

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-sixth Session
March 7, 2011**

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 9:10 a.m. on Monday, March 7, 2011, in Room 2135 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 John J. Lee, Chair
Senator Mark A. Manendo, Vice Chair
Senator Michael A. Schneider
Senator Joseph (Joe) P. Hardy
Senator James A. Settelmeyer

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Ted Olivas, Director of Administrative Services, City of Las Vegas
Janine Hansen, President, Nevada Eagle Forum
John Wagner, State Chairman, Independent American Party
Lynn Chapman, Nevada Families
Thomas W. Cornell, Secretary, Nevada Capital Libertarian Party
Jim DeGraffenreid, Chair, Special Committee on Legislation, Nevada Republican Party
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Tom Morris
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Kim Bacchus, Nevada Legislative Affairs Committee

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Woody Stroupe, Sun City Summerlin Conservative Club
Leslie Hayworth
Demar Dahl, Chair, Elko County Board of Commissioners
John Ohm
Carol Howell, Nevada Legislative Affairs Committee
Walter M. Nowosad
Christine Burns, Nevada Legislative Affairs Committee

CHAIR LEE:

We will conduct the work session first and open the hearing on Senate Bill (S.B.) 110 ([Exhibit C](#)). For those people who may be new to the Legislative Session and for those listening on the Internet, during a work session we discuss bills previously heard in order to vote on them.

SENATE BILL 110: Requires the establishment of a centralized licensing office for business licenses in each county in this State. (BDR 20-820)

MICHAEL STEWART (Policy Analyst):

Senate Bill 110 addresses the issue of centralizing business licensing at the local level. The version—as introduced—was not presented; however, it served as a placeholder for an amended version of the bill presented by Chair John J. Lee and representatives from the City of Las Vegas. The bill sets forth a business license process specific to Clark County.

The amended bill was presented to the Senate Committee on Government Affairs providing for a multijurisdictional license category and fee structure in Clark County and those cities in Clark County whose populations are 50,000 or more. Senate Bill 110 is specific to contractors licensed pursuant to *Nevada Revised Statute* (NRS) 624 and affords them a single licensing location to obtain required licenses in order to conduct business throughout the Las Vegas Valley.

Your work session document includes the amendment and provides clarification for the new processes. The proposal requires the cities and county to enter into interlocal agreements specific to contractors to: 1) prescribe the process for obtaining a business license depending on the fixed business location; 2) set the appropriate license fees; 3) set a procedure whereby the primary licensing city or county can collect the licensing fee and distribute the fees to the appropriate local governmental entities; and 4) set forth a procedure whereby the primary

licensing city or county maintains the applicant's business license information. Finally, within one year of adopting the interlocal agreement, the local jurisdiction must enact an ordinance establishing a multijurisdictional license category for those contractors operating under NRS 624.

The attached amendment provided by Chair Lee essentially replaces S.B. 110. In summary, the amendment requires the Board of County Commissioners in Clark County and the governing bodies of those cities within Clark County whose populations are 50,000 or more to enter into interlocal agreements to establish a business license specific to contractors for operating their business in the cities and county.

The amendment provides that upon entering into the interlocal agreement, the county and the affected cities must establish ordinances authorizing a contractor to engage in business in the cities or county. The ordinances must include the application requirements, the appropriate fees and other requirements necessary for such business licensing.

The amendment specifies that in order for contractors to be eligible to obtain the business license, they must meet the requirements set forth in the ordinance. They must maintain only one place of business within the county—or in the city for licenses issued by the city—and provide the place of business located within the unincorporated area of the county; or they must maintain more than one place of business within the county—or city for licenses issued by the city—provided each of those places are located solely within the unincorporated area of the county or within the incorporated city; or not maintain any place of business within the county. The amendment also specifies a person who obtains a business license be subject to all other licensing and permitting requirements to the State, counties and cities in which the licensee does business.

CHAIR LEE:

This is a pilot program for southern Nevada, specifically Clark County. When we first started this program, it was to integrate everything all at once. We found out there were 10,000 contractors and determined this would be a good place to begin. Once this program is in place, maybe within a year, we will expand the program to florists, locksmiths and other general businesses. This will streamline the processes of obtaining business licenses.

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TED OLIVAS (Director of Administrative Services, City of Las Vegas):
That is correct.

SENATOR HARDY:
Nevada Revised Statute 624 is the business of contracting. I want to ensure this amendment will only cover contractors, not someone making contracts for someone else.

MR. OLIVAS:
Yes.

SENATOR SCHNEIDER:
Real estate agents who sell houses all over Clark County—do they have to have a business license in each city now?

MR. OLIVAS:
That is how the process works today, and this legislation is an example of where we want to go. We will begin with the contractors, getting the systems in place that allow us to communicate and determine how the money will be received and distributed. Once this is in place, we could expand the program to other business types.

SENATOR SCHNEIDER:
So this would cover real estate agents, general contractors and attorneys?

MR. OLIVAS:
Not in its current form. This pilot program will enable us to get to that point.

CHAIR LEE:
We will push to have this expanded after the first year.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 110.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

We will ask Mr. Stewart to provide information on our next work session bill Senate Bill 153 ([Exhibit D](#)).

SENATE BILL 153: Revises provisions governing the appropriation of water by municipalities. (BDR 48-821)

MR. STEWART:

Senate Bill 153 provides certain provisions governing the considerations by the State Engineer—regarding the consumptive use of water—that would not apply to an application to appropriate water filed by a municipality. The bill would extend the time frame under which underground water must be put to beneficial use in certain circumstances. The bill provides that for any municipal or quasi municipal use for a public water system, the State Engineer may grant any number of extensions of time for any number of years if requested for good cause shown.

The attached amendment proposes to delete the bill in its entirety and replace it with an amendment to NRS 533.380 that would increase from five years to ten years the extension of time the State Engineer may grant—in a single, one-time-only extension—for construction relating to municipal or quasi municipal uses for a public water system. This amendment was worked out among all representatives to address public water system extensions.

SENATOR SETTELMAYER:

I am not comfortable with the government having more rights than a private property water right holder. I understand the need to predict for the future, but the basins in Douglas County are already overappropriated. To allow the government to have the ability to keep extending the time periods continues to overcapacitate those basins. In the private sector, you either use it or lose it. In that respect, I am unable to support the amendment for this bill. I do not believe the government should have rights beyond those in the private sector.

CHAIR LEE:

Senator Settelmeyer comes from a background of being a water right holder in northern Nevada. I know your background is extensive in this area. The theory is municipal and quasi municipal agencies have planning and must report to the state—where someone without those requirements would still be in the one-year program—but could move more quickly to meet their needs and the needs of the community.

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SENATOR HARDY:

Did we have buy-in from all of those testifiers who heard the bill the first time and voiced concerns?

CHAIR LEE:

We heard this bill. The only person who thought it was a great idea was the mayor from Caliente. There was a meeting of about 30 people interested in the bill, and they agreed upon this language.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 153.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED (SENATOR SETTELMAYER VOTED NO).

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CHAIR LEE:

Senator Settelmeyer will share with us the effects of Senate Joint Resolution (S.J.R.) 6 on the State of Nevada.

SENATE JOINT RESOLUTION 6: Claims sovereignty under the
Tenth Amendment to the U.S. Constitution. (BDR R-333)

SENATOR JAMES A. SETTELMAYER (Capital Senatorial District):

Senate Joint Resolution 6 is a Tenth Amendment resolution which, in these economic times, should be one of our top priorities. Any constitutional issue is neither a left or a right issue. It is a fact the federal government has forgotten the Constitution of the United States. Nevada can no longer afford the unfunded federal mandates being forced upon us by the federal government. There are national programs forced upon our State's taxpayers that we must bear but cannot afford. Some examples are the Clean Water Act and the Clean Air Act. Arsenic is a prime example. In the northern part of the State, our water standards were at 100 parts per billion, then the federal government lowered the standards from 100 parts per billion to 10 parts per billion. Now all areas in the northern part of the State must go through water reclamation or water cleaning facilities that are extremely costly. There is also the concept of creating

pipelines to connect water systems in an attempt to mix them in order to fall below the previous standard.

Utilizing some new maps, the Federal Emergency Management Agency decided 2,500 acres in Douglas County now falls under the federal guidelines that require flood insurance. No record has been located to prove these lands have ever flooded, so there is no way to justify the requirement. Even Douglas County has to provide flood insurance on the lands it owns, and the requirement has created some problems for our communities.

Many will ask why we should send this resolution. Simply put, the federal government has forgotten the Constitution, and we need to remind them. If this resolution passes, it will be in place for a two-year period because the Nevada Legislature meets every two years.

Senate Joint Resolution No. 1 of the 68th Session regarding the Tenth Amendment was heard by the Senate Government Affairs Committee.

James Madison in the *Federalist Papers* No. 45, said the powers delegated by the proposed constitution to the federal government are few and defined. You can reference Article 1, section 8, of the U.S. Constitution where it clarifies those defined powers, which range from establishing the military to the ability to coin money and punish those individuals who try to coin money without the permission of the federal government.

Those powers which are to remain in state government are supposed to be numerous and indefinite, yet that is not what has been occurring over a period of time.

The Tenth Amendment was adopted 220 years ago, and the federal government has forgotten what we Nevadans know. We the people created state governments, and then state governments created the federal government. We want to remind the federal government of our constitutional rights. This resolution seeks to protect the citizens of the Silver State from an overreaching federal government.

CHAIR LEE:

We understand your proposal will notify the federal government of our concerns through a business format.

JANINE HANSEN (President, Nevada Eagle Forum):

We need to remember something Thomas Jefferson said—the several states composing the United States of America are not united on the principle of unlimited submission to their general government.

It was Thomas Jefferson and James Madison who authored the Virginia Resolution and Kentucky Resolution, which essentially were a reaffirmation of the Tenth Amendment. This was in direct opposition to law which President John Adams passed regarding the Alien Act and Sedition Act that provided, in part, for the prosecution of anyone who criticized Congress or the President of the United States—a violation of the right to free speech. It is significant that the Democratic Party can trace their foundation to Thomas Jefferson.

Right now, things are happening along these lines. Eight states have passed the Firearms Freedom Act and medical marijuana laws, and many states such as Nevada refused full compliance with REAL ID. These are all acts asserting the Tenth Amendment. The State can say we are not going to accept the federal mandate because it has gone beyond the constitutional limits of the Tenth Amendment.

The states have their hands out and say we want the federal money, even if it only supplies a small portion of the cost of the program. It would be beneficial for the State Legislators to say we are not going to accept federal money nor are we going to accept the federal mandate. We need to do more than just speak. The Legislature needs to say we will not participate in unfunded federal mandates. Also, we will not participate in programs that will cost the State large amounts of money or take away our constitutional rights.

JOHN WAGNER (State Chairman, Independent American Party):

We support this legislation. Ms. Hansen mentioned REAL ID, which was defeated last Session. It is back again on the federal level; on April 11, all states are supposed to have the same type of driver's licenses with biometric encoding and a microchip. These microchips can trace you anywhere you go. They are in cell phones, in your global positioning systems, and you have Big Brother knowing every step you take. When it comes to REAL ID, I do not plan on complying with the law. I figure there are ways to block the chip by putting two pieces of metal on either side of the driver's license or maybe smashing the chip inside the license. I do not like the idea of the federal government

mandating to the states. We are supposed to be sovereign states according to the Tenth Amendment.

LYNN CHAPMAN (Nevada Families):

Many Federalists such as James Madison argued that the Tenth Amendment was unnecessary because the powers of the federal government are carefully enumerated and limited in the U.S. Constitution. Because the Constitution does not give Congress, the President or any federal judiciary the prerogative to regulate local matters, James Madison concluded that no such power existed and no such power would ever be exercised.

The provision was designed to protect states' rights as well as individual citizen's rights. Today, we have reached a point in history which Thomas Jefferson in 1823 hoped would never happen. He said:

I ask for no straining of words against the general government, nor yet against the states. I believe the states can best govern our home concerns and the general government our foreign ones. I wish, therefore, to see maintained that wholesome distribution of powers established by the Constitution for the limitation of both; and never to see all offices transferred to Washington.

But we know what is happening. Washington, D.C., is taking over more of the affairs of the states, and the federal government is now involved in schools, roads, housing, welfare, hospitals, banks, transportation, communication, air, water, land and natural resources.

June 12, 1823, in a letter to U.S. Supreme Court Justice William Johnson regarding the meaning to the Constitution, Thomas Jefferson wrote on every question of construction. Carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates and instead of trying to determine what meaning may be squeezed out of the text or invested against it, conform to the probable one in which it was passed.

THOMAS W. CORNELL (Secretary, Nevada Capital Libertarian Party):

I would like to speak in support of this legislation. Senator Settlemeyer mentioned unfunded mandates, but our party is more concerned about the funded mandates. The federal agencies like the Federal Election Commission (FEC), Department of Homeland Security and U.S. Department of Defense have hundreds of billions of dollars to offer incentives to state governments and

county governments to fund legislation. These are essentially laws and regulations made by those agencies.

An example of that is REAL ID. The State of Nevada needs money and the Department of Homeland Security offers grant money. Administrators look at getting those funds and then adopt the federal regulations coming down to the State level.

We saw this last week with the Secretary of State on limiting third parties. The Secretary of State is most certainly getting money from the FEC to come into compliance with what the FEC wants to see the states do. This is essentially going to limit third parties in this State and give the Secretary of State the power to interpret and create his own regulations.

I see it with the National Guard, for example. At one time, states had control over their own emergency forces. The U.S. Department of Defense comes in with funding for the organizations and they comply with all of the federal regulations, so now they are essentially federal. The Governor may not have the ability anymore to call out the National Guard in an emergency.

An example was in New Orleans during Hurricane Katrina. There was no Louisiana National Guard to respond to that emergency because they are all federalized and have been mobilized with a completely different agenda.

The U.S. Department of Education sets national guidelines and offers funding to the schools. The schools need money, so now we are federalized. In Nevada, we have a very distinct culture. Our needs are different from Washington, D.C., California or New York; yet, we have to comply with regulations because we have taken the money.

The library in Washoe County takes federal money and then finds out there are all sorts of strings attached. It ends up having to spend more money to comply with the regulations. In closing, there is a market system to ensure competition. Without the separation of powers, the federal government takes everything. That is really what is happening in this Country with people concerned about civil liberties.

There is no conspiracy to violate people's rights. It is an institutional dynamic of the federal government having so much money and federal agencies that are not

supervised by Congress anymore. The federal government can offer money to the state and local entities and thus build its own empire independent of the Legislature and popular sovereignty. Nevada elected representatives should be making these decisions, not federal agencies passing along their own regulations with their own administrative judges interpreting the regulations.

JIM DEGRAFFENREID (Chair, Special Committee on Legislation, Nevada Republican Party):

I would like to express our support for the resolution. There are a lot of people on different sides of the table coming together on this issue. That is an indication this is not just a one-party issue but is widespread. Our party platform states we strongly support, defend and abide by the Constitutions of the United States and the State of Nevada and the principles on which they were founded. We expect our elected representatives to respect these constitutions and their limitations. It goes on to say that we strongly affirm the Tenth Amendment.

States have the authority to conduct intrastate affairs without federal interference. These were adopted overwhelmingly by grassroots Republicans from all over the State of Nevada at our convention last July. One of our principles is that government works best when it is closest to the people. We believe that the powers that are not delegated to the federal government in Article 1, section 8, of the U.S. Constitution are reserved to the states as stated in the Tenth Amendment.

We believe the federal government has expanded beyond its enumerated powers, and this legislation gives Nevada a basis to assert its sovereignty in cases where the federal government has overstepped its bounds and enacted inappropriate legislation or placed unfunded mandates on the State that we cannot afford.

Senator Settlemeyer mentioned the flood insurance issue in Douglas County. It is an excellent example of not only an unfunded mandate that affects the State itself but also affects the residents of the State. I am an insurance agent in Douglas County, and I can tell you this issue has created a great hardship not only for the government in Douglas County but for the people who suddenly are faced with paying flood insurance on property that has never flooded before. The cost of that insurance is often more than their regular insurance for everything else.

CHAIR LEE:

This is a resolution that we know will be sent to the Vice President and the President of the United States. We know this is a states' issue, but we have two Democrats and three Republicans in Congress who are supposed to be working for the betterment of the elected officials in the State of Nevada. They are elected by us to represent us in Congress. Is there any responsibility of the Congressional team to discuss this, since they are closer to the President and Vice President than we are?

MR. DEGRAFFENREID:

It is their responsibility to do that. Giving them the support of this resolution allows them to do a better job and to state the wishes of the people of Nevada.

MR. CORNELL:

I think your question reinforces the point I was trying to make. There are only 535 federal legislators. That is the same number we had 250 years ago. The federal legislators do not have time to read the legislation before them. Once they pass a law, it becomes enforced by federal agencies that end up deciding how to enforce it and make their own regulations. The federal agencies interpret the legislation as to how it should be enforced. The Congressional Delegation does not have time, but you do have the time.

I cannot go to Washington, D.C., to testify at Congress because I do not have the connection I have at the State level. Congress is too remote today. Congress is too elite, and it is not supervising the agencies or the federal bureaucracy. The bureaucracy has been empowered to make and interpret its own regulations and obtain its own funding with fines and fees and whatever else. That is the constitutional issue. The federal legislators should be supervising the governmental agencies, but they are not. Maybe the doctrine of the unitary executive that became popular under ex-President George W. Bush could provide additional information.

CHAIR LEE:

I am trying to get a full understanding of the issue. There are 63 Legislators here who work every two years for four months. We do not have the time to monitor the executive agencies also. Even if all 63 of us sign on to this legislation, what is the next step? To provide clarification—is this something you are asking this Committee to do, or is it something you are asking Congress to do?

MR. DEGRAFFENREID:

There is a book called *Nullification* by Thomas E. Woods, Jr., who is closely associated with the Ron Paul campaign for President. That book has become a best seller that perhaps you might want to read. It is going to have to happen at the State level. The federal government is out of control. The federal government will soon be as financially strapped as some of the states are now. How are we going to stop these federal agencies? We just refuse. I understand and identify with the problems you have as a State Senator. You are paid \$7,800 a year, and you are dealing with State bureaucrats who make ten to fifteen times as much as you do, and they have staff.

CHAIR LEE:

It is every two years for the Legislators.

MR. DEGRAFFENREID:

You do not have the resources to police these executive agencies. That is the problem we have and why we are facing bankruptcy. How are we going to do that? It is a good question. I think we begin with the resolution.

CHAIR LEE:

Short of raising taxes to produce more public employees to stop the abuse, how do you put your finger in the dike?

MR. DEGRAFFENREID:

I believe the answer is going to be bankruptcy of the federal government. Maybe that is the only way we can stop this trend where the federal government is going to run everything when they do not have any more money. As the State is discovering, we just do not have the money to fund all the programs the State bureaucracy would like to have.

SENATOR SCHNEIDER:

The previous speaker indicated the federal government should stay out of roads and highways.

MR. DEGRAFFENREID:

There are two aspects. There is the unfunded liability that the State cannot afford to do in order to meet federal requirements, and the second, much of it has never been considered by statute. The bureaucracies themselves are

deciding what to tell the state to do. We of course do not want to do away with roads, but do we want to do away with our own National Guard?

SENATOR SCHNEIDER:

The government, our Country, society and everything is different from when the original documents were drawn. We do need a strong central government. Former President Dwight D. Eisenhower built the interstate highway system, a federal government mandate. Of course his concern was moving armies from coast to coast real fast. That highway system has been an absolute boom to commerce in this Nation, and it would never have happened without the federal government.

Here in the West, we need transmission lines to run power through the Western grid. We cannot get that accomplished without the federal government which will have to step up and complete it. We just built a new bypass bridge at Hoover Dam. We could not have done that without the federal government. There is a lot the federal government does to assist the states.

You stated there were 535 legislators in Washington, D.C., who do not have time to read all of the bills. You said it has been the same number of legislators for 250 years. If you double or triple the number, that means there would be more bills and less time to read them. Legislators specialize in two or three areas of expertise. We do the same thing in this body. We specialize and rely on trusted Legislators to vote on the different legislation. We cannot read every word of every bill here, either. I think society has changed so much, so fast, that without a strong central government we would be like the Middle East.

Look at the fancy cell phones we have. We need federal government regulations as you travel across this Nation. I appreciate this legislation where we wish the federal government would stay out of things, but without it we would truly be a cobble of independent states doing whatever we wanted to do. I think we do need somebody to provide us with strong direction.

Look back 200 years—when you used to go to the barber to get your teeth worked on. Things have really changed, and the people of this Nation demand health care, they demand pensions, they demand a lot today. It has become a right.

If you live in the United States, you are entitled to good health care. You are entitled to work and receive a pension to be secure when you are old. That was put into place under former President Franklin D. Roosevelt. Sometimes we get caught up in keeping the federal government out with our libertarian streak that runs through Nevada. I understand that, but sometimes we do not think deeply enough. We are right on the surface. The federal government needs to do more than they do today, and I am not saying they should be doing this unbridled. They need to work with the states more and think about things more.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

The American Civil Liberties Union has signed in as neutral on S.J.R. 6. In terms of expressing the proponents' point of view, the bill is in the proper resolution mandate the Legislature carries. You as a governmental entity have the prerogative to state an opinion. However, to the extent that it suggests any power to the State of Nevada to declare a federal law null and void, we think it would be improper. This resolution reiterates the Tenth Amendment to the Constitution of the United States, but it also makes several conclusory statements regarding the relationship between the state and federal government.

Namely: the scope of power defined by the Tenth Amendment means the federal government was created by the states specifically to be an agent of the states, and today the states are treated as agents of the federal government. The people of the State of Nevada have rights the federal government may not usurp and many federal laws are directly in violation of the Tenth Amendment to the Constitution.

Based on those premises, this resolution moves beyond restating the Tenth Amendment and demands that federal government repeals unspecified laws that the Nevada Legislature may or may not deem unconstitutional. There are several preambulatory clauses. Suffice it to say, this resolution explicitly argues for a position that the Tenth Amendment affords the Legislature an ability to determine whether and which federal statutes would be deemed unconstitutional. This runs contrary to Article 6, paragraph 2, of the U.S. Constitution's supremacy clause which states that the Constitution and laws of the United States and all treaties made under the authority of the states shall be the supreme law of the land and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary

not withstanding. Senate Joint Resolution 6 appears to pause at a conflict between the states' rights issue and the Tenth Amendment in its applicability to federal laws that run counter to a state's constitutional evaluation under the supremacy clause.

This conflict is particularly illusory in the State of Nevada when you look at the Nevada Constitution, which is quite explicit in Article 1, section 2. It makes clear the constitutionality of any federal statute is to be determined not by the Nevada Legislature but by the United States Supreme Court itself:

Purpose of government; paramount allegiance to the United States.
All political power is inherent in the people[.] Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it. But the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers as the same have been or may be defined by the Supreme Court of the United States

Any statutes considered by the Nevada Legislature, were this resolution to pass, could not be rendered unconstitutional by the Nevada Legislature itself but under the Nevada Constitution by the United States Supreme Court. None of this precludes the Legislature from passing this resolution, but insofar as S.J.R. 6 implies that the Legislature has any power to render any federal statute unconstitutional would violate the spirit and the letter of the federal Constitution and the State Constitution as well.

CHAIR LEE:

Could you provide further clarification regarding the allegiance position?

MS. GASCA:

I quote again from Article 1, section 2, of the Nevada Constitution: "The Paramount Allegiance of every citizen is due to the Federal Government in the exercise of all its Constitutional powers as the same have been or may be defined by the Supreme Court of the United States."

That means the allegiance to the federal laws is going to be determined on behalf of the citizens by the U.S. Supreme Court. You have to keep in mind the State of Nevada joined the Union at a very volatile time, and one of the reasons it was accepted was because it was a nonslave state. This very well could have

been a political statement by the founders and organizers of this State to say, hey look, we are following what the Supreme Court decides in regard to federal law. A historian would be better equipped to speak to the intent of the founders of this State and the drafters of our State Constitution. Certainly, the constitutionality of federal laws are to be determined by the Supreme Court of the United States, not by the Legislature of the State of Nevada itself.

TOM MORRIS:

First of all, I would like to answer Senator Lee's question with regard to the responsibility of our Congressional representatives. Thomas Jefferson wrote, "whensoever the General Government assumes undelegated powers ... a nullification of the act is the rightful remedy." Thomas Jefferson recommended that every single time the federal government exercised its powers not delegated to it in the Constitution that we are to reject and nullify those acts on a State level as they happen. This was the intent of our Founding Fathers.

What body ultimately decides disputes, the Supreme Court? No, that was not the intent of our Founding Fathers. Both Thomas Jefferson and James Madison and the Kentucky Resolution and the Virginia Resolution warned us, "if the federal government has the exclusive right to judge the extent of its own powers, it will continue to grow." Regardless of elections, the separation of powers and other much-touted limits on governmental power, the Supreme Court is a branch of the federal government. Congress is a branch of the federal government. Neither one can be the final judge of the extent of our government's powers. This is language taken from our Founding Fathers. If it is within our Nevada Constitution that we are required to follow those mandates brought about by the Supreme Court, this was not the intent of our Founding Fathers. It has so much to do with the time our State was admitted to this Union. There were so many politics involved in those days.

Where is the outrage? Sadly, an honest reading of the Constitution will show most of what the federal government does today is not authorized. I will tell you where the outrage is, it is right here getting citizens like me to come to the Legislature. The unpaid lobbyists in the audience are trying to make sense out of all this and get back to those mandates of our Constitution. If enough people say no to the federal government and enough states pass laws saying no to the federal government, then it will not be able to enforce unconstitutional mandates. This was the clear intent of our Founding Fathers, and we need to listen. We need you to protect us by supporting this resolution.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):
Farm Bureau policy clearly states that we are in support of the Tenth Amendment of the Constitution. The statement itself, regarding the role the federal government is supposed to play, would be our point of view. That role and responsibility should be met.

KIM BACCHUS (Nevada Legislative Affairs Committee):
I would like to address the question posed earlier about asking our United States representatives to bring this issue forward. I would have to refer you to the Seventeenth Amendment, which took away the rights of the State Legislators to elect our Senators. Prior to 1913, our states were very adequately represented. Our states' interests were represented. Our citizens of states were well represented by our Senators in Washington, D.C.

At this point, our U.S. Senators are elected by the Nation of the United States. This is no longer simply a matter of representing Nevada if you are a Senator from Nevada. It behooves our State Legislators to stand in support of the citizens and the benefits of Nevada. Senator Schneider pointed out there are limited needs of support from federal government by all states, needs that transcend singular states' interests. We need to send a message to our federal government that you represent the State of Nevada. If you pass this resolution, you stand in support of our citizens.

CHAIR LEE:

You bring up a good point, but when I get elected from Senate District 1, it is by a very select group of people. They elect me to look at their needs but also to look at the whole State. I understand congressional people are looking at the needs of Nevada and the Nation. I am constrained just as they are to oversee a broader range in geographic area than from what I was elected.

WOODY STROUPE (Sun City Summerlin Conservative Club):
I support the bill because I support the Constitution and the Supreme Court cases that have upheld the Tenth Amendment. In *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court held that the state legislatures are not subject to federal direction. The Court stated the federal government may not compel the states to enact or administer a federal regulatory program. It would be nice if our State Legislature would realize that actions do not uphold or administer a federal regulatory program that has already been found constitutional by the Supreme Court of the United States. As far as the

supremacy clause is concerned, in the case of *Printz v. United States*, 521 U.S. 898 (1997), the Court found that the supremacy clause was very limited and was not a broad statement of powers by the federal government. Also, we have to keep the Supreme Court findings of the Constitution in mind. The Constitution is the law of the land and has been upheld many times by the Supreme Court.

Society has changed—frankly, it is still our Constitution until it has been amended. It has been amended, such as women's right to suffrage, because society had changed since it was founded. If people want to change the provisions of the Constitution, there is a process to be followed.

The Middle East is where it is because of strong central government, not because of strong local government. The advocates of a strong central government and the advocates of a strong federal government are thinking on the surface. They are not thinking about their faith, or they have no faith in the states or in the people to manage their business.

LESLIE HAYWORTH:

For many of the same reasons brought forward in previous testimony, I am in support of this resolution.

DEMAR DAHL (Chair, Elko County Board of Commissioners):

We had an Elko County Commission meeting last week with a presentation by the head of our Economic Development Board in Elko County. We were asked what we viewed as Elko County's biggest challenge for our economy in the next 20 years. Our challenge is to keep the federal government out of our way.

One of our challenges is to make sure we receive our Payment In Lieu of Taxes from the federal government. If Elko County was all privately owned, we could be collecting taxes. The way it is now, we get pennies on the dollar and every year we have to fight for them.

The economy of Elko County is like a three-legged stool. We have the livestock industry, the mining industry and recreation. We are in a battle now with the U.S. Forest Service regarding the forests in Elko County to keep the roads open. The Forest Service intends to close hundreds of miles of roads in the forest. It is important to Elko County for those roads to remain open so the people from Las Vegas are able to utilize them. There are a number of other restrictions,

such as big game retrieval, that is being limited, and dispersed camping where you will be limited to park one car length from the road. The roads that are open are going to be marked open, and everything else will be closed. That is a big problem for anybody who happens to be on the wrong road and does not know it is closed. If people are cited, they cannot contest the ticket in Elko. They would have to travel to Reno or Las Vegas because it would be a federal offense.

The livestock industry has seen nearly all of its sheep disappear from the range and more than half of the cattle since 1980, primarily because of federal management practices. We have seen many thousands of acres burn because we have a buildup of fuel that is forage and not being consumed by livestock. Now we have a serious burn problem.

Of course the mining industry always has a challenge with the federal regulations. The federal government is our biggest challenge in Elko County.

JOHN OHM:

I support this proposal, but it needs more teeth. This is currently before the state legislatures in Montana, Arizona and Tennessee. It is called the Nullification and Reaffirmation Act of 2011 ([Exhibit E](#)). I will read one part, section 11, that I suggest you consider amending:

The Legislature shall establish and/or appoint a Commission of Recommendation, consisting of X amount of members, which shall be charged to recommend, propose and call for an "up or down vote by simple majority" to nullify in its entirety, a specific federal law and/or regulation which is deemed to be outside the scope of the powers delegated by the People to the federal government in the United States Constitution, or at odds with the Constitution of the state. The Commission shall respond with their recommendation(s) within thirty (30) days of receiving said federal legislation for consideration and process.

I think this will add more emphasis to what we are trying to do for those who are proponents of this particular resolution.

CAROL HOWELL (Nevada Legislative Affairs Committee):

I am in full support of this resolution if it is more than just a feel-good piece of legislation. Several points have been brought up by the Committee and those who testified. It reminds me of an 18-year-old preparing to leave home but not having the means to do so. He expects his parents to continue supporting him, providing his education, feeding him and probably buying gas for his car. If this is a resolution we are serious about, we need to get our hands back in our own pockets. We cannot continue to hold our hands out and ask the federal government for money and then object to the strings they add to it. If we are ready to be a State of adults and representatives who are ready to manage this State rather than expecting the money and rules and regulations to come down from the federal government, then I am in support of this resolution. If we are a State that has rights, then it is the State's right to offer health care and other items being mandated by the federal government. We are first a State. If it takes changing your terms from a four-month term to a six-month term or a yearly term, then so be it. We need to stop sending all of our funds to the federal government to disperse what they want to give back to us, to dictate our education requirements, which we all know is failing in this State. Let us get the money back into our own State and take care of our own issues. I support this resolution, but you have to be ready to support the government of this State if you are going to stand up and say I am an adult.

CHAIR LEE:

The Chair is better educated on this issue after hearing all of the testimony provided today. A national amendment to the Constitution was suggested and maybe that is an avenue to pursue. Is there anything happening in the Republican Party regarding this issue that this Committee should be aware of, Senator Settelmeyer?

SENATOR SETTELMEYER:

To my knowledge there is nothing on the Tenth Amendment, but there are numerous aspects where people feel the federal government has intruded. These issues are being brought to several states, whether it be gun rights or a balanced budget. There have been discussions of a constitutional amendment against unfunded mandates similar to what was brought forward by the counties. There has been no reaffirmation against the Tenth Amendment since it already exists.

MR. DAHL:

Supposedly, all of the states are on an equal footing. In 1975, I was a charter member of an organization that started the Sagebrush Rebellion so Nevada could be on an equal footing with the rest of the states. It would make a huge difference to Nevada.

WALTER M. NOWOSAD:

I support S.J.R. 6 but want to address having our Congressional Delegation do something about this issue. I have been writing letters for years to all of my representatives. More often than not I receive answers that are unconfirming of the question I had asked in the first place. This Tenth Amendment issue is a grassroots Republican issue. It says to the federal government—you are not listening, so here is what we are proposing.

CHRISTINE BURNS (Nevada Legislative Affairs Committee):

I too support this resolution. The Tenth Amendment is something all of you have sworn to uphold, as well as the Constitution of the United States and the Constitution of Nevada. As such, we have legislators on the federal level who have gotten so busy with the business of trying to stay elected and in power, they are making backroom deals. That power does not always equate with protecting the states they represent. As a State that keeps an open door to its people, you need to have the people support you and you need to support the people. How can you not support something you have already sworn to uphold? If you do not support the people, are you, in effect, saying the Constitution has no validity in what you are doing?

As Senator Schneider mentioned, there are many things our federal government does. He also stated many people are demanding and think there are certain things that are rights. It was noted our education system is in disarray. Many people want these things but do not understand their responsibilities and the responsibilities of our legislative and governmental bodies. We have people acting like children and having their hands out to the government, saying you have to help me. As a compassionate people, we desire to help, but when it becomes mandated and citizens do not accept responsibility, we the citizens want to be responsible and work for what we get. We have to look at educating our public better as well as our government to understand the true meaning.

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SENATOR SETTELMAYER:

This is a reminder to the federal government because it has clearly forgotten the Tenth Amendment. The federal government needs to work more closely with the states in trying to implement the things that are better for all of the constituents rather than having an approach of one size fits all. There may be laws that would fit New Orleans, but the law also blankets Nevada. The effect is a cost we cannot afford.

CHAIR LEE:

When measures are passed out of this Committee, it is because they will answer a problem or make a change. I am still looking for the real nexus to success for this resolution. With no further business to come before this Committee, we are adjourned at 10:32 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____

EXHIBITS			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 110	C	Michael Stewart	Work Session Document
S.B. 153	D	Michael Stewart	Work Session Document
S.J.R. 6	E	John Ohm	Nullification and Reaffirmation Act of 2011