

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 23, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:06 a.m. on Monday, February 23, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**GUEST LEGISLATORS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Thomas F. Kummer  
The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court  
Bruce T. Beesley, State Bar of Nevada  
William F. Dressel, Cochair, Article 6 Commission of the Nevada Supreme Court  
James T. Richardson, J.D., Ph.D., Director, Grant Sawyer Center for Justice Studies and Judicial Studies Program, University of Nevada, Reno

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Samuel P. McMullen, Las Vegas Chamber of Commerce  
John Wagner, Independent American Party  
Lynn Chapman, Nevada Families  
David Schumann, Nevada Committee for Full Statehood  
Janine Hansen, Nevada Eagle Forum  
Warren Russell, Elko County Commissioner  
Juanita Clark, Charleston Neighborhood Preservation  
Fred Hillerby, MasterCard Worldwide  
Lisa Corrado, Redevelopment Project Manager, City of Henderson  
Chris MacKenzie, American Express Corporation  
Sabra Smith-Newby, Director, Department of Administrative Services, Clark County  
Bill Uffelman, Nevada Bankers Association  
Lea Tauchen, Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada  
Chuck Callaway, Sergeant, Intergovernmental Services, Las Vegas Metropolitan Police Department  
Ira Victor, InfraGard, Sierra Nevada Alliance  
Rebecca Gasca, American Civil Liberties Union of Nevada  
Helen Foley, T-Mobile USA

CHAIR CARE:

The hearing is open on Senate Joint Resolution (S.J.R.) 2 of the 74th Session.

**SENATE JOINT RESOLUTION 2 OF THE 74th SESSION:** Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

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

I have submitted material to you in ([Exhibit C](#), original is on file in the Research Library). I present my written testimony in ([Exhibit D](#)).

The original version of this measure required a justice or judge to win by 60 percent of the votes cast in the election. The Assembly amended this last Session to 55 percent of the votes cast in the election. There is a big difference between this resolution and others previously on the ballot.

As Legislators, we are expected to have some opinions and to tell people how we stand on particular issues. That is not true when running for a judicial seat. People need to see judicial candidates as fair, impartial and independent.

Any lawyer with five years of experience can put his or her name on the ballot. This measure improves the performance, recommendations and reports that were not in earlier versions of this proposal.

Let us strive to achieve an independent judiciary.

THOMAS F. KUMMER:

I support S.J.R. 2 of the 74th Session. This has been needed for quite some time. I am familiar with the Missouri Plan method of selecting judges. I have never been in favor of judges and justices having to stand for election. It creates the aura of impropriety and potential conflicts.

Under S.J.R. 2 of the 74th Session, qualified lawyers will apply for the positions of judge or justice. There will be a screening process. The commission is broad-based with lawyers, legislators and citizenry who will make these decisions. They will look at reports and determine whether the judge should stand for retention.

Trial lawyers practicing in the courtroom need 10 or 15 years of experience to acquire the qualifications to sit in judgment of others on many of the complicated issues we face today. The process of raising money to run for a judicial position should be eliminated in order to have judges and justices who are neutral, fair, impartial and independent.

Thirty years ago we were representing a high-profile client against a high-profile corporate citizen of Nevada in a summary judgment process. The court disclosed that it was in discussion with the other party about a campaign contribution. The court did not disqualify itself, and we proceeded. The motion was heard, and our summary judgment motion was denied. We filed a motion for rehearing, and the court recused itself on the basis it had received a substantial contribution from the other party. We sought the rehearing before another judge who reversed the decision and granted the summary judgment, which was ultimately affirmed on appeal. The appearance of impropriety was present in this example.

Most judges are free of any bias or prejudice. The time and effort it takes to stand for election is wasted time. A judge should be doing the people's business, which is sitting as an unbiased arbiter of the facts of a case.

THE HONORABLE JAMES W. HARDESTY (Chief Justice, Nevada Supreme Court):  
I am not here in my capacity as Chief Justice because the judiciary does not take a position on this bill. It is up to the voters and the Legislature to decide how judges should be selected.

I was elected to the bench, not appointed. In my personal opinion, this measure would make an improvement in the manner we select judges in our State.

Under the elective system, a judge who runs for reelection can be elected on his or her own vote if unopposed. Approximately 64 percent of the judges in this State ran last year unopposed.

This bill would require any judge who is unopposed to stand for a retention election. This bill increases the public's ability to vote on the retention of a judge in a future elective process.

SENATOR AMODEI:

To what do you attribute the fact nobody is running against these judges? Is that an indication of the job people think the judge is doing?

CHIEF JUSTICE HARDESTY:

There may be some of that, but not always.

SENATOR AMODEI:

Do you have any articles indicating that unopposed judges are not doing a good job?

CHIEF JUSTICE HARDESTY:

No. I have the opinion of judges who work with judges running for reelection. There may be a difference of opinion among the judges about whether that individual should be reelected.

This bill includes a provision requiring an evaluation of a judge's performance. Judicial evaluations appear in the *Las Vegas Review-Journal* every other year. This is a survey of lawyers. The Washoe County Bar Association conducts a

similar evaluation every two years, which is also a survey of lawyers. An issue in these evaluations is a statement under the honor system by the lawyer that he or she has actually appeared in front of the judge and has knowledge of the judge's performance.

The judicial performance provisions in this measure are a broader-based evaluation of judges' performance. It considers the input from lawyers, staff, jurors, witnesses and colleagues. This is an improvement to the judicial performance evaluations of a judge.

My comments today in support of this measure provide no change in my reelection. If this bill is passed through the Legislature, it will be presented to the voters in 2010. My term expires in January 2011. I will have to run for reelection next year.

When I ran for the Supreme Court, I had to raise over \$750,000. A campaign contribution has never influenced my decision in any case. The appearance of impropriety is a greater problem than the actual impropriety itself.

As Chief Justice, I chair the Commission on Judicial Selection (Selection Commission). We recently interviewed 15 applicants for the two vacant Family Court positions in Las Vegas. The process provides an in-depth examination of the applicant—scholastic effort, achievement and transcripts. Writing samples are required by the Selection Commission and are tested. The Selection Commission requires the disclosure of an applicant's professional achievements, which are tested and vetted. A personal background of all the applicants is conducted, including information about their health, their credit checks and their criminal background.

By rule, the Nevada Supreme Court and the Selection Commission endorsed the process used in Arizona to vet these candidates publicly. All interviews were conducted in public, and public comment was permitted. The voting process for the recommendation of the candidates to the Governor also occurred in public. The Commission is allowed to discuss a candidate's personal and private information in an executive session.

SENATOR WIENER:

Can you give us a sense of the time taken away from your public duty as a judge to raise money and campaign for election?

CHIEF JUSTICE HARDESTY:

I can only speak to my personal experience, but I have witnessed the time constraints on my colleagues who participate in an election campaign. When I ran for the Nevada Supreme Court, I was also Chief Judge of the Second Judicial District Court. During my campaign for the Nevada Supreme Court, the public got their 40 to 50 hours per week, and I added 40 hours. It takes a personal toll on a judge to campaign statewide. This measure would alleviate some of that.

Judges involved in the process try to reduce the appearance of impropriety associated with collecting money. The fact is you spend a lot of time soliciting funds to support the campaign.

SENATOR WASHINGTON:

Regarding the Arizona process you mentioned earlier, was the public permitted to comment on a particular candidate being considered for a judgeship?

CHIEF JUSTICE HARDESTY:

Absolutely, and during the Selection Commission's most recent interviews, the public was able to comment about candidates three times during the meetings. This process has influenced the selection of other judicial candidates. As Chief Justice, I am chairing the committee that will recommend the new Justices of the Peace to the Clark County Commission. That committee has voted to conduct their process the same as the Selection Commission. Their entire process will be public.

SENATOR AMODEI:

Have you talked with people who have done this in other areas? I have a concern about the makeup of the Performance Commission. It is heavily weighted by members of the Bar. People have expressed concern to me regarding how much power the Performance Commission members would have. What is the power dynamic in this group of people who will have the ability to establish and maintain incumbency? Incumbency on the bench is a powerful thing in Nevada.

CHIEF JUSTICE HARDESTY:

The lay people on the Selection Commission think they played a meaningful role in our recent interview process. This bill maintains a substantial number of nonlawyers on the Performance Commission. The lay people on the Selection

Commission took an active role in reviewing the applications, the questioning of the applicants and the voting process.

SENATOR AMODEI:

I am not talking about the individuals who are doing it. The lay people are excellent people and doing an excellent job. However, the framework of the Performance Commission is weighted in favor of State Bar members. The evaluation process is a good idea regardless of who ultimately selects a judge. However, you are telling people that their ability to vote will be supplanted by an organization smaller than the voting process. That is a concern to many people.

CHIEF JUSTICE HARDESTY:

We will be one of a few states to impose a super-majority requirement for retention. The 55-percent requirement is significant. A study was done in Alaska, which showed that a super-majority requirement may result in more judges being removed from office than being retained. Interest groups only need 46 percent of the vote to prevent the retention of a judge. In contrast, if someone runs unopposed, he or she only needs one vote to be retained.

Regardless of the outcome of S.J.R. 2 of the 74th Session, the Nevada Supreme Court is working with the Grant Sawyer Center for Justice Studies on a pilot program for the judicial performance system. We need this to evaluate judges throughout the State and to broaden the input of people who come in contact with the judicial system. It would be helpful to institutionalize that in the *Constitution of the State of Nevada*. The retention process could eliminate an individual based upon a written report that a judge is not performing as the public perceived.

SENATOR AMODEI:

Are there mechanisms available to stress performance without taking away the ability to stand for election in a more traditional sense? Someone recently expressed to me this creates the presumption that when you reach incumbency stage, you have even more of an advantage that an incumbent does now.

CHIEF JUSTICE HARDESTY:

There is less. Most lawyers will not run against an incumbent judge. We do not have an institutionalized judicial performance evaluation that tests the skills of an incumbent judge.

SENATOR AMODEI:

How does that work when you have an open seat?

CHIEF JUSTICE HARDESTY:

When there is an open seat, they go through the process we just went through.

SENATOR AMODEI:

Do you have one person recommended?

CHIEF JUSTICE HARDESTY:

There are three candidates recommended to the Governor, who selects the candidate.

SENATOR AMODEI:

There is no voting involved in that. The Governor selects the candidate. If this measure is in place when that person comes to the voters the first time, he is retained or not retained.

CHIEF JUSTICE HARDESTY:

But that individual serves for one to two years. They are subject to a judicial performance during the time they served. They have to get a 55-percent retention vote.

SENATOR AMODEI:

Do you think we have learned anything from the none-of-the-above choice that has been available in the Supreme Court context? People have had the opportunity to express displeasure. I recall that the none-of-the-above choice has reached about 20 percent.

CHIEF JUSTICE HARDESTY:

If you compare election results, you will find that none of the above has garnered between 18 percent and 25 percent in the Nevada Supreme Court races, whether it is contested or uncontested.

SENATOR AMODEI:

There was an opponent. I am just talking about none of the above for someone running without an opponent. Is there anything to be gleaned from that?



CHIEF JUSTICE HARDESTY:

Yes, in other states. Alaska has a lot of information on this subject that we can share with the Committee.

BRUCE T. BEESLEY (State Bar of Nevada):

To have an effective judicial system, you must have fair and impartial judges. Even more importantly, the citizenry must believe the judges are fair and impartial. That is not the case in the current system. I am regularly asked by clients whether the judge was bribed and whether the judge's decision was influenced by campaign contributions.

These questions are corrosive to our system. As long as lawyers and business people fund most judicial elections, people will not believe they are getting a fair shake.

People do not get very much information about candidates. The television advertisements, which are the mainstay of judicial elections, do not give much information on whether a candidate will be a good judge.

It takes hundreds of thousands of dollars to run for election. A tremendous toll is taken on the business of the State in having so much money spent on election purposes.

WILLIAM F. DRESSEL (Cochair, Article 6 Commission of the Nevada Supreme Court):

The Article 6 Commission vote was overwhelmingly in support of S.J.R. 2 of the 74th Session. The voters are gaining a more informed vote because a candidate's performance is evaluated.

Removing the taint of money is another gain. Several polls have said 69 percent of the public think raising money for elections affects a judge's decision to a moderate or great degree. This bill takes the funding out of it. When everything is balanced, the gain outweighs the loss.

SENATOR AMODEI:

Does anything prohibit someone who did not like the sentence imposed in a criminal matter from campaigning against this person for retention?

MR. DRESSEL:  
No.

SENATOR AMODEI:

If that person wants to be retained, does he not have to respond to that campaign? If we do this, an incumbent judge may still have to raise money to fight an attack such as this.

MR. BEESLEY:

Nothing prevents that, although it is less common to have people sufficiently motivated to get enough support.

MR. DRESSEL:

I was a judge in Colorado, and I went through four retention elections. I was a better judge because I was responding to what people were saying. The people of this State will be better served by this measure.

JAMES T. RICHARDSON, J.D., PH.D. (Director, Grant Sawyer Center for Justice Studies and Judicial Studies Program, University of Nevada, Reno):

I direct a jointly-sponsored graduate program for trial judges. It is given by the University of Nevada, Reno, and sponsored by the National Judicial College and the National Council of Juvenile and Family Court Judges. Every time a group of judges comes to a seminar, this issue comes up. The class always divides into two groups—one from states with retention elections and the other from states with contested elections. Those who run in contested states envy those who do not because of the fund-raising and its implications.

I have spoken with dozens of judges over the years about this problem. They feel it is corrosive in what they do as judges and debilitating in their effort to be good and neutral judges.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce):

We support S.J.R. 2 of the 74th Session. My spouse, Mary-Ellen McMullen, has been a temporary member of the Selection Commission. I have been impressed with the process they go through. More importantly, she feels there is strong public input into this process. It is a great public process, and there is a lot of impact and participation from the public.

SENATOR RAGGIO:

I am providing you with a survey that comes from *Justice at Stake Campaign* ([Exhibit E](#)). I am referring to the slide titled Cynicism About Cash in the Courtroom in [Exhibit E](#), page E2. Seventy-six percent of voters believe that campaign contributions have at least some influence on judges' decisions. Seventy-nine percent of business leaders agree. Twenty-six percent of state judges agree that campaign contributions influence decisions.

JOHN WAGNER (Independent American Party):

We oppose this bill. In the current system, we see these judges around the State. Lawyers are just as biased as anyone else when it comes to selection processes. Their biases will filter into this. We believe in the right of the people to select their candidate. A person should be able to run for office regardless of what any panel says.

LYNN CHAPMAN (Nevada Families):

We are opposed to S.J.R. 2 of the 74th Session. It is wrong to take away the people's right to vote on judges. We do not vote on United States Supreme Court Justices or federal judges. In our State, those judges are closest to the people. We should have the option to vote or not to vote for someone.

In late 2003, the Brooklyn, New York, District Attorney was investigating a party chairman, Clarence Norman. They were looking into whether the party was selling judgeships. For example, to become a Supreme Court judge in Brooklyn, New York, a candidate had to be selected by Chairman Norman. Those candidates are then referred to a screening panel that was also appointed by Chairman Norman. The 42 district leaders who often had strong ties to the party, screened the candidates. Finally, the judges were selected by a judicial convention made up of various friends, relatives, business partners and employees of the party overseen by Chairman Norman. Corruption can happen in carefully constructed ways of appointing judges.

At the International Association of Women Judges Conference in 2006, many argued that the elective system favors women and minorities who are not insiders and would never be appointed to the bench. When those outsiders are competent and talented, they can win elections. Deborah Agosti, former Nevada Supreme Court Justice, said she could never have become a judge, much less Chief Justice, in an appointive system.

DAVID SCHUMANN (Nevada Committee for Full Statehood):

Last Session the retention vote was lowered from 60 percent to 55 percent. I request that you raise the retention level back up to 60 percent. Then people will have a little more trust.

JANINE HANSEN (Nevada Eagle Forum):

I oppose S.J.R. 2 of the 74th Session. I believe in public service. We do not want the judiciary to be independent of the people. This bill will make the judiciary independent of the people.

Our National President, Phyllis Schlafly, has written a book about the imperial judiciary and how the federal judiciary is apart from the will of the people. We do not want an imperial judiciary in the State of Nevada. The Nevada Supreme Court issued *Guinn v. Nevada State Legislature*, 119 Nev. 277, 71 P.3d 1269 (2003), rehearing denied; opinion clarified, 119 Nev. 460, 76 P.3d 22 (2003). As a result of *Guinn*, a justice who ran for reelection in the next election was defeated.

When a controversial issue is brought to the attention of the people, they are smart enough to vote the right way. If there is no election, there cannot be a recall. Consequently, the people have no recourse. This Commission on Judicial Selection is a special interest group. It will be a closed shop, and the people will have very little representation and no scrutiny at the polls.

If this bill passes, how would we oppose someone who is on the bench? How do you highlight the issues or discuss them at a candidates' night when you cannot be on the candidate program because you are not the candidate? It is practically impossible to win against a retention campaign. You must raise money to oppose a judge as an individual rather than judges raising money to be elected.

We are extremely concerned about this closed shop. If people's right to vote is taken away, they would not believe you were acting in their best interests. I encourage you to consider the difficulty this poses to the people of Nevada. We ask you to vote no on S.J.R. 2 of the 74th Session.

WARREN RUSSELL (Elko County Commissioner):

I am an Elko County Commissioner. I oppose S.J.R. 2 of the 74th Session as a reflection of my county constituents. If you were running for a judicial position

in Elko County and you made it known that you favor appointment of judges, you would get very few votes.

Perhaps it might be appropriate to fund judicial campaigns with public funds. It sounds like qualifying candidates could use some improvement.

This bill would reflect negatively on the competency of voters to make good decisions. We replaced a judge two years ago in Elko County who functioned very well as a judge, but did not reflect the values of our community. This process allowed us to do that.

The retention system would promote mediocre judges. We would have a judge appointed for life, which is not necessarily good for the people. That judge would not be challenged unless he or she reaches an unfavorable decision in your county.

JUANITA CLARK (Charleston Neighborhood Preservation):

We oppose S.J.R. 2 of the 74th Session. There are three branches of government. It is wrong for a group to handpick candidates for one branch of government. Our neighborhood has candidate forums for judges. People do attend these forums, and they ask questions. Raising campaign money is just as demeaning to the other two branches of government as it is to the judicial branch. We have heard a lot of testimony today indicating the people do not vote correctly. Everything said in favor of this bill is a strong argument against it. Please think about the people's right to vote on whichever candidate they choose, and vote no on S.J.R. 2 of the 74th Session.

CHAIR CARE:

There being no further questions, the hearing is closed on S.J.R. 2 of the 74th Session. The hearing is open on Senate Bill (S.B.) 125.

**SENATE BILL 125**: Prohibits the unauthorized possession, reading or capturing of another person's personal identifying information through radio frequency identification. (BDR 15-481)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

I am the sponsor of S.B. 125. This bill deals with radio frequency identification technology (RFID). I do not intend to single out RFID for any kind of regulation or to promulgate any kind of ban on the use of this technology. Senate Bill 125

focuses only on persons who might use RFID for illegal purposes. Radio frequency identification is not new technology, but has been applied in many new ways spurred by technological advancements and reduced costs. Once used in World War II to identify friendly aircraft, RFID is now being used in a variety of public and private sectors for manufacturing, distribution to retail and inventory control. In RFID systems, an item is tagged with a tiny silicon chip and an antenna, which is called a tag. It can then be scanned by either mobile or stationary readers using radio waves. The chip can be encoded with unique identifiers allowing tagged items to be individually identified by the reader.

These systems are used in a wide variety of applications. For example, in a department store, each item may be tagged and identified electronically. Tagging cases and pallets of goods moving through the supply chain increases their efficiency. A pharmacist can fill a prescription from a bottle bearing an RFID chip confirming the authenticity of its contents. The Federal Drug Administration actively encourages pharmaceutical manufacturers to use RFID to fight drug counterfeiting. Cars with RFID tags on their windshields can move quickly through highway toll booths. At home, pets can be implanted with chips so lost animals can be readily identified.

Two recent applications include passport cards and enhanced drivers' licenses. Radio frequency identification devices have three primary elements—a chip, an antenna and a reader. The database is an important part of an RFID system.

There are three types of RFID tags differentiated by how they communicate and how that communication is initiated. Passive tags have no onboard power source and do not initiate any communication. A reader must first query a passive tag sending electromagnetic waves that form magnetic fields when they couple with the antenna.

Semi-passive tags do not initiate communication with readers, but they have a battery. That onboard power is used to track temperature of the item, for example. We recently heard about this when peanut products were recalled. Had there been a good tracking system, it might have been easier to identify tainted products.

Active tags can initiate communications up to 100 feet. The easy pass used on toll booths is a familiar application.

The data is stored on most RFID cards unencrypted. Tests have demonstrated that data can be remotely read from a considerable distance by identity thieves and hackers. If someone steals your identification card, it is a crime. But, if the information is stolen off an RFID card by skimming, it is not a crime. Senate Bill 125 would make it a crime.

I provided a handout ([Exhibit F](#)). The first page shows the proximity access cards. Our identification cards issued by the Legislature for access into this building are passive RFID cards. There are other applications.

[Exhibit F](#), page F2 shows a key fob. Some cars are equipped with a smart access system, which is an RFID chip.

[Exhibit F](#), pages F3 and F4, are data sheets for VISA, which show a radio wave indication on the VISA card. This allows someone at a checkout station to wave their card in front of a reader, which automatically captures the credit card information. More people are trying to find ways around this technology.

I have received some recommended amendments, which I support.

FRED HILLERBY (MasterCard Worldwide):

Our amendment adds "for the purpose of fraud, identity theft, or for any other illegal purpose," to the bill in section 1, page 2, line 3, clarifying the actions constituting grounds for a Category C felony in ([Exhibit G](#)).

CHAIR CARE:

A Category C felony calls for prison time. Would you agree this conduct warrants prison time?

MR. HILLERBY:

Yes, it rises to the level of a Category C felony. Identity theft could turn your life upside down. It would depend on all the circumstances and evidence of fraud or identity theft surrounding a particular case.

SENATOR WIENER:

I have been involved in some of the early identity theft work. New technology continues to emerge, and it is difficult to find language that will capture something we do not know will occur in the 18 months between sessions. The

concern is that the people who violate these laws do it hundreds or thousands of times. They do not steal the identity of just one person.

A charge of \$2.99 may appear on a card possessor's account, which is not an amount that pops out at you. However, that amount could be imposed on up to 500,000 cards. It gets to be quite egregious because of the cumulative effect. In answer to the concern of whether this conduct warrants prison time, these crimes become massive crimes, not just single crimes.

MR. WAGNER:

We support S.B. 125. When you lock your car with a key fob containing an RFID chip, someone could be standing by with a scanner. That scanner could pick up the code from your car, and your car could be burglarized. I always tell people not to lock their car with that key fob.

LISA CORRADO (Redevelopment Project Manager, City of Henderson):

We have a minor modification in ([Exhibit H](#)). The criminal side of our City Attorney's Office suggested, rather than listing each law enforcement agency in the bill, replacing each of those with the term "peace officer" to be more inclusive.

MR. SCHUMANN:

I am a member of the Nevada Livestock Association. The federal government has satellites, and they wanted to implant RFID chips in the ears of cattle. They could track those cattle and telephone you to give you that information. With that technology, people can be tracked anywhere. Radio frequency identification can be dangerous. This should not be put in drivers' licenses.

CHRIS MACKENZIE (American Express Corporation):

We support S.B. 125. I have provided a proposed amendment ([Exhibit I](#)). We are concerned permission is subject to interpretation. It could be implied that if someone presents their card, permission is implied. This amendment would make it consistent with Nevada Revised Statute (NRS) 205.690 in terms of possessing credit and debit card information.

CHAIR CARE:

The sponsor relates it is fine with him.



SABRA SMITH-NEWBY (Director, Department of Administrative Services, Clark County):

Clark County offers two changes to S.B. 125—one dealing with the Department of Aviation in ([Exhibit J](#)), and one dealing with credentialing for Emergency Management purposes in ([Exhibit K](#)). We use RFID technology in the Department of Aviation for baggage [Exhibit J](#), page J1. We are running close on time, so I would be happy to speak at more length another time or work with the sponsor on possible amendment.

BILL UFFELMAN (Nevada Bankers Association):

We are amenable to all the amendments offered by MasterCard Worldwide, American Express Corporation, Henderson police and Clark County.

LEA TAUCHEN (Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada):

We are signed in as neutral on S.B. 125, but we support the bill. The retail industry does use RFID technology for supply chain management. However, they are aware this technology is continuing to evolve. The amendments proposed today further clarify this language. We offer our support.

CHUCK CALLAWAY (Sergeant, Intergovernmental Services, Las Vegas Metropolitan Police Department):

We support this bill with the proposed amendments mentioned earlier.

CHAIR CARE:

If we pass this bill and someone breaks this law, can you detect that during the course of the conduct or only after an investigation?

SERGEANT CALLAWAY:

I am not an expert in the field of financial or fraud crimes, but we would probably detect it after the fact based on evidence obtained.

MS. HANSEN:

We are glad to support the bill, but we have concerns about the abuse of RFID chips, especially regarding the Real ID and enhanced drivers' licenses. The Real ID is transforming into the Western Hemisphere Travel Initiative. The passport cards, the enhanced drivers' licenses and the Western Hemisphere Travel Initiative-approved documents all have or will have RFID chips in them. We are concerned about protecting people's privacy.

We are concerned about the amendment proposed by the police because they should not skirt the issue of the need for warrants. This is a Fourth Amendment protection. We oppose the amendment promoted by the City of Henderson in [Exhibit H](#).

If Real ID becomes a part of our State, that bill provides for an alternative driver's license that does not have the Real ID. If that happens, a person could opt out of the Real ID.

The bill should include a definition of personal identifying information. We support this concept, but we have concerns regarding abuse.

I am concerned about the amendment language in [Exhibit G](#) where it says, "for the purpose of fraud, identity theft, or for any other illegal purpose." We are against using it for an illegal purpose, but what if this information is captured for a benign purpose, such as collecting information about your purchases? Their database including your information could be compromised. There is no right to refuse collection of that information under this bill, especially if this amendment is added for the purpose of fraud. This information is not being collected for the purpose of fraud but for marketing. What protects the public from personal identifying information being put into that database if that database is breached? We need more protection. This can be abused by perpetrators of fraud, but it can also be abused by the government. I support this bill for the concept of protection, but I have those concerns.

SENATOR WASHINGTON:

The new drivers' licenses have dual images on them—a secure image that prevents fraud and duplication. It has a strip on the back containing your personal information, which is encoded. This is because of terrorism.

Ms. Hansen:

I am not opposed to security measures for drivers' licenses.

IRA VICTOR (InfraGard, Sierra Nevada Alliance):

We oppose this bill as it is now written. I present my written testimony in [\(Exhibit L\)](#).

The letter you have from the Electronic Frontier Foundation ([Exhibit M](#)) is a result of our effort to gain guidance on what other states have done regarding

anti-RFID skimming bills. We have also been in touch with Dr. Katherine Albrecht of the Consumers Against Supermarket Privacy Invasion and Numbering. She is a nationally known expert on RFID privacy and security issues ([Exhibit N](#)).

Many people made comments earlier today that were factually incorrect from a technical respect. Research of information security professionals provides us with accurate information about the capabilities and vulnerabilities of RFID. This information can push public policy and industry to change the technology, adopt different technology or add layers of security to technology.

Dr. Albrecht shared information from an RFID manufacturer regarding the RFID drivers' licenses in Washington State. The industry representatives said if you put the driver's license into a sleeve, someone cannot read it in an unauthorized way. The work of independent researchers discovered that there were ways to get that information, even with the sleeve.

A researcher named Chris Paget demonstrated that with \$250 worth of equipment purchased on eBay, he could drive through the streets of a city and pick up RFID information. We need that kind of research in Nevada.

The Black Hat and DefCon technical security conferences meet every year in Las Vegas. This is the largest security conference cluster of its kind in the world. It is good for Nevada. Many locals learn about information security by attending this conference. This improves the information technology education those conferences provide.

This bill as it is now written would make a lot of the research presented and done at these conferences a felony. There could be a public harm to making legitimate experimentation and research a felony because we would strip law enforcement of their ability to separate the bad guys from the good guys.

It is important that we add research to this bill. Cindy Southworth is with the National Network to End Domestic Violence. They have been concerned about RFID because it could be used in domestic violence primarily against women. They have done independent research to show how RFID inappropriately used could result in an abusive spouse or stalker tracking their victim. Independent research can help change the rules to protect those people.

Infragard Sierra Nevada Members Alliance is very concerned about this bill and wants an amendment for experimental research.

CHAIR CARE:

If this bill is passed, language would be added imposing criminal penalties for those who accumulate data for legitimate research purposes and then use that data for purposes not intended for research.

MR. VICTOR:

Nevada Revised Statute 597.970 prohibits the transmission over the Internet of personally identifiable information.

CHAIR CARE:

I asked earlier if you can catch someone in the act of this conduct or as a result of some subsequent investigation. How would that be accomplished?

MR. VICTOR:

The equipment needed to capture information could all be placed into a backpack. It would be extremely difficult to catch someone doing that because of the clandestine nature of this equipment. We would have to catch them doing something else with the data.

This technology can be improved. There is a group in Holland who has developed a firewall for RFID. There are encryption methods that can be used to fully and strongly encrypt the data on RFID.

Research is necessary to show these technologies are needed before there is widespread deployment of RFID with sensitive information.

CHAIR CARE:

How would the victim know that funds have been depleted from a bank account, for example?

MR. VICTOR:

Nobody knows. That is the problem with RFID as it now stands. There is no log or record. We do not know who accesses the information or when they did it. There is a technical solution to that, but researchers must show it is needed.

REBECCA GASCA (American Civil Liberties Union of Nevada):

We are neutral on this bill. We are available to work on amendment language. We believe the language on personal identifying information should be tightened. It is not defined. There are some exceptions that should be made to this bill. Good faith research and the use for emergency medical assistance and natural disasters are exceptions we would support. The City of Henderson's proposed amendment in [Exhibit H](#) concerns us. We would like to see language adding a warrant.

CHAIR CARE:

I have some issue regarding the expectation of privacy. If people are at a trade show and law enforcement is gathering data, maybe that is not the same as walking in a shopping mall where you have no expectation of privacy.

HELEN FOLEY (T-Mobile USA):

We are concerned that the bill does not clearly exempt cellular PCs or other non-RFID communications. When someone uses a wireless phone, there is identifying information from the handset to the network. If someone is lost, they can sometimes be located when they use their cell phone or can be identified for emergency situations. We would like to help draft amendment language.

SENATOR PARKS:

It is my intent to protect both the civil and privacy rights of all individuals.

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CHAIR CARE:

There being nothing further to come before the Committee, the hearing is adjourned at 12:41 p.m.

RESPECTFULLY SUBMITTED:

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Kathleen Swain,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE: \_\_\_\_\_