MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-sixth Session
March 22, 2011

The Senate Committee on Legislative Operations and Elections was called to order by Chair David R. Parks at 3:36 p.m. on Tuesday, March 22, 2011, in Room 2144 of the Legislative Building, Carson City, 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 David R. Parks, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Steven A. Horsford
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Dean A. Rhoads, Rural Nevada Senatorial District

STAFF MEMBERS PRESENT:

Carol Stonefield, Policy Analyst
Eileen O'Grady, Counsel
Michael Geissinger, Committee Secretary

OTHERS PRESENT:

David Kaserman, National Voter Outreach
Janine Hansen, Nevada Eagle Forum
Samuel P. McMullen, Las Vegas Chamber of Commerce
Danny Thompson, Nevada State AFL-CIO
Scott Gilles, Deputy for Elections, Office of the Secretary of State
Larry Lomax, Registrar of Voters, Elections, Clark County
John Wagner, State Chairman, Independent American Party
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Kevin Benson, Deputy Attorney General, Office of the Attorney General

Matt Griffin, The Capitol Company

CHAIR PARKS: We will open the hearing on Senate Bill (S.B.) 170.

SENATE BILL 170: Revises provisions governing petitions for initiative or referendum. (BDR 24-537)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):
Senate Bill 170 gives more flexibility to our initiative petition process. Nevada's system of allowing citizens to propose ballot measures for constitutional amendments and other statewide measures is a key component of the political system in our State. It allows for citizens and groups to bring forth important issues deserving statewide consideration. The current process does not allow for the proponents to withdraw a measure if deemed unnecessary. This creates unavoidable expenses to the State, proponents and opponents of a measure. This bill addresses the issue of changing circumstances making ballot measures unnecessary after petitions have been submitted to the Secretary of State's Office. The bill allows petition organizers to withdraw a petition up until the time absentee ballots have been prepared before a general election. Senate Bill 170 proposes committees of five registered voters be formed as a petitioners' committee, which would have the responsibility of properly filing and circulating the petition. The petitioners' committee would have the authority of withdrawing the petition if four of the five members attest to the Secretary of State that the petition should be withdrawn. This measure does not restrict the initiative petition process. It provides citizens and groups the ability to put measures on the ballot to affect our laws and constitution. It allows discretion to withdraw measures no longer deemed necessary. The language in the bill is simple. Section 1, subsection 1 discusses the five registered voters who may commence as the petitioners' committee. The bill adds subsection 6 on the process of how a petition may be withdrawn. It outlines how four of the five individuals can attest to the Secretary of State to withdraw the measure. This is a simple adjustment to our current initiative process.

SENATOR SETTELMEYER:
What is wrong with one person having an idea or initiative? I recall former Clark County District Judge Don Chairez came forward with the concept on eminent domain as an individual. Will the bill allow other forms, rather than always needing a committee?

SENATOR HORSFORD:
The concept you are presenting may be acceptable. The number of signatures required under existing law would be maintained. We are creating a petitioners' committee of five registered voters who may commence initiative or referendum proceedings by filing an affidavit and circulating a petition. It is a benchmark so members who are on the petitioners' committee would have the right to withdraw the petition if necessary.

DAVID KASERMAN (National Voter Outreach):
National Voter Outreach of Carson City is neutral on this bill.

JANINE HANSEN (Nevada Eagle Forum):
The concept of having five registered voters is positive. If a candidate cannot get five people to participate, a petition will never get done. What happens to the will of the people when the committee decides to withdraw the petition? I will move myself to neutral on S.B. 170.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce):
I support this bill. I experienced a real-world example of the inability to withdraw an initiative. There are times when initiatives are done in response to other initiatives, only to discover the original initiative could not be certified, therefore making the response initiative unnecessary. There could be other unforeseen circumstances between the time an initiative is filed with the Secretary of State and the time you actually want the initiative to be there. Senate Bill 170 is an appropriate mechanism to address this problem. The initiative petition could make it clear in the text that when signing the petition, you are allowing the committee formed for the petition to withdraw the petition at its discretion.

DANNY THOMPSON (Nevada State AFL-CIO):
With respect to Senator Horsford, we oppose this bill. I have experience with initiatives in the State of Nevada. If this bill is enacted, a situation will be created where initiatives will be fashioned to extract leverage from different groups, knowing the initiative can be pulled at a later date. I have experience performing this very act in the State of Colorado. People will take advantage of the ability to withdraw initiatives. It is a mistake to have voters sign a petition that can later be pulled at the discretion of others. I urge the Committee to defeat this bill.

SCOTT GILLES (Deputy for Elections, Office of the Secretary of State):
We are neutral on this bill. I do want to discuss a few practical issues within the bill. Petitioners' Committee is a newly defined term. In our election bills, we are trying to remove the definition of terms like ballot advocacy group from election reporting requirements as a defined group in the statutes. A petitioners' committee may fall under the definition of a political action committee and therefore be required to follow the reporting requirements under *Nevada Revised Statutes* (NRS). We have concerns with the deadline of the withdrawal date. As the bill is written, the deadline date is when absentee ballots are prepared and distributed. The result could be a situation of absentee ballots printed and a withdrawal requested just before distribution. We prefer the deadline be moved back. We are not aware of a single deadline date under the statutes that would work the best. The first Friday after the primary election allows for the change of ballots, that date may work. Some research needs to be conducted to avoid potential waste of resources and finances by the county.

SENATOR SETTELMEYER:
What about using the date in statute for withdrawing a candidacy?

MR. GILLES:
That may be the date I was referring to. I would need to confer with Mr. Lomax.

LARRY LOMAX (Registrar of Voters, Elections, Clark County):
We would prefer S.B. 170 state a hard date, preferably before the ballot is set. It could be at the end of the candidacy withdrawal period or the end of the subsequent challenge period.

SENATOR HORSFORD:
I agree with Mr. Gilles and Mr. Lomax. Could either of you provide some dates to the Committee?

CHAIR PARKS:
Senator Horsford, this is your bill. We will wait for you to bring back revisions for consideration.

SENATOR HORSFORD:
Yes. I will work with Mr. Gilles and Mr. Lomax on the proposed language changes.

CHAIR PARKS:
We will close the hearing on S.B. 170 and open the hearing on S.B. 133 and S.B. 241.

SENATE BILL 133: Revises provisions governing initiative petitions. (BDR 24-1)

SENATE BILL 241: Revises provisions relating to initiative petitions. (BDR 24-1101)

SENATOR DEAN A. RHOADS (Rural Nevada Senatorial District):
I have been battling this issue for eight to ten years. I would like to read the following written testimony (Exhibit C).

CHAIR PARKS:
We have received a number of e-mails in opposition to these bills. We certainly have a situation that needs to be resolved. The bills do offer three possibilities. Could we also use the Senate Districts?

SENATOR RHOADS:
That would be difficult with the multiseats in Clark County.

SENATOR HORSFORD:
Senate Bill 241 uses the Board of Regents' boundaries. What if those positions are appointed, not elected? What would happen if those boundaries no longer exist?

SENATOR RHOADS:
I imagine the bill would be ruled unconstitutional. The Legal Division at the Legislative Counsel Bureau (LCB) and outsiders I have worked with all agree the Assembly Districts in S.B. 133 would be best.

MR. KASERMAN:
I am here on behalf of National Voter Outreach. We are a petition company. In the past, we represented the interests of grassroot efforts to qualify a petition on the ballot and let the people vote. I said in the past because it now has become difficult to even qualify initiatives on a ballot. Nevada has one of the highest-qualifying thresholds in the Nation at 10 percent. You must acquire 10 percent of voter signatures to be on the ballot. The initiative must then pass in two consecutive elections. On a petition we did last year, 10 percent equated

to 97,000 signatures. To qualify an initiative on a ballot, you need to acquire one and one-half to two times that amount. That is a lot of people signing up to say, we would like to vote on this issue. This Committee is aware of how much time the Nevada court system has allotted to dealing with initiative petitions. I have scrutinized the court's language of how to do this without being ruled unconstitutional in the future. The United States Supreme Court has said ballot initiative law is held at the same standard as election law.

If either of these bills pass, the 10 percent of signatures required from either the Assembly or Board of Regent Districts will make getting on a ballot extremely difficult. As an opponent, I would simply focus all my efforts on one district in which to foil the gathering of your 10 percent of signatures. Even if 51 percent of the voters in every other Assembly or Regent District supported you, the lack of signatures in one district could veto you from being on the ballot. This is the burden you would put on the initiative petition process. The courts have said if you require a distribution, the numbers must be equal. This is an extremely difficult task. You must protect the First Amendment right of free speech, and you cannot make the burden so onerous that it is impossible. A 10 percent threshold of the voting public statewide is sufficient. I urge you to do away with district requirements.

MR. LOMAX:
I would like to address some administrative issues with these bills. The last election used Congressional Districts, and we processed a petition in that manner. We ran into legal issues over the way the petition was processed. Regardless of which districts we end up using, we need direction in the statutes on how to gather and process the petitions. If we use Assembly Districts, there would be 30 districts in Clark County. Is a petitioner supposed to carry 30 clipboards? Is it one clipboard, and then the registrar's office is supposed to sort it out? There are issues of voters signing the wrong petition. Do we count that signature? In the last election, working with the Secretary of State's Office, we followed the law and randomly sampled 500 signatures or 5 percent, whichever was greater. If a percentage of the signatures were found to be from another district, we would statistically move those signatures to the correct petition. We need some guidance so we do not end up in court again.

I would point out the law says we do a random sampling of 500 signatures or 5 percent. If we use the Assembly Districts, as written in S.B. 133, there will be 30 districts in Clark County. This means 500 signatures in each of the

districts, totaling 15,000 signatures to verify. In a countywide petition now, if 100,000 signatures are collected, we only have to verify 5,000 signatures. If S.B. 133 were to pass, our workload would increase significantly. The time factor to verify more signatures would create a burden. The current laws will not give us extra time for verification of more signatures. If two statewide petitions happened to be turned in at the same time, we would have 60 petitions to verify. We would only have four days to do a raw count and nine days to complete the random signature samples. These issues need to be addressed if districts with high numbers are used. Finally, I have received guidance from Mary-Anne Miller of Clark County District Attorney's Office saying there is no statutory requirement for Regent Districts to be of equal population. Potentially, a legal issue could arise from this fact.

MS. HANSEN:
I am the State President of Nevada Eagle Forum. I have been battling with Senator Rhoads on this issue for a long time. I oppose these bills. Article 1, section 20 of the Nevada Constitution says: "Rights retained by people. This enumeration of the rights shall not be construed to impair or deny others retained by the people." Article 19, section 2, subsection 1 says: "the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this Constitution, and to enact or reject them at the polls." These petition bills heard over the last few years—in particular, S.B. 133 and S.B. 241 before us today—would essentially remove Article 19. Since 2005, when the single-subject rule was passed, we have had one petition in 2006 on the ballot, none in 2008 and none in 2010. The reason is because of the basic antagonism of the Legislature against the peoples' right to petition is manifest in making it difficult. I have petitioned in every county in the State of Nevada, so I am speaking from experience. Senator Rhoads' bills would make it more difficult. A petitioner would have to carry more maps and clipboards to verify voter districts before qualifying them to sign. A petitioner normally has only 30 seconds of engagement in which to collect a signature. If more time is needed to look through documents to verify a person's district, you will not get a signature. It is inherently difficult to get signatures as the laws are now.

We support using the Congressional Districts. This is a critical time. If we do not change things such as the single-subject rule, there will be no more petitions on ballots. Section 19 was originally proposed in 1909. It passed then and again in 1903. It was then passed by the people in 1904 [*sic*]. The purpose was to

allow the people, if the Legislature was intransigent, to circumvent the Legislature. I spoke to a Legislator in the Assembly who said, "I just don't like wealthy people coming in here and buying initiatives." That is free speech! The petition is supposed to be protected to the zenith of the law under the First Amendment of the United States Constitution. People with money might be the only ones in the State of Nevada who get a petition. Because of the single-subject rule and other restrictions, it takes millions of dollars to get a petition.

When I worked under the original law, we had to get signatures from 13 of the 17 counties. That was reasonable. If you could not get signatures from one particular county, you could get them in another. The Congressional Districts have large populations and do not pose such an issue, but with regard to Assembly Districts, it is a significant issue. I have been the ballot access coordinator for the Constitution Party in all 50 states. I have supervised petition campaigns in many individual states. It is extremely difficult to petition without money. In the State of Nevada, without millions of dollars, access for the people to the initiative process is essentially torn out of the Constitution. These two bills are another way to kill the right to petition.

JOHN WAGNER (State Chairman, Independent American Party):
I agree with the goal of Senator Rhoads to give the rural counties a say. I live in Carson City and have been involved with several petition drives. Carson City is a rural county. Having signatures for an initiative petition gathered from Congressional Districts seems reasonable. The new congressional seat may make things more confusing in Clark County. We recently had a bill by ex-Senator William J. Raggio, which covered the appointment of judges, on the ballot. If that had been an initiative by the people, it never would have gotten on the ballot. There were several reasons why it may have failed the single-subject rule. I would like to see the single-subject topic redefined. The way it stands now, it does not make any difference whether either one of these bills pass. We already have too many restrictions imposed on us.

MR. THOMPSON:
Speaking for the AFL-CIO, we oppose these bills. Originally, the law in Nevada stated 13 of the 17 counties. Most people do not know why that was in the law. Prior to that, you could get 10 percent of the registered voters anywhere in the State. In order to stop the Nevada State AFL-CIO from overturning the right to work in the 1950s, the Las Vegas Chamber of Commerce lobbied the

Legislature and passed the requirement for 13 of the 17 counties. In some of the past initiatives, we actually used the 13 Counties Rule to defeat measures. We would pick five rural counties with small populations to campaign against the opponent. Even if an opponent had massive numbers in Clark or Washoe County we were able to defeat them. We do not think it should be 10 percent of the registered voters anywhere. We support the single-subject rule as a controlling mechanism. If you have 10 percent statewide, the ballot becomes very large. I respect Senator Rhoads trying to do this as either/or, but I agree with Ms. Hansen, 42 districts would make qualification difficult and using the Regent Districts will not work if those districts are legislatively disbanded. There should be a reasonable mechanism to do this if the people want it. If these bill requirements are tied to redistricting, and there is disagreement when redistricting which leads to court litigation, the State may be left with only the option of 10 percent statewide. I submit to you, that is a dangerous scenario. Every person who wants to change a law would likely be able to acquire 10 percent in front of the Department of Motor Vehicles in Las Vegas. We would like the Legislature to craft a separate set of rules and initiative petition districts as a compromise. It would not be an easy task. It will still require the registrar of voters to identify where the voters live and present the same problems of a legitimate signature or fraud.

SENATOR HORSFORD:
Will the new Congressional District in Nevada address some of the concerns of Senator Rhoads and others in regard to the rural counties having a voice?

MR. THOMPSON:
Yes, it would be more fair. When anything is redistricted, it theoretically is even populationwise.

SENATOR SETTELMEYER:
In the last election cycle, the State used Congressional Districts. Legal counsel has informed me the Congressional District use will end in July unless we change that. Will we have to go to initiative petition districts which have not been created yet? What should we do in the interim? Should we use a sunset clause to move the date back two years and then use the new Congressional Districts? I would like to have Mr. Thompson's insight on the issue.

MR. THOMPSON:
Something needs to be done this Session. Keep in mind, if you tie these issues to reapportionment and there is litigation, you may end up with nothing.

SENATOR SETTELMEYER:
We will need something in place by the next election.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
There are two questions brought forward regarding initiative petitions being constitutional. The first is whether the populations are distributed equally. The American Civil Liberties Union (ACLU) has successfully litigated this issue two times in Nevada. Both were a direct result of proposals put forth by prior Legislatures. The second question is whether the number of districts becomes so burdensome as to de facto take the process away from the public.

The ACLU has no objection to using Congressional Districts. In the last session we agreed with LCB legal staff that Congressional Districts would pass constitutional muster. We also do not object to the use of the 10 percent threshold established by the courts. If petitions are identified by Assembly Districts, we might recreate the problems that led to the original lawsuits. In between redistricting periods, Assembly District populations could vary widely. It is feasible that large population shifts could result in two Assembly Districts having various amounts of individuals within that district, thus recreating the original argument that was brought forward in the other two lawsuits. This particular issue has not been addressed by the courts.

The concept of using 42 Assembly Districts would be burdensome, creating a constitutional issue. We testified against S.B. No. 212 of the 75th Session because it did not require any public announcement of what made up a petition district. If there is forward movement to petition districts that do not align with current Congressional Districts, I urge the Committee to consider the burden placed on the State to inform the citizens of their petition districts. The publication of information related to petition districts could be expensive. Based on prior elections, the ACLU believes the initiative process is problematic because of the single-subject rule. Legislation has already reduced the opportunities for the initiative petition process. Defining a petition district any way other than Congressional Districts or a 10 percent threshold would further weaken the process. If litigation is brought forth, the ACLU believes the State

would be forced to accept the 10 percent default in order to qualify initiative petitions.

In earlier testimony, Mr. Lomax stated there is no statutory requirement of the Board of Regents District to be based on population. That issue would certainly be problematic. In the Seventy-fifth Session, the Board of Regents Districts were reapportioned and redistricted based on equal populations. If State law does not require equal populations and the one-man, one-vote manner is not used, the State would be open to litigation in the future.

MR. GILLES:
With me is Kevin Benson from the Attorney General's Office. He litigates all the cases regarding initiative petitions brought to the Secretary of State's Office. He has come to answer any questions the Committee may have with regard to proposed petition district plans. Congressional Districts have been upheld by Nevada's U.S. District Court. The appeal is pending. We cannot be certain, but district usage by both the Assembly and Board of Regents face potential constitutional challenges. If either of those districts is used, the Legislature may want to draft some backup language in case they are ruled unconstitutional. With that recommendation, the Secretary of State's Office is neutral. I would defer any questions regarding legal issues of either of these proposals to Mr. Benson.

SENATOR SETTELMEYER:
What is the legal argument that a Congressional District is unconstitutional?

KEVIN BENSON (Deputy Attorney General, Office of the Attorney General):
An equal protection challenge was brought on essentially to what is called the All Districts Rule which says you need to have 10 percent in each district. The argument was made that giving the authority to one district to veto the other two districts gave one district more power than the others. As Mr. Gilles indicated, the court rejected that and upheld the All Districts Rule and the Congressional Districts. The basis for the ruling was the Congressional Districts were based on equal population, giving no one district a built-in numerical advantage. For that reason, the court upheld the use of the Congressional Districts.

MATT GRIFFIN (The Capitol Company):
I take no position on the bills before the Committee, but I have been involved in this process in the past. Any changes made to addressing petition districts will have to include changes to statute of how the petitions are processed, including the raw count and verification of signatures. The Secretary of State had some regulations thrown out trying to adapt the Congressional District rule to the existing statutory framework. For the record, those statutory changes have to be effectuated in NRS 293.127562, 293.127563, 293.1276 through 293.1279 and additionally NRS 295.056. Those changes are to a petition circulated in multiple counties and petition districts. A county clerk may receive a petition with ten signatures on the raw count; the clerk does not know if the eight signatures from his or her county are sufficient to certify the petition above the raw number. In 2010, those numbers were forwarded to the Secretary of State's Office to identify a number required for each petition district. The Secretary's Office would send the number and petition back to the counties for verification of signatures. The District Court in Carson City found this violated the statutory context. With Congressional Districts or either of the proposals on these bills, there is no way for the county clerks or the Secretary of State to verify the number of signatures on a petition under the statutory frame work. These statutory issues will need to be addressed.

CHAIR PARKS:
We received a letter (Exhibit D) in opposition of S.B. 133 and S.B. 241 from June Ingram, the Board President of the Charleston Neighborhood Preservation along with a correction (Exhibit E).

CHAIR PARKS:
We will close the hearing on S.B. 131 and S.B. 241. The meeting is adjourned at 4:42 p.m.

RESPECTFULLY SUBMITTED:

Michael Geissinger,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 133 S.B. 241	C	Senator Dean A. Rhoads	Written testimony
S.B. 133 S.B. 241	D	Charleston Neighborhood Preservation	Opposition letter
S.B. 133 S.B. 241	E	Charleston Neighborhood Preservation	Letter to correct errors on Exhibit D