

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
February 24, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:32 a.m. on Tuesday, February 24, 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 Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Shirley B. Parraguirre, Clark County Clerk, Regional Justice Center
Ace Robison, State President and Southern Nevada Spokesman, Church of Jesus Christ of Latter-day Saints
George William Treat Flint, Nevada Mission Fellowship; Chapel of the Bells
Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada
Nicole J. Lamboley, Chief Deputy, Office of the Secretary of State

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CHAIR CARE:

We will not hear Senate Bill (S.B.) 141 today.

[SENATE BILL 141](#): Enacts the Uniform International Wills Act. (BDR 12-673)

Our only bill today will be S.B. 130.

[SENATE BILL 130](#): Revises certain provisions governing certificates of permission to perform marriages. (BDR 11-468)

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):
Ace Robison, the State President and spokesman for the Church of Jesus Christ Latter-day Saints, contacted me about some confusion and ambiguities in the law relative to ministers and its impact on lay ministers. The ministers in the Latter-day Saints church are lay ministers. This confusion led to a meeting with the Clark County Clerk who asked me if I would sponsor a bill to address these concerns.

The amendment from the Office of the Secretary of State will provide a vehicle for that office to be more efficient. The amendment, proposed by Allen Lichtenstein of the American Civil Liberties Union, allows provisions for those who do not have a religion or secular side. I do not have an objection to his goal, but I would like to give more thought to his method. The amendment from George Flint proposes language for statutory construction purposes for our Legislative Counsel. I do not have any problem with his proposal.

SHIRLEY B. PARRAGUIRRE (Clark County Clerk, Regional Justice Center):
I will read my prepared testimony ([Exhibit C](#)). I have brought statistics ([Exhibit D](#)) for review. I also brought the February 21 minutes ([Exhibit E](#)) from the 1967 Judiciary Committee meeting of the Nevada State Legislature. I am here to answer any questions.

CHAIR CARE:

There is a passage in S.B. 130 under section 8, subsection 4, which reads, "A county clerk may authorize a licensed or ordained ... minister" Another passage in S.B. 130, section 9, subsection 1, states, "A certificate of permission ... may be obtained only from the county clerk of the county in which the minister ... resides" This bill would expand that language. Does

current statute determine what is and is not a legitimate church and whether someone is an ordained or unordained minister?

MS. PARRAGUIRRE:

Several district attorneys' offices throughout the state have been asked to define the term congregation. I have not received a definite definition. Within the last year, our District Attorney in Clark County has determined membership of two or more can be considered a congregation.

We are seeing more and more applicants licensed or ordained over the Internet. They supply their licensure or ordination papers to us but have no true local congregation. They may have one, two or three members, many of those being family members of the applicant. We are hoping S.B. 130 will take the judgment calls away from the various county clerks and provide consistency in the enforcement of these statutes.

CHAIR CARE:

Does your office treat any church or religion differently than another?

MS. PARRAGUIRRE:

No, we try our best not to.

CHAIR CARE:

I noted Nevada Revised Statute (NRS) 122.150 states, "All marriages solemnized among the people called 'Friends' or 'Quakers,' in the forms heretofore practiced and in use in their meetings, shall be good and valid." Have you had an occasion to consult that statute?

MS. PARRAGUIRRE:

I have not.

SENATOR WIENER:

For the record, we have a very long history. Shirley was part of my college years because she was my Dad's most prized staff person who kept him in line in his law practice.

In S.B. 130, section 14 proposes to add new language to NRS 122.073 that reads, "... permission to perform marriages." Lines 24 and 25 of section 15 of S.B. 130 proposes to add to NRS 122.090, "... or other person authorized to

solemnize a marriage" Explain the difference to me in performing a marriage and solemnizing a marriage.

MS. PARRAGUIRRE:

We see no difference in solemnizing or performing a marriage.

SENATOR WIENER:

Is that something we need to make consistent?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):

The statute right now speaks of people who are authorized to perform marriages. The new definition we are adding, refers to solemnizing a marriage. If there was some desire to make those consistent, we certainly could.

SENATOR WASHINGTON:

Solemnize means a person has the ability to recognize a marriage as legitimate as opposed to performing a marriage. Solemnization recognizes that whoever performed the marriage is certified to do so.

CHAIR CARE:

Are you in agreement with that or are you acknowledging Senator Washington's interpretation?

MS. PARRAGUIRRE:

I am acknowledging his interpretation. I know when we are seeking to eliminate the denominational standing, the affidavit I previously referred to, [Exhibit C](#), is an affidavit of authority to solemnize marriages.

SENATOR WASHINGTON:

From my experience in Clark County, if I have a minister in my congregation who desires to perform marriages, I have to sign an affidavit stating this person is in good standing, is a member of the church, and has gone through the ordination process before I can sign a certificate stating he is ordained to perform marriages. He then takes that certificate to the county clerk's office. They recognize it and make him sign and notarize his signature. That person is then legal to perform marriages under the cloak or banner of the name of the church or congregation. Once this individual performs a marriage, he signs the certified copy of the marriage license, and the signature against his records is checked.

ACE ROBISON (State President and Southern Nevada Spokesman, Church of Jesus Christ of Latter-day Saints):

We embrace S.B. 130 and have no problems with any of the elements. I might add a word to the discussion that has taken place with regards to semantics. Marriages are solemn events. It is important to use the word solemnize, as opposed to performing, in order to distinguish marriage as a solemn but not necessarily religious act.

GEORGE WILLIAM TREAT FLINT (Nevada Mission Fellowship; Chapel of the Bells):

I propose an amendment ([Exhibit F](#)) to S.B. 130 to create some form of grandfathering-in for those who are already licensed or certificated to officiate, solemnize or perform marriages, particularly those who are retired.

CHAIR CARE:

If there is some confusion about the drafting of the amendment, we will consult with the bill sponsor or have our staff rewrite it.

Let me go to those who are opposed to S.B. 130.

ALLEN LICHTENSTEIN (General Counsel, American Civil Liberties Union of Nevada):

I signed up to testify against S.B. 130. There is nothing wrong with the language other than some of the technical consistency matters. The religious component presents a problem. There was an earlier question asked of Ms. Parraguirre in terms of what kind of judgments are made, and her answer discussed the size of the congregation. One thing is clear from the language: a nonreligious group is not going to be able to designate anyone to perform marriages.

The ACLU was approached by the American Humanist Association. This group is not a religious organization. Its members do not believe in God; therefore, they cannot designate anyone to perform marriages, which is problematic. The ACLU has no problem with ministers or other designated religious people performing marriages, but without the ability of some sort of secular equivalent, I think the Humanists do have a point. I would hate to see this go into litigation. We propose in our amendment ([Exhibit G](#)) that people who are already designated by the State of Nevada to be able to perform marriages, specifically notaries public, should be able to do so.

What is solemnization? Even though there is some confusing language, the language in the NRS says that marriages, in order to be valid, must go through a solemnization ceremony. The NRS does not say they need to be performed. This is the particular question. With a license and one witness, a couple can show up with someone authorized to perform this solemnization process and simply state they want to marry. Nothing beyond that is required by the statute. It is no more elaborate than other affirmations and oaths already performed by notaries.

A question was raised this morning that since notaries are licensed by the state, there would not be any county authority to control them. A point well taken, but I do not think this will be a huge problem. Just like ministers, a notary public would have to apply and be authorized by the county. The county would then have the jurisdiction to satisfy them. This is an attempt to circumvent a problem which has the potential to scuttle the whole process simply because of the religious issue.

The term "religious" implies a belief in God or a supreme being. Folks like the Humanists would be adamant that this is not what they are about. To make the distinction where some groups are allowed to marry because of their belief in God and others cannot because they do not believe in God, comes close to a prohibitive religious test we believe can be avoided through this amendment.

CHAIR CARE:

I think we are all agreed under chapter 122 of NRS, every couple has to have a marriage license. This is the issue of solemnization. I asked Ms. Parraguirre if her office treated all religions the same, and she said they did. I gather your position is, even if all religions are treated equally, there still is an Establishment Clause issue with this bill because it favors only those who do belong to a "religion."

MR. LICHTENSTEIN:

That is correct. The jurisprudence on the Establishment Clause prohibits government from undue discrimination between different religions or religion and no religion. What we have is the latter situation where certain privileges are being given to those with a religion, and organizations and its members not in the category of religion do not get that same privilege. As a practical example, let us take a secular couple who wants to get married in a park or at their home. Unless these folks can find a friendly judge willing to marry them or a minister who claims he will not be religious that day, that couple is out of luck finding

someone to marry them. That kind of discrimination, based solely on religious belief, is an unnecessary Establishment Clause violation.

CHAIR CARE:

What about the statute that references the marriages of Quakers and the forms they use? It is the only reference I could find under NRS 122 to a specific religion.

MR. LICHTENSTEIN:

I am not sure why you are asking me about that.

CHAIR CARE:

Given your testimony today, I wondered if you thought it was valid law to have a statute like that.

MR. LICHTENSTEIN:

I do not think it is invalid law. We are concerned not that religious organizations, ministers or lay people within the religion will be allowed to perform marriages, but that those who do not profess any religion or religious beliefs or those who have Humanistic or other kinds of views are prohibited from performing marriage.

What we are proposing is not astounding. Florida and Maine allow this sort of thing. This is not a matter of first impression. It has been done successfully elsewhere.

CHAIR CARE:

We have a copy of your letter and your proposed changes as opposed to a red line version of the proposed legislation. Do I read your letter to mean that your amendment would also require deletion of language in the current bill?

MR. LICHTENSTEIN:

Yes, the statute does this now.

NICOLE J. LAMBOLEY (Chief Deputy, Office of the Secretary of State):

Under the current law, we are required in the Office of the Secretary of State to be the central repository, maintaining a statewide list of all people who are authorized to serve as a minister. This process is cumbersome. After the county clerks collect the application, information and affidavit, they send our office a

copy. The clerks enter the information into their system, and we enter the data into our system. We keep a copy of the application and the affidavit and run a monthly report of the ministers. This is not real time. If someone is revoked, the county and state levels eliminate that person from the list and re-issue the list.

Our proposal ([Exhibit H](#)) in working with the clerks is similar to how we maintain the statewide voter list. Our office would create a centralized, unified system. The clerks would enter the information one time; it would upload and become a secure online database. Only the clerks would be authorized to have input authority. We would then be able to produce the list on our Website for public viewing. It would be possible for anyone to check as to whether an individual had a current certificate to perform a marriage. Right now, there is no way for the public to check that list. This amendment is proposing to streamline the process for both the clerk and our office to reduce the redundancy and simplify the process.

CHAIR CARE:

The proposed amendment will go into the work session document. Have you shared this amendment with Senator Hardy?

MS. LAMBOLEY:

We have shared the amendment with both Senator Hardy and the clerks. The idea is to make certain this is a simpler process for the clerks. The list is real time, reflecting the current nature of those permitted in this State to perform marriages.

SENATOR WIENER:

Based on the change to real time and the delay that is in the current system, do you have any records or knowledge of marriages performed in that gap time that would not be legal marriages?

MS. LAMBOLEY:

No, we do not. We are a ministerial function. We do not validate whether or not the person performing that marriage was in fact certified. That is the county clerks' function. They issue the certificate and do the due diligence. We just maintain a record.

SENATOR HARDY:

I want to speak to Mr. Lichtenstein's comments. I think my position on the importance and sanctity of marriage is well established by my votes in this body. I do not want to diminish the importance or the solemnity of the event. Coming up with language that will include the secular equivalent of religion is something that I am open to and willing to consider. I will endeavor to come up with language which does so without minimizing the importance of that event.

MR. FLINT:

When Mr. Lichtenstein spoke of the nonreligious couple who would like to get married in the park, I think there needs to be a comfort level that each of you may have for yourself in regard to that scenario. In 1955, Attorney General Dickerson opinioned that "ministers who perform marriages in this state are, in so far as marriage is concerned, officers of the court." In 1981, the Honorable Bruce Thompson, now deceased, ruled in a Reno federal court that ministers may perform civil marriage just like a justice of the peace or district judge. He even ruled a minister could advertise he performed civil marriage. Ministers of the Gospel routinely marry couples with no associated religion. These couples are concerned about what verbiage is going to be used. As ministers of the Gospel, we routinely marry couples who ask us to honor their beliefs. I think there is a formula or vehicle whereby these nonreligious individuals can be accommodated by the present status quo.

CHAIR CARE:

Can notaries perform a marriage today?

MS. PARRAGUIRRE:

Currently, no. After hearing Mr. Lichtenstein, I would like to address this issue. I would oppose his proposed amendment. We spend an enormous amount of time monitoring the ministers to make certain they are timely recording the marriage certificate within ten days. The list of statistics, [Exhibit D](#), shows you how many notices we send. Every three or four weeks the County Recorder's Office gives us a list of those certificates left in their office for recording, which for one reason or another, must be returned to the minister. If a minister does not respond after three written notifications, a revocation hearing is set. If the minister does not comply with the statutes, we do revoke their certification. To add notaries to this process would be an overwhelming burden. I would be opposed to this idea because we already have 2,500 ministers in Clark County.

We did have an occasion within the last eight or nine months where an organization with no religious affiliation tried to get a certificate, and we turned them down. Mike Foley, the Civil District Attorney in Clark County, was in touch with a Washington, D.C., attorney who threatened to file a lawsuit. Mr. Lichtenstein stated the statute did not provide for these organizations having no religious background. Mike Foley's argument states this is untrue. There are provisions for nonreligious organizations, in Washoe or Clark County, through the Office of Civil Marriage, district court judges, justices of the peace and Supreme Court Justices. The original intent of the bill talked about ministers asking for licensure or ordination. When couples ask for a religious ceremony, we never refer them to a specific place. We tell them there are many wedding chapels that will perform civil ceremonies and leave out any reference to religion. We may also refer couples to the Office of Civil Marriage in Clark County. I would oppose giving every notary the right to perform marriages. We would have to hire additional staff just to monitor the timely filing of the certificates.

MR. LICHTENSTEIN:

Telling a secular couple they can go to a judge or minister of the Gospel who will not say anything religious would not pass constitutional muster or an equal protection argument. The burden is going to be based on the number of marriages that would take place, not the extra people. What I have not heard is any real constitutionally permissible justification for the exact kind of religious test for this. Standing in a shoes-of-government kind of position, the *Constitution of the United States of America* is pretty clear about this, not only in the First Amendment but also in the no religious tests clause within the main body of the Constitution itself. If this is not going to change, the folks from the Humanist Association may very well decide in court whether this would be permissible or not. The American Civil Liberties Union would be happy to work with Senator Hardy in finding a secular alternative which does not depend on religious people. Our goal is not to support notaries necessarily, but to make sure this kind of alternative exists in a way that does not have the problems of the current system.

CHAIR CARE:

This may be one of those bills where down the road the courts may be looking at legislative history and legislative intent. With that in mind, does the word solemnize, to the hypothetical Humanist, carry with it a heightened theological connotation not otherwise shared by Humanist?

MR. LICHTENSTEIN:

I cannot speak for the Humanists because I am not one of them, but I do not think the term has any specific theological connotation. Going back to the question of why a solemnization ceremony needs to be made in order for a marriage to be valid, legislative history tells us it has more to do with not having common law marriages than having formal marriage ceremonies. In this context, solemnize is synonymous with perform, suggesting that getting into marriage is a solemn event. I do not want to address whether being married is solemn or otherwise, but the word solemnize does not necessarily have a religious connotation. It could not have, because then a civil marriage not having that connotation would be invalid. I cannot see that the word solemnize in the statute could reasonably be construed as having some kind of religious component.

CHAIR CARE:

We will close the hearing on S.B. 130. The meeting is adjourned at 9:30 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____