookkeeper in the business but never collected a paycheck. She also made a home with him. When he died unexpectedly, she discovered that she had nothing. She had trusted him and been completely dependent on him, but he had never put anything in her name, no property, no accounts. Within days of his death, his family appeared and began to take possession of the resources, and she was asked to vacate her home. She was eligible for a little assistance. I think she got some food stamps for a period of time. I do not know the end of her story. I do not know if she was ever able to recover anything, but I know she needed the protection of law and she did not have it. In an emotionally fragile period of

her life, she had to face eviction, homelessness, and destitution. You are wise people, and you know that these kinds of things happen every day. Unexpected tragedies occur every day in our state for so many different reasons. A man or a woman abandons the family relationship without leaving any provisions behind for the one who remains. Please give these partners the protection of law, whether they choose to marry or not, and we might actually save some public money in the process.

Assemblyman Hambrick:

The example you gave is compelling for many reasons, but had this law been enacted 29 years ago, as I read it, if the man had not signed a document, this law would not have changed her status. In your opinion, from your experience, it would still require two people to sign a document in order for her to be protected, correct? I do not think this law would have changed that situation, or am I wrong?

Paula Petruso:

I find that many people, through neglect, do not sign the documents they need to. How many of us do not have wills when we should have them, because we never really think about the tough parts of the future. I believe if this law was available, this particular woman might have taken advantage of it. She was smart, thought she was middle class, and she herself might have made an effort to do something. We would certainly need to educate people.

Assemblywoman Ellen B. Spiegel, Clark County Assembly District No. 21:

I am here today to explain to you how domestic partnerships are not just for the gay community and how they are different from marriage. I am going to share two very personal stories with you, because I can speak to this issue in a way that few can, and I think it is very important.

I am one of the luckiest women in the world. I am lucky because I have my husband, Bill, who is a wonderful, caring, loving, and supportive husband. But years before I met Bill, I was also lucky enough to have a man named Elliott in my life. He also was a wonderful partner, and I thought that I was going to spend the rest of my life with him. One day he said to me, "I would die a happy man if I could spend the rest of my life making you happy." Well, he got that wish. On the day before his 40th birthday, I came home from work and found that he had suffered a fatal heart attack.

When I called the police and they came that night, they told me that even though it was obvious that I was living there—my clothes were all over the place, I had the keys, I had the alarm code, I had called them—because we were not married and I had no proof of a rental agreement, I could not be in the

house anymore. They told me that I should get my toothbrush and a change of clothing, and that I should leave plenty of food and water for our cats, because they were going to have to padlock the house. I was fortunate that some nearby friends let me stay there. My family was about 40 miles away, and his family was even further.

I know what it is like to lose a partner, be in devastating emotional pain, and yet be immediately thrown into the street because I had no rights in the relationship. Years later, when I was ready to date again, I was lucky enough to meet Bill. While we were in the midst of planning our wedding, I got a notice from my landlord informing me that my rent was going to be increasing by \$1,000 a month. You would think that the next logical step would have been for me to move in with Bill. Well, there was a problem with that. Bill's lease did not allow unrelated, unmarried people to live together in the apartment without the express written permission of the landlord. And we knew the landlord would not grant us permission. So we knew that if I moved into that apartment, we would be evicted, not for any real reason but just because the landlord had the right to evict a tenant who took in a partner.

Lucky for us that apartment was in Santa Monica, and Santa Monica has a domestic partnership ordinance. Ten years ago Bill and I filed paperwork with the City of Santa Monica and actually became domestic partners. This granted us the right to be able to live together, and I cannot tell you how relieved I was to know that the landlord could not evict us and, if something should happen to Bill, I would not be thrown into the street again.

Six months later, Bill and I were married. Our wedding was officiated by an Orthodox Jewish rabbi and was a very traditional service. At that point, we took on the rights and obligations prescribed by our religion, where marriage is meant to mean that the husband and wife are merging together into a single soul. We became linked spiritually in a way that was very different from our domestic partnership. We signed a *ketubah*, which is a traditional Jewish marriage contract. I would like to take a minute to read to you the English text of our *ketubah*.

The groom, Bill, and the bride, Ellen, consecrate themselves to each other in this covenant of marriage. As we join our lives together in a bond of eternal love, we promise to be as sensitive and understanding towards one another in our hours of happiness as we are in our moments of sadness. We promise to respect and honor each other and to delight in each other's uniqueness, to fulfill our spiritual and emotional needs as one. We promise to be honest and open with one another and to share all of our dreams,

thoughts, and feelings. We will strive to build a home committed to our Jewish heritage, a home filled with love, empathy, laughter, and acts of kindness. As our love grows deeper and stronger, may our souls intertwine in the heart's deepest intimacy. All this is valid and binding.

As you can see, entering into a marriage is very different from establishing a household in the eyes of the state. Our marriage is spiritual, while our domestic partnership is practical. The domestic partnership did not give us the sanctity of marriage. It gave us some legal rights, basic rights that should be available to all citizens regardless of circumstances. The United States was founded on the principle of separation of church and state. While we should respect our churches and the *Nevada Constitution*, we also should respect the basic rights of all Nevadans. No Nevadan should be a second class citizen in the eyes of the state, and as a legislative body, we should strive to ensure that every Nevadan has equal rights under the law.

Rev. John Emerson, Pastor Emeritus, First United Methodist Church, Reno, Nevada:

I have prepared written testimony ([Exhibit H](#)). I do not think I need to expand on that, so I will surprise you by not saying another word.

Pam Roberts, Private Citizen, Reno, Nevada:

I have submitted a letter in which I expound upon a few things which have already been said ([Exhibit I](#)). The additional thing I would like to mention, which has been referred to but not specifically stated, is that Section 1 of Article 1 of the *Nevada Constitution* states, "All men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness[.]"

I want to tell you about my family. I have been with my partner for 18 years, and we have two children. One of them is Zachary. When he was five years old, like all other kids, he did a book about his family. He showed pictures of his family [holding up book], and you can see, in true five-year-old fashion, that he has, "My dog, mom Gretchie, my brother, me, and my mommy Pam." This is his family.

My other son, Riley, who is now 14 years old, did his family tree. His family tree has Pam, Gretchen, Zachary, and Riley. Our family is even bigger than that. I brought a small version of our family [holds up photo], Gretchen, me, and our boys, along with her brothers and sisters and her parents. We are a Nevada family, and we deserve the same rights that other families have in

Nevada. I am an attorney. I prosecuted for the City of Reno for seven years and for the State of Nevada for ten years. I have taught elementary school for the state; and I am very familiar with the laws. We have done everything that we can under our laws to protect our family, but we are not equal to the other families in Nevada that are headed by a husband and wife who are considered spouses. And when you start applying the word "spouse" throughout our statutory scheme, they have many rights and obligations that we do not have.

If my partner dies or becomes suddenly ill—we have been together 18 years—and she goes to the hospital, they do not have to let me in. You heard Ms. Brooks' story. When my partner's parents pass away—and that is not an "if," unfortunately, it is a "when"—they are not considered my family anywhere in Nevada law. I cannot take family leave, bereavement leave, to be there and be supportive of my partner and, frankly, of our children. Those are their grandparents, and they are not considered family.

You are going to hear from the opponents of S.B. 283 (R1) that Section 21 of Article 1 of the *Nevada Constitution* is the public policy of this state, and it is. Seventy percent of Nevadans said that marriage is going to be between a man and a woman. Gretchen and I are not married under Nevada law, but we are committed to each other, we have a family, and we deserve equality. You all took an oath to uphold the *Nevada Constitution* and the *United States Constitution*, and they are your manuals. They are your public policy, and I ask you to please pass S.B. 283 (R1).

Michael Knight, Private Citizen, Henderson, Nevada:

This is just a matter of pure frustration with our government. I want S.B. 283 (R1) to pass because it says it is a civil contract. I do not understand how anybody religious can object to laws affecting civil contracts, or affecting people who desire to enter into these civil contracts. I sincerely hope that you remember that civil litigation has no religion. It has no right or wrong as far as the church or organized religions go. This is purely a legal matter. For the Legislature to consider it on any other grounds would certainly not be good for the rights of the people it affects. I ask that you consider this purely on a legal basis and not on the basis of religion or marriage or anything else, because it really is just a contract.

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

I served as the petition chairman for 16 of the 17 counties on the protection of marriage petition, and I personally gathered over 1,000 signatures in all of the counties. I would first like to turn to the amendments of the bill ([Exhibit C](#)) and discuss a couple of those. I am opposed to this legislation, but I do want to recognize that there are a couple of improvements in the amendments.

On page 4 in section 8, the amendment now includes an exemption for private employers from having to provide health care benefits for domestic partners. This would have forced a tremendous economic cost upon employers in this economic downturn in our state, as well as perhaps violating some of their religious liberties. The *Nevada Constitution*, in the Ordinance, requires a "perfect toleration of religious sentiment."

On page 5 of the proposed amendment, we see that section 10 would require a legal union of two persons in another state to be accepted and recognized in this one. There is an amendment in that section which requires that they comply with Nevada law in obtaining domestic partnership recognition.

I think the most critical improvement is in section 12, which is of serious concern to many of us. That section provides that it is "left to the dictates of each religious faith to determine whether to offer or allow a ceremony or blessing of domestic partnerships." This is certainly critical with regard to not interfering with the religious faith and positions of many churches that do perform religious ceremonies. Those are improvements in the current bill.

I would like to turn directly to S.B. 283 (R1) and make a couple of comments. On page 2, just looking at some of these definitions, line 22 says that these people "have chosen to share one another's lives in an intimate and committed relationship of mutual caring." I cannot help but think that these certainly mirror the same definitions that one might consider in a marriage.

In section 7, it says domestic partners will have "the same rights, protections and benefits . . . responsibilities, obligations, and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of law, as are granted to and imposed upon spouses." The entire bill goes along in this similar vein, which I would say is a mirror of the statutes on marriage. Therefore, I believe that it does circumvent the constitutional amendment to keep marriage only between a man and a woman.

Paragraph (e) of subsection 1 of section 7, on page 3, states that, if Nevada law is in opposition to federal law, domestic partners must be treated according to Nevada law and not federal law. Of course, we know that the Defense of Marriage Act [110 Stat. 2419, *United States Code*, Title 1, Section 7 and Title 28, Section 1738C (1996)], which was passed by Congress and which is part of what this is referring to, will be circumvented and undermined by this current legislation. The Defense of Marriage Act did exempt states from recognizing same sex marriage from other states, which would have been

required under the Full Faith and Credit Clause of the *United States Constitution*.

If you look on page 4, line 31, it talks about other rights and duties with regard to property and says that any reference to a date of marriage shall be deemed to refer to the date of registration of the domestic partnership.

In section 11, which I think is the most telling portion of the bill, it says that "a domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the *Nevada Constitution*." If it did not say that, it would be obvious to most people that that is precisely what it is aiming to do. By putting that into law, they seek to circumvent the current constitutional amendment passed by the people of the State of Nevada.

My final comment is on section 12. This is the section of the bill which says we must construe liberally to the effect of resolving any doubt or question in favor of domestic partnership with respect to Title 11 of NRS.

I am also a person of faith in Jesus Christ, and I am here this morning as a participant in the protection of marriage campaign, having obtained signatures in every county and upholding marriage as a sacred union.

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

I was very interested in the family law information given, but I thought, "Gee whiz, everybody goes into a court of law with no guarantees." I also have been talking to a lot of people out in the communities, and I have never seen so many people get so angry about the fact that there seem to be so many issues coming before our State Legislature that are all end-runs around the vote of the people or our *Constitution*. It is making them very angry. I thought you should know that. Of course we are not for this bill, but if it does pass, people are going to be asking me, "What is the difference between a domestic partnership and marriage?" I am going to tell them, "One starts with a 'D' and one starts with a 'M'."

John Wagner, State Vice Chairman, Independent American Party, Elko, Nevada:

We are against the bill for the same reasons as have already been stated. Are there common-law marriages in this state? If there are not, maybe there should be. I understand some of the concerns of the gay partnership people, and I think some of these can be addressed by statute without using the name of domestic partner. I like Senator Parks, I respect him, and I think he is a great guy, but I do not have to agree with him on everything, and I do not agree with him on this.

Richard Ziser, Las Vegas, Nevada, representing Nevada Concerned Citizens and the Coalition for the Protection of Marriage:

The Coalition for the Protection of Marriage was responsible for the initiative and the amendment that has been placed in the *Nevada Constitution* protecting marriage. Janine Hansen laid out our position quite well, so I will not repeat everything that she had to say. I will ask that my written materials be made a part of the record ([Exhibit J](#)).

Assemblyman Ohrenschall:

Earlier today, Richard Morgan, former dean of the Boyd School of Law, testified that other states that had passed constitutional amendments similar to Question 2 had broader language that prohibited not only homosexual marriage but also domestic partnerships, which clearly is not in Section 21 of Article 1 of the *Nevada Constitution*. Maybe my memory is rusty, but I seem to remember that a lot of the campaign literature and propaganda that went out in support of Question 2, when it was being considered by the voters, said that it would specify that marriage can only be between a man and a woman, but it would not affect things like domestic partnerships and civil unions. Obviously, the language of Question 2 only referred to marriage. It does not ban domestic partnerships or civil unions. I am wondering where you see the conflict.

Richard Ziser:

I would take issue with your statement that the materials we put out were propaganda. I think you understand that we do have a single-subject rule, and if you have been watching any of the initiatives lately, it seems like lawsuits pop up every time someone includes more than one issue. I assume that probably would have happened with our initiative. There are states which have been more specific. That has happened since we put our amendment in place. I guess if you would like us to, or if we have to, we could go back through the amendment process and do the same thing again. That may be necessary based on what we are hearing today. They want to create domestic partnerships. We went through the initiative process of protecting marriage, and they are sidestepping the fact that we do have an amendment protecting marriage. I know Mr. Morgan mentioned that there are states which have amendments, where there have been conflicts, and they do have domestic partnerships. That issue has gone both ways. There are states that have protected marriage with language very similar to ours, and they have overruled the domestic partnership. In the City of Philadelphia, that has taken place.

Assemblyman Ohrenschall:

The way I understood the amendment when it went before the voters, both the language of the amendment and the campaign literature and advertisements

that went out were that it would not affect domestic partnerships and civil unions. That is why the language was written as it was.

Richard Ziser:

I was responsible for most of that information, and I do not ever remember seeing any documentation mentioning domestic partnerships or civil unions. There was talk about benefits, and we did talk about the concern not necessarily being the benefits themselves, but the recognition of domestic partnerships or another form that would be similar to marriage. To remind you, one of the major issues that was brought up in the campaign was the religious-liberties issue in that once a status is recognized in state law, then heterosexual and homosexual relationships would be looked at by the law as being morally equivalent, and many people in this state do not believe that is true. It then extends into our school system, and our kids are being taught that there is a moral equivalence between a heterosexual marriage and a homosexual marriage; that is something that violates the religious liberties. We are talking about rights, and there are always conflicts with rights. That issue was very strongly talked about in the campaign.

Chairman Anderson:

I need to note for the record that another Assemblyman is present in addition to Assemblywoman Spiegel. When a member of the Legislative Body is present in a chamber, even though he is not a member of the Committee, it is incumbent to make sure that his name is included in the official record of the day. Dr. Hardy, we will enter your name into the record so that we know you were here.

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

I am representing a neighborhood group of some 13,000 households. We are here to speak against this bill. I want to pose the question of why there has been this amazing verbal gymnastics to piggyback, if you will, this with a constitutional amendment that was passed with a vote of the people in 2000 and 2002? We are concerned that, in essence, there should be an amendment to the *Nevada Constitution* for this issue and not the gymnastics that have been done.

In previous communications, we called attention to section 11 of S.B. 283 (R1) with a two-sentence example. It seems to say, "You are an Assemblyman. Instead, you are not an Assemblyman." "A domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the *Nevada Constitution*."

We faxed over today our single page of concerns ([Exhibit K](#)), and we state that "The integrity, perfection, fulfillment of our *Nevada Constitution* Article 1, Section 21, is entrapped by S.B. 283."

Assemblyman Segerblom:

I am curious about your representation of the Charleston neighborhood. I represent Charleston from Valley View to Eastern, and people in my district strongly support this law. I am curious where you find people on Charleston Boulevard who do not believe in domestic partnerships.

Juanita Clark:

Respectfully, these are not people who do not support these partnerships at all. These are people who are not for the bill as it is where it does the verbal gymnastics, as I termed it before, to attempt to get around the language in the *Nevada Constitution* regarding marriage between a man and a woman. I am not speaking against your question. But I am speaking against S.B. 283 (R1).

Tony Dane, Political Consultant and Pollster, Las Vegas, Nevada:

I am a political consultant and national pollster. I have polled all over the United States, different issues, different candidates, and I have been published on FOX News and several blogs and newspapers throughout the United States.

This is one issue that I have polled in several Senate districts. I have not broken it down into Assembly districts yet, but I plan on doing so. Although domestic partnership is more tolerable to the population, it is still overwhelmingly a negative. Most people I have polled do not support S.B. 283 (R1). My personal feeling is that you are trying to create another class of citizen, which I believe is wrong. This is not race, not creed, not color; you are trying to create a different group. I believe that people should be able to live their lives anyway they want, but I have problems with the bill. What are the age groups for a domestic partnership? Because a lot of pedophiles also believe that they were born that way, are they going to be allowed to have a domestic partnership and marry? There are a lot of concerns in here that are not being addressed. I feel that this bill is wrong; I think it is immoral, and I believe you are trying to circumvent the vote of the people. In polls that I have been taking, a vast majority of the people feel as I do.

Father David Hoff, representing himself and Saint Paul's Charismatic Episcopal Church, Henderson, Nevada:

There are people of faith who are against this measure, just as I am sure there are others who would support it, as Reverend Anderson stated. I am going to boil my remarks down to two points. First, with 70 percent of the Nevada population voting for marriage being only between one man and one woman and

with all of the testimony you heard against the bill, I want to remind you that this is the will of the people who have spoken on this issue. I think that entire 70-percent figure ought to register loudly and clearly with all members of the Senate as well as the Assembly.

Second, I do believe this bill is an inroad into marriage being between one man and one woman and that we will have further inroads along this domestic partnership path. Not only with pedophiles, as Mr. Dane stated, but I believe the American Psychological Association lists 30 other aberrant behaviors where I could see people wanting special laws that would accommodate them.

I hope that the members of the Assembly would take the voice of the people of Nevada into their careful consideration and vote no on S.B. 283 (R1).

Robert Wells, Private Citizen, Las Vegas, Nevada:

One of the things I have not heard discussed in all of this—we have talked about families, what constitutes a family—is families that constitute perhaps three, four, or five committed adults. The question in my mind is, if we start extending this as a public policy to people who have not been included in the past, what is to stop us from going on to additional relationships such as that? This is a policy issue that we need to look at as a state and be very careful about what steps we go down. One of the distinctions that has been made here is marriage is for ceremonial or social status reasons. I do not believe that is true. I also do not believe that it is just as a matter of convenience that people need to be able to do this. Frankly, one of the things that I look at in terms of rights and who has the right to do different things is that I am a heterosexual married man, but if my wife wants to be able to use my credit card or have access to my utility bills, I have to go through the legal steps of notifying those parties that she is entitled to do that. She does not have that right just because we are in a committed relationship. I very much worry about the direction we may be going by expanding the definition of marriage or saying that, in this case, "We have something else, it is just like marriage, but we are not going to call it that because the state law says we cannot."

Olaf Vancura, Private Citizen, Las Vegas, Nevada:

I would like to briefly address what I think has been alluded to by Mr. Ziser and others and is one of the fundamental issues, and that is the morality of this particular bill. Marriage was instituted by God, and God is perfect, God is always fair, and God is always just. God created us, as the scripture says, as male and female. Therefore, marriage is perfect because everyone can marry. It is a fair civil right. Every man can marry and every woman can marry. That is by His design, and it is a beautiful design.

God obviously speaks to homosexuality, and He says that it is immoral. I think as a society, as Nevada citizens, we have spoken on this issue, and 70 percent is a pretty healthy number. I would mirror the comments of those prior that ultimately the people should dictate what happens in this state.

I do not think it is right for our government to celebrate or elevate a lifestyle that God has said is immoral. I think we do so at our own peril. I am a sinner, just like we all are. I do think that the most loving thing we can do—and God is love—for others who are in a lifestyle that is sinful, is to address that in a loving, truthful way, not to try to endorse something that is ultimately to others' demise.

Assemblyman Segerblom:

Speaking for myself, my God does not have any problem with domestic partnerships, and I do not think that this is a religious matter. We believe what we believe, but the role of government is not to legislate religion; it is to legislate. Just for the record, God does not oppose domestic partnerships.

Olaf Vancura:

May I respond to that?

Chairman Anderson:

Well, it is not an argument on the divinity or lack of divinity of a creator, nor is this a legislative question on the existence or nonexistence of a supreme being. This is a legal issue dealing with whether we are going to establish a registry within the Office of the Secretary of State. It is a pure and simple thing. You and I could have a long discussion on apologetics if you wish; I would be happy to go there, although it would require me to reach deep in my memory of my adolescence.

We heard what you said. I have already told Mr. Segerblom that any statements or questions must be directed to the bill. If it is to the bill, please. If you are going to debate with me about the existence or nonexistence of God, it is not going to happen.

Olaf Vancura:

It is an issue of morality, sir.

Chairman Anderson:

Thank you. Senator Parks, a closing statement?

Senator Parks:

I believe you summed it up. This is an issue dealing with putting a contract in law.

Assemblyman Cobb:

Does this bill, with the fee involved, create any new revenue?

Nicole Lamboley, Chief Deputy, Office of the Secretary of State:

There is a fee for the filing, just as there is for other ministerial filings that our office processes.

Assemblyman Cobb:

More specifically, does it create any revenue?

Nicole Lamboley:

I believe that would be a question for the Legislative Counsel Bureau's Fiscal Division to answer. There is a fee associated with the filing, just as there is for other filings that our office processes to cover the costs of the processing.

Chairman Anderson:

I will close the hearing on S.B. 283 (R1).

[The Committee stood in recess at 10:35 a.m. and was called back to order at 10:53 a.m.]

There is a quorum with nine members present. We are reconvened for a work session.

[Discussed upcoming business for the Committee.]

Let us turn our attention to the work session document. Let us take a look at Senate Bill 125 (1st Reprint).

[Senate Bill 125 \(1st Reprint\)](#): Makes changes relating to personal identifying information. (BDR 15-481)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 125 (1st Reprint) was presented by Senator Parks to this Committee on Monday. [Read from work session document ([Exhibit L](#)).]

The Committee has two amendment options to choose from. The first amendment, which was presented by Clark County, provides an additional exception for the radio frequency identification (RFID) baggage tags used by the

McCarran International Airport. This is attached to the work session document and presented as option 1. However, during the hearing, the Committee discussed the need for the exemptions in this bill, and because of the intent language in the bill, the exemptions are actually unnecessary. The Committee may consider the second amendment option to delete altogether the exemptions currently listed in the bill for law enforcement, health care providers, and research purposes. If you delete the exemptions, it does not apply the provisions of the bill to those particular entities.

Chairman Anderson:

If we take option 2, since it is not the intent of a medical provider to carry on some illegal activity, really what that all comes down to is there is no need for the listing of all those exemptions. I would suggest that, if we are going to move forward, rather than create a long list of exemptions, which the bill as currently put forth might do, we would be better advised to remove all exemptions and trust to the nature of the bill itself in terms of having to prove illegal intent.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
SENATE BILL 125 (1st REPRINT) WITH AMENDMENT NO. 2.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMBRICK, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us turn to Senate Bill 130 (1st Reprint).

[Senate Bill 130 \(1st Reprint\)](#): Revises certain provisions governing certificates of permission to perform marriages. (BDR 11-468)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 130 (1st Reprint) expands the authority to perform marriages to qualified persons in addition to ministers. The Committee has an amendment from the American Civil Liberties Union (ACLU) of Nevada to consider. The amendment allows notaries public to perform marriages. The memo and proposed language is attached to the work session document for your review ([Exhibit M](#)).

Chairman Anderson:

I appreciate the concept behind the proposed amendment. I think it creates another set of problems by adding this to notaries' responsibilities. There have been some questions over the last several sessions about notaries that leave me

a bit uneasy about assigning them this specific legal authority. While I am not absolutely positive that this is necessary, I do not find it to be quite as objectionable as portrayed by the ACLU, although I think their warning regarding the constitutional requirement of separation of church and state is always well-timed and well-intended.

Assemblyman Segerblom:

I think the ACLU has a point, but the reality is I do not see how we could allow all notaries to perform marriages. Perhaps in the Interim we could work on some type of special notary who could be registered with the Secretary of State and perform marriages that would not have any religious connotation. In the meantime, I think the bill has merit.

ASSEMBLYMAN MANENDO MOVED TO DO PASS
SENATE BILL 130 (1st REPRINT).

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMBRICK, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Let us turn to Senate Bill 169.

[Senate Bill 169](#): Enacts the Revised Uniform Unincorporated Nonprofit
Association Act of 2008. (BDR 7-674)

Jennifer M. Chisel, Committee Policy Analyst:

The Committee heard S.B. 169 on Monday as presented by Senator Care ([Exhibit N](#)). It enacts the Revised Uniform Unincorporated Nonprofit Association Act. There are no proposed amendments for the Committee to consider on this bill.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS
SENATE BILL 169.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMBRICK, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Let us turn to Senate Bill 313 (1st Reprint).

**Senate Bill 313 (1st Reprint): Revises provisions relating to guardianships.
(BDR 13-182)**

[Work session document ([Exhibit O](#)).] This is Senator Matthews' bill on guardians. I was not happy about the exemption for public guardians to be excused from jury duty. While I realize that there are only a few people who would potentially be harmed, there has been a great deal of time spent over the last several years in terms of who should be on jury duty. I know that the *voir dire* will often exclude people who have knowledge of the law, as a guardian would. We do not exclude people who, by the nature of their job, have no opportunity to serve on juries. I think an Amend and Do Pass motion would make this bill acceptable.

Assemblyman Carpenter:

I agree with you on who should be exempt in regard to jury duty. I do not like the bill, including section 50, on page 32, where the guardian could sell perishable property and other personal property, because he does not have to get the sale confirmed by the court. I think the current law meets most every situation that you could think of, and I do not like the \$10,000 net value after deduction. I do not like that part of the bill.

Chairman Anderson:

Other than that section of the bill...?

Assemblyman Carpenter:

I do not have a problem with any of the other ones, but I think most of them have to go through the court, but this one does not. I think the exceptions that are reiterated here take care of most situations.

Chairman Anderson:

In that case, let me go back and re-review the bill, and we will put it into another work session document so we can look at the bill more closely.

Let us turn to Senate Bill 333.

Senate Bill 333: Makes various changes relating to real property. (BDR 9-865)

This is a bill we heard last Saturday.

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 333 clarifies the notification procedure for a borrower to terminate a loan provision for future advances on principal. During the hearing, Assemblyman Cobb proposed a clarification to provide that the statement

recorded by the lender indicate the amount of outstanding interest. The amendment is highlighted on page 2 of the attached mock-up ([Exhibit P](#)).

Chairman Anderson:

Mr. Cobb, does the amendment meet your intent?

Assemblyman Cobb:

Yes, that was the suggested change that I had.

ASSEMBLYMAN COBB MOVED TO AMEND AND DO PASS
SENATE BILL 333.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMBRICK, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Let us turn to Senate Bill 353.

Senate Bill 353: Revises certain provisions relating to sealed records concerning criminal proceedings. (BDR 14-193)

Jennifer M. Chisel, Committee Policy Analyst:

[Work session document ([Exhibit Q](#)).] The Committee heard S.B. 353 on Monday. It provides law enforcement agencies the authority to access sealed criminal history records of a person applying for employment with a law enforcement agency. It also requires an applicant for employment with a law enforcement agency to disclose criminal proceedings that were sealed by law. The Committee has no amendments to consider.

Chairman Anderson:

The only problem that I perceive here is with respect to someone who commits an indiscretion, a misdemeanor, gross misdemeanor, or a felony, at a very young age, and he is put into a program and successfully completes that program. For all intents and purposes, the promise of that program and why he agreed to it was he would be able to move forward with the rest of his life without having to disclose. Now, all of a sudden, he comes to seek employment in a particular area, law enforcement, where we have a high level of expectation of the integrity and honesty of the individual. It seems to me that we could probably handle it by means of a disclosure statement on the application that the applicant has to disclose everything regardless of whether his file is sealed. I listened to part of the testimony and talked to several

members regarding what was said while I was not here directly for the testimony on the bill. The question of whether this bill is necessary is important because Mr. Horne had some concerns about it. I need to hear your feelings about it.

Assemblyman Ohrenschall:

I listened to what Mr. Horne said, and I think I agree with you and Mr. Horne. An applicant can agree to this as a term or condition of applying for a position. I think it might be overkill to put this in statute.

Chairman Anderson:

Apparently we do allow the Gaming Control Board to have this authority in terms of people who make application for gaming licenses. It is not without precedent.

Assemblywoman Parnell:

I would assume that this means if you did something that was expungable that would not be included in the record. Could someone clarify that for me?

Chuck Calloway, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

I am not an expert in this field. However, I did talk to the people in our records section. Regarding the first question, we have our potential employee sign a waiver saying that he will allow his records to be viewed, but the problem is twofold. First, when a record is sealed, by *Nevada Revised Statutes* (NRS) that record is deemed to have never existed. When we do a background check, there is nothing to show that a previous arrest occurred. Second, even with a person's permission to look at a sealed record, the court that sealed the record would have to be petitioned to open it. The court will not open the record even with the person's signed waiver. In certain cases where the potential employee claims he was arrested for one offense and we talk to someone in a background investigation who claims the person was arrested for some other offense that may be more serious, the only way to see who is telling the truth is to unseal the record and determine if it would be an offense for which we would not hire that person. For certain misdemeanor offenses, and that sort of thing, we would still potentially hire that person. If it would satisfy the Committee, I have talked to several people about this, and they say that we are primarily concerned with adult records, not with sealed juvenile records. We would be happy to amend the bill to put in language to say "sealed adult criminal records."

Assemblywoman Parnell:

My question is answered. Maybe if we amended it to exclude juvenile records that have been expunged, I would probably have a greater comfort level.

Assemblyman Cobb:

I was going to echo the officer's comments. In discussions with law enforcement, that was the reason they felt this was necessary, and I think it is very important that we know the full background on individuals who wish to be involved in law enforcement. That is why I support the bill.

Chairman Anderson:

Until we can come up with some language, we will hold off on the bill.

Assemblyman Carpenter:

It seems to me when someone gets a record sealed; he has already gone through a big process. I guess you should be looking at those things for any kind of an occupation. Even with all of the background checks and everything, they still hire people who do not really meet standards. I am having a hard time with this bill because I do not think people have their records sealed because they want to commit future crimes. They do it so they can continue with their lives. I have a problem with continuing to make them unseal these records.

Assemblywoman Dondero Loop:

How difficult is it to get a record sealed?

Kristin Erickson, representing the Nevada District Attorneys Association, Reno, Nevada

I am sorry to say that my knowledge on record sealing is quite limited. I do know there is a time period, a lesser period for a misdemeanor and a greater period for felonies, depending on the category, but I am afraid that is about all I know on this subject.

Lee Rowland, representing the American Civil Liberties Union of Nevada, Reno, Nevada:

I do not know much more than Ms. Erickson. I happen to know the numbers. For a misdemeanor, I believe it is five years and for a felony I believe it is ten years until you are eligible. From what I hear in the office, the main hurdle for most people is not the process itself because it is a fairly simple procedure in which the judge rules whether there is merit; it is the expense of hiring an attorney to do it. From my point of view at the American Civil Liberties Union (ACLU), we get tons of calls about how to seal records. The obstacle is not so much the process but the cost of getting an attorney to do it.

Ben Graham, Administrative Office of the Courts, Carson City, Nevada:

In the unit that I worked with at the District Attorney's Office in Clark County for nearly 20 years, we probably sealed at least 2,000 to 3,000 records a year. There was a website developed based on what was being done in the Washoe County District Attorney's Office. You do not need to hire an attorney. There is a step-by-step process for sealing records. It varies based on the severity of the crime. A record can be sealed tomorrow if the case is dismissed. We talked about the sealing process in specialty courts. It can be done with relative ease. Let me assure you, however, it is never easy to get a record unsealed. I have participated in that process, and it is very frustrating. Notice is given, and you can only seal or unseal what is in Nevada.

Chairman Anderson:

We are adjourned [at 11:32 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 8, 2009

Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Guest list
<u>S.B. 283</u> <u>(R1)</u>	C	Senator David R. Parks	Mock-up of proposed amendment to bill
<u>S.B. 283</u> <u>(R1)</u>	D	Senator David R. Parks	Letters in support of the bill
<u>S.B. 283</u> <u>(R1)</u>	E	Senator David R. Parks	Information on the bill
<u>S.B. 283</u> <u>(R1)</u>	F	Pamela Brooks	Written testimony
<u>S.B. 283</u> <u>(R1)</u>	G	Paula Petruso	Written testimony
<u>S.B. 283</u> <u>(R1)</u>	H	Rev. John Emerson	Written testimony
<u>S.B. 283</u> <u>(R1)</u>	I	Pam Roberts	Written testimony
<u>S.B. 283</u> <u>(R1)</u>	J	Richard Ziser	Written materials
<u>S.B. 283</u> <u>(R1)</u>	K	Juanita Clark	Letter
<u>S.B. 125</u> <u>(R1)</u>	L	Jennifer M. Chisel, Committee Policy Analyst	Work session document
<u>S.B. 130</u> <u>(R1)</u>	M	Jennifer M. Chisel	Work session document
<u>S.B. 169</u>	N	Jennifer M. Chisel	Work session document
<u>S.B. 313</u> <u>(R1)</u>	O	Jennifer M. Chisel	Work session document
<u>S.B. 333</u>	P	Jennifer M. Chisel	Work session document
<u>S.B. 353</u>	Q	Jennifer M. Chisel	Work session document