

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Seventh Session
March 15, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 9:06 a.m. on Friday, March 15, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Chairwoman
Assemblywoman Dina Neal, Vice Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Irene Bustamante Adams
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblyman James W. Healey
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Heidi Swank
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Pete Livermore (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Jim Wheeler, Assembly District No. 39

Minutes ID: 534



STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Bonnie Hoeffcker, Committee Manager
Lori McCleary, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Kate Morra, Private Citizen, Carson City, Nevada
Walter Nowosad, Private Citizen, Carson City, Nevada
Alan Wetter, Private Citizen, Henderson, Nevada
Matthew Yealy, Private Citizen, Las Vegas, Nevada
Keith Wood, Private Citizen, Elko, Nevada
James DeGraffenreid, Secretary, Nevada Republican Party
Juanita Cox, representing Citizens in Action
Duncan Rand Mackie, representing Nevada Firearms Coalition
Jim Sallee, Private Citizen, Las Vegas, Nevada
Vernon Brooks, Private Citizen, Las Vegas, Nevada
Richard Brengman, Private Citizen, Gardnerville, Nevada
Carol Howell, Private Citizen, Carson City, Nevada

Chairwoman Benitez-Thompson:

[Roll was called. Committee rules and protocol were explained.] We need to have a Committee bill draft request introduced. I will entertain a motion to introduce BDR 23-982.

BDR 23-982—Revises provisions governing reductions in the workforce of a school district. (Later introduced as [Assembly Bill 295](#).)

ASSEMBLYWOMAN NEAL MOVED TO INTRODUCE BDR 23-982.

ASSEMBLYMAN ELLIOT ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN LIVERMORE WAS ABSENT FOR THE VOTE.)

Chairwoman Benitez-Thompson:

We have one bill today, [Assembly Bill 196](#). I will open the hearing for [Assembly Bill 196](#) and welcome Assemblyman Wheeler to the table.

Assembly Bill 196: Requires the Attorney General to bring an action to protect and secure certain constitutional rights of residents of this State under certain circumstances. (BDR 18-945)

Assemblyman Jim Wheeler, Assembly District No. 39:

Thank you, Madam Chairwoman, and thank you to the members of this Committee for taking the time to hear Assembly Bill 196. I would like to begin by giving you a little history behind this bill and my reasons for writing it.

We have all heard the press refer to this bill as the "Gun Bill" or the "Second Amendment Bill," or all the things the press likes to say. In reality, while the Second Amendment to the *United States Constitution* is definitely the catalyst, it really has very little to do with this important bill. This is a bill that is more about the Tenth Amendment to the *United States Constitution* and more about the separation of powers in our government.

This bill is very simple. It is one paragraph, for which you can all thank me later. I know we all like those kind of bills. I am sure you have read it by now. It simply states that if the President of the United States happens to dictate an executive order in contravention to the Second Amendment to the *United States Constitution*, the Governor and/or the Attorney General, acting separately or in concert, can begin an action against that executive order.

You may ask me why I thought this was important to do, because after all, every President writes executive orders. So far at least, this President, arguably, has not written an executive order in direct contravention to the Second Amendment. I wrote this because of statements I was witness to by the Vice President of the United States. On January 10, 2013, the Vice President was asked what the administration would do if Congress failed to act on gun control laws, and given the makeup of our current Congress, it was highly possible they would fail to act. His answer was, "There are executive orders, executive action that can be taken." This President is willing to take them.

I do not know about the members of this Committee, but that scares the heck out of me, and it should scare the heck out of you. We all know the President does not write law; that is the job of the United States Congress. Just as it is not the job of our Governor to write law, it is the job of this Committee and the rest of us here in this building—we write the law.

We have a good system in this country. We have the ability to write new laws, we have the ability to change laws, and we even have the ability to change the *United States Constitution*. It is a living, growing document and our forefathers

saw to it that we could change it. The very thing that makes this system work is the process itself and the equilibrium that exists between the federal government and the state governments. Quoting from *Federalist No. 31*, Alexander Hamilton, when queried about the relationship between the states and the federal government when the *United States Constitution* was being ratified, said people "will always take care to preserve the constitutional equilibrium between the general and state governments." In a speech to the New York Ratifying Convention, he stated:

This balance between the National and State governments ought to be dwelt on with peculiar attention, as it is of the utmost importance. It forms a double security to the people. If one encroaches on their rights they will find a powerful protection in the other. Indeed, they will both be prevented from overpassing their constitutional limits by a certain rivalry, which will ever subsist between them.

I think over the last 234 years, we have seen that to be true. In other words, when a state government oversteps its boundaries, it is up to the federal government to step in and stop them. By the same token, when the federal government oversteps its boundaries, it is up to the state governments to step in and stop them.

I felt it was important Nevada, once again, lead the way in this. I know of three other states that have contacted me personally and are watching what we are doing here today to see if they will do the same thing. Their bills are already written, but have not gone to committee yet. Again, people are looking at Nevada to see what we do. All of these states hope this may become a superfluous law; I do, and I am sure all of you do, as well. We hope this is a law that will never be needed. However, given the statements of the Vice President on January 9, 2013, I do not know if we can take that chance. That is why I was asked to write this law and that is why I wrote this bill. I do not want this Legislature to recess and have our constitutional officers not have the ability to combat an executive order because we failed to act.

I would be happy to answer any questions, if there are any.

Assemblyman Ellison:

Thank you, Assemblyman Wheeler, for bringing this bill forward. I cosponsored this bill because I agree with you. Can you tell me how many Presidents have written executive orders throughout history? This is nothing new.

Assemblyman Wheeler:

No, this is nothing new at all. Every President writes executive orders. The difference is there is a threat out there right now to write an executive order that would actually make laws. That is something we do, not something the President does. There is a separation of powers in this country and that process should be upheld.

Assemblyman Ellison:

I do not know how many emails you have received on this, but between this bill and the other Second Amendment bill, and this is only half because I lost half of them, I am at 271 emails. It is amazing. If anyone would like to see these emails, they are more than welcome to.

Assemblyman Wheeler:

I have received well over 400 in support of this bill. I went ahead and looked up the opinions on the webpage and there are around 130 to 150 people who are in support of this bill. Only two were against. When I read the comments of the two who were against, I saw why they are against it. It seems to be something the people think we need.

Assemblyman Oscarson:

I am proud to be a cosponsor of this bill. I appreciate your bringing it, simply to protect the rights of Nevadans through the constitutional officers. I, too, have received emails in support of this bill, and although I have not counted them, I know I spent at least an hour and a half to two hours a night responding to them. I appreciate the thoughtful emails I have received. I have received no emails in opposition to the bill.

Assemblywoman Bustamante Adams:

From what I remember from last session, the Legislature put something on the ballot to allow the legislators the authority to call ourselves into special session. I do not remember if it was a blanket or if it was on one specific item, which would be the budget. In that instance, we can call ourselves into special session and give our constitutional officers the authority to do something if this matter came into play. I feel like we are protected in that sense, whereas before we did not have the authority to call ourselves into special session and make those kinds of decisions. We have given ourselves the power to be able to do that.

Most of the emails I received were not from my constituents. I am not sure how my constituents feel about it. I know most of the emails I received were from people in northern Nevada. Do you have a breakdown of where those zip codes were?

Assemblyman Wheeler:

I did not do a breakdown of them. A lot of those emails only have a name and no address. I honestly do not know how good the breakdown would be if I gave you one, but I would be happy to do that.

Assemblyman Stewart:

I, too, have received a great deal of emails. A lot of them are from the north, but I had a significant number from Henderson, as well. The emails I received were 87 to 1 in favor of this bill.

Assemblyman Munford:

In Article VI, Clause 2 of the *United States Constitution*, the federal laws that are passed are designated only to the federal government. There are laws that are designated to the states, as well. Certain powers are given to the federal government and certain powers are given to the states. Article VI, Clause 2 of the *U.S. Constitution* is called the Supremacy Clause and it gives the federal government supremacy over the states or any state law. The clause is part of the *U.S. Constitution*, so you basically have that protection already there to some degree. Perhaps you want extra protection in case, as you mentioned earlier, the President might suddenly initiate some executive power. I never heard the President say he was going to do that. He may have, but I never heard him say it. Unless they are going to repeal the Second Amendment, I believe we are in pretty good shape.

Assemblyman Wheeler:

I understand what you are saying, but I believe that particular clause has to do with the law, not with an executive order. If we have a law that comes out of our Congress, then that is part of the process and the people in this building and the people in this state need to follow that law. If a law is passed that is in contravention to the Second Amendment, obviously we have the third branch of our government, the Judiciary Branch, where it would be appealed to. What I am saying here, is if the President—any President, not just this one—issues an executive order, Nevada would be able to say no, this is not right and we are not going to follow it. We would bring a legal action through our Attorney General to cover this.

Assemblywoman Neal:

My understanding of the Supremacy Clause is that federal executive orders actually do trump state law when it is in conflict. There is a preemption there, where if the U.S. Government decides they want to occupy a certain area, they trump the state law that is in conflict. That includes an executive order; that is the hierarchy.

The second point I want to make is, in your bill, you have the language on page 2, lines 7 through 9, that if it is in contravention to what we would like in reserving our powers under the Tenth Amendment, then we would be able to sue. The way it reads, to me, is you would be able to sue the federal government. My question is what are we invoking? I know there are instances where a state can take an action, but usually it is in the reverse. The federal government is able to sue the state for failure to do state actions. I kept trying to think whether or not the Eleventh Amendment was being occupied. In the Eleventh Amendment, it gives states the right to sue each other and states to sue a foreign nation, but it does not go in the reverse. I understand the Tenth Amendment, and I know the powers that are reserved to the states, and I feel strongly about what the Tenth Amendment leaves the states, but how do you then get the right to sue the federal government and where is that invoked? If there is a conflict, and if we have been preempted, what is our caveat? I want to know what case law you read, because I want to know what Tenth Amendment cases gave us the power to trump the Supremacy Clause.

Assemblyman Wheeler:

I did not read any case law on this. What I did is use a little northern Nevada common sense. I went to the Legislative Counsel Bureau (LCB) and asked if we are able to do this. Originally, this bill was supposed to be written to have the Attorney General defend any citizen who was arrested under the executive order. They told me there might be a conflict there, so we changed the bill to go here. I do have a conceptual amendment to bring it back the other way. However, I think this is the strongest way to do it here. I guess I am a little reversed in that state law should trump federal law, and that is the way the original intent of the *U.S. Constitution* was written. I guess this would be something we find out about in the courts.

Assemblywoman Neal:

I think it is creative. When I see Tenth Amendment arguments arise, it creates interest for me because I loved constitutional law when I was in law school. I believe that yes, there are powers reserved to the states and there is no question. I would love to see, when this is invoked, how this plays out. The "if" statement is the linchpin. If it happens, then we are going to get into this Tenth Amendment argument. I will be the avid reader of the paper when it happens.

Assemblyman Wheeler:

I really like the way you said, "When it happens."

Assemblyman Daly:

I agree with Assemblywoman Neal; the bill is creative. I am a supporter of the Second Amendment. I own guns and I am not going to let anyone take mine away, any more than you would let someone take yours. When I look at the bill and I look at the executive order there are a couple of questions I would have. They are not necessarily problems. Why only the Second Amendment? Why not the First Amendment and all the rest of the amendments, the Commerce Clause and the rest of them? I was a very unhappy individual when George Bush put an executive order out that said no federal agency could enter into a project labor agreement. I do not know who was there to protect my rights then, but I do not think I could get the Attorney General to defend me. I have a question about the Governor being able to order another elected constitutional officer in the state to do anything. We had that under Governor Gibbons when he said we would sue under health care reform and the Attorney General said no we would not. Private action went. The Attorney General's role is not to defend us; she is the attorney for the state. If someone is arrested under an executive order, or any other rule, they have to get their own attorney to defend them; the state does not do it. I do not know if you have ever been to your city attorney and asked to be defended because you got a ticket. They would say, no, I am defending the other side; that is my job. You have a little role reversal there, at least what I am seeing. If you want to, you can comment on those. I do not know if this bill is going to get you where you want to go.

Federal executive orders, the same as a state executive order, only apply to the Executive Branch of the government. When President Bush outlawed project labor agreements, it did not affect anything in the state of Nevada. When the Governor outlawed project labor agreements in the state, it did not affect private industry because they can do whatever they want. I do not know how an executive order theoretically creates law. It is just to carry out the policies that exist in laws within those federal agencies. If someone believes it is not correct, they have the right to challenge that in court and say they have overstepped their bounds. I do not think it is the Attorney General's job to do it. They can if they want to defend the state, similar to what we have done with Yucca Mountain. There is a time and place for that, but it all has to be in its own context. It is creative, but there are a lot of things that are jumbled up together to make the connections you are trying to make. I just do not think they exist.

Assemblyman Wheeler:

As far as the role reversal, I think maybe you have it wrong. It is the main job of the Attorney General, who by the way is coming out as neutral on this bill from what I have been told, to defend the citizens of Nevada. That is what we elected her, or him in the future, to do. As far as what you were saying about

the President's executive orders only affecting executive departments, I think you are correct. The problem is you have the Vice President of the United States saying the President is going to do something that is in contravention to that. I would like to fire that first shot across the bow, to be honest with you, and that is what this is about.

There are a lot of bills coming before these Committees regarding the Second Amendment. I chose the Second Amendment on this one to put the camel's nose under the tent. If it looks like an executive order would be in contravention to any amendment, then obviously, if we do it here, we will do it somewhere else. We are not going to just take it lying down.

Assemblywoman Pierce:

I have a list of executive orders issued by President George W. Bush in front of me. I am guessing there are 250 of them. The timing on this seems curious to me. I look at the sponsors, and it is true that most of the people sponsoring this bill are freshmen and have not been here very long, but a couple of them, and certainly a couple of the Senators, have been in this building since 2003, when I got here. If you look at the executive orders from George W. Bush, there are a lot of them in 2003 and they do not even list what they are about. I guess they were secret. I do not remember anyone ever getting exercised about this before. It is just curious to me that we are only now getting exercised about executive orders. I think the timing is curious.

Assemblyman Wheeler:

I was not here when George W. Bush was President and, as I said in my presentation, every President writes executive orders, some more than others. I do not believe President Bush's Vice President jumped up and said we are going to write an executive order if Congress does not act. I cannot speak to that. I am here to speak to the actual policy of this bill, not what George W. Bush did, but thank you.

Chairwoman Benitez-Thompson:

I have a question to make sure we are capturing your intent as the bill sponsor. In section 1 it says, "If directed by the Governor or if, in the opinion of the Attorney General" Is it your intent that one or the other can engage in a lawsuit? Is your intent that there be a consensus by the two? Could the Attorney General act independently of the Governor, or is the Attorney General specifically directed by the Governor? Is your intent to have consensus from the Governor and the Attorney General?

Assemblyman Wheeler:

The intent of the bill was that either one could act or they could act in concert.

Chairwoman Benitez-Thompson:

Are there additional questions from the Committee? [There were none.] We will open the hearing for testimony in support of the bill. I see that we have folks in Las Vegas and in Carson City. I will ask you to come forward and fill the chairs and I will go back and forth between the two areas. I would like to remind everyone testifying today about the level of decorum we expect in public policy conversations here at the Legislature. We will open up for questions after we hear from those in support of the bill.

Kate Morra, Private Citizen, Carson City, Nevada:

I come before you today as a concerned private citizen. I heartily thank Assemblyman Wheeler and the cosponsors of this legislation, and this committee for hearing the bill.

Without the Second Amendment, all other rights enumerated in the *U.S. Constitution* are nothing more than a piece of paper. We must be cognizant of the fact that if we surrender any of our freedoms, we will never get them back. Thousands of brave, self-sacrificing people have fought and died for the rights inherent in the *U.S. Constitution*. We cannot allow their blood to have been shed in vain. We must not sacrifice the Second Amendment upon the altar of false security. Ben Franklin said, "They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety."

Any attempt to chip away at the Second Amendment with legislation or executive orders is the beginning of despotism. I urge you to vote yes on this bill so that Nevada protects her citizens, stands for the *U.S. Constitution*, and halts the insidious erosion of our right to bear arms.

This is not a Democrat or Republican issue; this is a *United States Constitution* issue. I refer you to my written testimony for my full remarks ([Exhibit C](#)). Thank you for the opportunity to speak today.

Chairwoman Benitez-Thompson:

Ms. Morra's remarks are on the Nevada Electronic Legislative Information System (NELIS) for the Committee ([Exhibit C](#)). Are there any questions from the Committee? [There were none.] I will take the next person wishing to testify from Carson City, and then I will take two people from Las Vegas to keep it even.

Walter Nowosad, Private Citizen, Carson City, Nevada:

I stand and rise in support of Assembly Bill 196. James Madison, the father of our *U.S. Constitution*, saw that power in the hands of a single person or organization leads to the destruction of liberty.

[Mr. Nowosad continued reading from written testimony ([Exhibit D](#)).]

I will add something off the cuff. When the *U.S. Constitution* was ratified, there was no *Bill of Rights*. The *Bill of Rights* was not instituted until 1791, when the states ratified those ten amendments. Why did they do that? They asked themselves, what if the government decides to take this away? That is the condition we are looking at in A.B. 196. It is a "what if" situation. We want to be prepared. The founders and those states that ratified the *Bill of Rights* wanted to be prepared.

I thank you for your time and I appreciate your attention.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee? [There were none.] I will take two people from Las Vegas who wish to testify in support of this bill.

Alan Wetter, Private Citizen, Henderson, Nevada:

I vigorously ask you to support A.B. 196. As you know, the people's gun rights are continually under attack. Approving this amendment will improve and protect our constitutional right to keep and bear arms. In the event the President of the United States should use an executive order against the people of Nevada, this will make it clear, and we will not stand for it. Please look favorably on this bill.

In closing, allow me to share the words of George Washington, "Firearms are second only to the *Constitution* in importance; they are the people's liberty's teeth." Thank you for your attention.

Chairwoman Benitez-Thompson:

Are there any questions from the Committee? [There were none.]

Matthew Yealy, Private Citizen, Las Vegas, Nevada:

I am in complete support of this bill. I only see one issue and that is it should not just be a Second Amendment bill, it should be the entire *Bill of Rights*.

If the President decides to suspend habeas corpus or declare martial law, we the citizens should be protected by our state first, before anything else. It was done once before by President Lincoln during the Civil War. It was overturned

as unconstitutional in *Ex parte Merryman*, 17 F. Cas.144 (C.C.D. Md. 1861) (No. 9487) by a man who would become the leader of the Supreme Court. This bill helps protect us, the citizens, against that.

With regard to a few things I have heard during this hearing, things that were said and asked by our representatives to the sponsor of the bill concerning the special session, if the President enacts an executive order or declares martial law, are you going to try to get your fellow legislators together during that time to get this bill passed so the citizens can be protected, or would it be smarter to have a preemptive law where the government can stand up for the citizens of this state first?

Concerning the suing of the federal government to the legislator who brought that up, yes, it can be done. Several states have done it. One of the most recent lawsuits was when the states brought suit to prevent the Patient Protection and Affordable Care Act. Several states, and I want to say ours did as well, brought a lawsuit against the federal government to try to stop the Patient Protection and Affordable Care Act based on the constitutionality of the act itself.

Concerning the Attorney General, defending the citizens is their primary job description; to protect the state and the citizens of the state. That is why they are the top law enforcement agent in the state; just like the U.S. Attorney General is the top law enforcement agent for the federal government and directs the FBI. The Attorney General is supposed to direct all of the law organizations and their ultimate goal is to protect the rights of the citizens.

One last thing that surprised me to hear was about a lot of freshmen bringing bills to this body. The question I have to that, because this is an extremely important and hot button topic, is are you saying the new legislators should not be bringing bills, that they should leave it to the senior, seasoned legislators? Should they not listen to their constituents when they are crying out to make sure that our state government protects us from the federal government? The Tenth Amendment does back it up. I strongly support this bill, but would ask that it be amended to say that any time any right of the *United States Constitution* is infringed, that the Attorney General defend the citizens first against an overreaching federal government.

Assemblyman Oscarson:

As one of the freshman Assemblymen in this room, I appreciate that comment because there are sometimes new thought processes and the freshmen do bring things to the table for these very important pieces of legislation. I appreciate your comments and want to go on record as saying that.

Matthew Yealy:

That is why we bring new blood in, not the same old blood every time. That is why I believe in term limits, as well.

Chairwoman Benitez-Thompson:

I see some of you are reading from written testimony. If you want to submit those to the committee secretary, if you have not already done so, we can get them loaded on NELIS to be part of the legislative record.

Keith Wood, Private Citizen, Elko, Nevada:

My residence is in Elko, Nevada, 300 miles from here. Three hundred miles in a different direction, an executive order created a concentration camp, one of ten camps, in which 80,000 American citizens and their families were sentenced for the crime of having ancestry that the President of the United States considered suspicious. We are not talking possibly in the future. We are not saying a tyrannical government might do something. We are talking about something that was done in 1942.

The reason we have so many Japanese gardeners is because their homes were taken, their lives were taken, and their property was taken. All they had was the ability to work when they were finally released from these concentration camps. They were sent there by one signature, by one President considered by many to be one of the greatest Presidents this country has ever had, because their ancestry was Japanese and some of their distant relations had attacked United States territory.

The majority of the people of the United States agreed with this atrocity. Even the American Civil Liberties Union (ACLU) agreed. Several of their attorneys in San Francisco disagreed with this policy and fought on behalf of the Japanese Americans to restore their rights; a battle which took over ten years and created a rift between the San Francisco office of the ACLU and the national ACLU, which continues to this day, though it is healing. We are not talking about maybe a President might do something really bad to a lot of people. We are talking a lot of people had their lives destroyed because a President did something he thought was a good idea and that he thought would increase safety for the general population of this country.

I support this bill and I am actually very disappointed in all of you that this bill is necessary. We are supposed to work together as Nevadans, for Nevadans, and for the civil rights of everyone in this state. It should not be a question of whether the state would defend my civil rights. Whether it is a Second Amendment issue or the federal government deciding that my hilltop in Elko is where they are going to put up a tent city for a concentration camp,

the question is simply are we Nevadans or are we New Yorkers or Californians, or are we from Illinois. The rights of the people of this state should be your primary concern. If I wanted to live in California, I would. My constant comment to people is the reason I am in Nevada is because it is as far as you can drive from Washington, D.C., without having to be in California.

Assemblywoman Neal mentioned the constitutional law that she finds of great interest. The *U.S. Constitution* was written to ally the states after the Revolutionary War and after the original *Articles of Confederation* proved not to be strong enough for the defense of the states against other powers. The *U.S. Constitution* was never intended to give power to a central government over the states. It was supposed to be a way of joining the states together as independent but associated states. When we forget these things, when we start believing that the federal government has overriding power over every part of our lives, the question comes, if we have Congress in Washington, D.C., why do we need you, ladies and gentlemen? Your power derives from me, and from this gentleman, and from the lady here, and from everyone else in this state. Federal power derives from all of us together. When we believe that one person should have the right to condemn 120,000 people, 80,000 of whom were our fellow citizens born in this country, because of their skin color or the shape of their eyes, or who their grandparents were, when the majority agrees with that decision, it is up to you, ladies and gentlemen, and it is up to me, and it is up to all of us, to say no, this is wrong. It does not matter who wrote the order, we do not have an emperor, we do not have a king, we do not have a leader without recourse.

Assemblywoman Neal:

The fact that you started your presentation citing *Korematsu v. United States*, 323 U.S. 214 (1944) is actually quite interesting. I get excited when people bring in issues. I went to school in Louisiana, and the Tenth Amendment in the South is a huge issue. I understand Second Amendment rights. It is an ordered liberty. It has been established that it is a right reserved to the people. However, in terms of the limitation when the federal government determines there is a general welfare purpose where we need to limit access to weapons, I would like you to talk to me about that. I would like to hear your opinion because it may give me some good things to research over the weekend. I love to research the law and I would love to hear what your solution is to that, or if you feel there is no solution to a general welfare issue where there is abuse. We have children who are killing children in schools. What is our general welfare purpose limitation to the Second Amendment?

Chairwoman Benitez-Thompson:

Do you mean that to be rhetorical?

Assemblywoman Neal:

Mr. Wood, we could actually talk off-line about this because I think it would take a long time for you to get into that. I would be very interested in just knowing your opinion for myself.

Assemblyman Munford:

I want to make a comment and you may react to it if you would like to. When every state entered the Union, such as Nevada in 1864, we had to write a constitution or we would not be accepted into the Union. The states' constitutions had to mirror the *United States Constitution* or they probably would have declined their acceptance to the Union.

In the *Constitution of the State of Nevada*, it says we must adhere, respect, and be loyal to the laws of the federal government or the *Constitution of the United States*. You know it says that. When we stand up and salute the flag and sing the Star Spangled Banner, that is all loyalty to the United States. I do not know why you are going to question them. I do not think they are going to take anything from you. You keep mentioning the President may issue an executive order to take away your guns. He would only do that for a national emergency. If it is not a national emergency, the government will give the states their rights. They are not going to take them from you because they are in the *U.S. Constitution*. The Ninth Amendment and the Tenth Amendment protect the states on everything. I do not think anyone is going to take your gun rights from you.

Keith Wood:

With all due respect, you are not aware of the power of an executive order. An executive order is not law. An executive order does not have the power of law. An executive order is not imposed through the legal means under which a law is created. For instance, what we are doing right here is the legal means under which a law is passed. If you were the Governor of this state and wrote an order saying something was going to be the law of the state, the people of the state would tell you no, you do not have the power to impose that as a law. You can set it as the policy during the time you are in power. An executive order expires at the end of the term of the President or the authority that writes the order. A law only expires if it is specified to do so within the law or if it is amended or repealed by the body which creates that law. An executive order is nothing more than a signature on a piece of paper saying this is what you are to do. An executive order can be overturned by the Supreme Court, as was mentioned by one of the other members of the Assembly, but that can take a period of time.

The people who I mentioned were sent to concentration camps in this country, including one only 300 miles from here, lost their homes, their livelihoods, their careers, and many of them were unable to return home for four or five years. That is an awful long time to wait for the Supreme Court to return your life. I would actually appreciate the opportunity to discuss this with you some other time, just the two of us. I think we could probably reach an agreement.

James DeGraffenreid, Secretary, Nevada Republican Party:

The Nevada Republican Party wants to go on record in support of A.B. 196. Our party platform is strongly in support of the *United States Constitution*. We expect our representatives at all levels of government to abide by their oath of office, which includes the duty to defend the *U.S. Constitution*.

If any President were to issue an executive order that infringes on any of our constitutional rights here in Nevada, we believe that it is imperative that the State of Nevada protect Nevadan's constitutional rights. We thank Assemblyman Wheeler and his cosponsors for bringing this bill forward, and we urge a yes vote from the Committee.

Juanita Cox, representing Citizens in Action:

I am the Chairman of Citizens in Action, a group of citizens who demand that the *Constitution of the State of Nevada*, the *United States Constitution*, and our *Bill of Rights* are upheld. We thank the gentleman from Elko, Keith Wood, for his remarks. We believe that the Tenth Amendment is extremely important from federal usurpation. Since we the people created our state government, and in turn, our states created the federal government, it is about who created whom, and that is the answer.

In recent administrations, both Republican and Democrat, they have been pushing the limits beyond their constitutional powers. The oath of office is to be upheld and an individual can be sued and should be sued for disobeying their oath.

What needs to be stated for the record is that our military are being asked questions about taking arms up against citizens of the United States or various states and whether they would take the citizens' arms away. That seems to be the concern of Citizens in Action, whom I represent.

Duncan Rand Mackie, representing Nevada Firearms Coalition:

The Nevada Firearms Coalition is dedicated to the safe use of firearms for self-defense, competition, recreation, and hunting.

[Mr. Mackie continued to read from written testimony ([Exhibit E](#)).]

Briefly, the various testimonies on this bill have been very interesting. There are two quick points I would like to make. The first point is regarding the threat of executive orders. This President and his administration have already demonstrated a willingness to violate the *U.S. Constitution*. Just one example is his recent recess appointments to the National Labor Relations Board when the Senate was not in session.

The second point I would like to make is regarding the Second Amendment, which deals with a right which is constitutional. The right to bear arms was singled out by our founders for specific protection in the *Bill of Rights*. That is worth considering and also worth remembering.

Chairwoman Benitez-Thompson:

If you have not already done so, feel free to submit your written comments to the Committee Secretary in Las Vegas and we will get them uploaded to our electronic system for the public to see as well.

Jim Sallee, Private Citizen, Las Vegas, Nevada:

I am a member of the Nevada Republican State Central Committee. I would like to thank Assemblyman Wheeler, who spoke very eloquently on the bill, and all of the sponsors of the bill. I believe an ounce of prevention is worth more than a pound of cure. I spoke on the Tenth Amendment hearing that they held a week or so ago in favor of the Tenth Amendment. It is very, very important. I am seeking your support of A.B. 196. Our Second Amendment in the *Bill of Rights* is under attack.

[Mr. Sallee continued to read from written testimony ([Exhibit F](#)).]

Chairwoman Benitez-Thompson:

Please make sure you submit your written remarks to the secretary. I believe we have one more person at the witness table in Las Vegas.

Vernon Brooks, Private Citizen, Las Vegas, Nevada:

I would like to thank Assemblyman Wheeler for bringing this legislation forward, especially in such a clear and concise manner. Its brevity makes this an easy bill to get behind. My reason for supporting this bill is the result of a recent letter to Senate leadership, where our current Attorney General decided to make Nevada a signatory. This letter was a statement of opposition to the National Right-to-Carry Reciprocity Act. When I contacted our Attorney General to express my displeasure over that, her response was less than satisfactory.

I believe this legislation is required to ensure that our Attorney General acts in the best interests of the citizens of Nevada. With regard to the timing of this

bill and whether or not it is curious, the statements by our Vice President regarding this foundational constitutional issue have awoken a sleeping giant. That is why you are seeing this today. The nature of our part-time legislature means that we must be proactive and preemptive whenever possible.

With regard to whether it is the Attorney General's job to defend the people, the answer is, of course. The analogy given earlier where someone wants the city to defend them in a traffic ticket was actually a good one. In that analogy, the city is in fact representing the people against the offender.

With regard to new legislation being offered up by freshman legislators, I would just like to say if a freshman legislator has not introduced new bills to improve the lives and liberty of Nevadans, they have failed their constituency.

With regard to saluting the flag and similar expressions of patriotism, let me make something very clear. I am not making any pledge directed at government. It is an expression of solidarity with my fellow Americans. Please, do not confuse the two.

With regard to statements made earlier to the effect that nobody is going to take away your guns, I say this: Unless Hurricane Katrina happens again.

Richard Brengman, Private Citizen, Gardnerville, Nevada:

More than any other state, Nevada has been the "maverick state." Many people have moved here to escape perceived oppression in their former state.

[Mr. Brengman continued to read from written testimony ([Exhibit G](#)).]

Chairwoman Benitez-Thompson:

Thank you for your comments. Just so you know, as a general Assembly standing rule, we do not pass out bills the same day they are heard. That way we can give all legislators the time to contemplate and check back with their constituents before we vote on a bill.

Carol Howell, Private Citizen, Carson City, Nevada:

I would like to thank you for hearing and considering this bill. I thank Assemblyman Wheeler for bringing it forward. In full disclosure, I am a gun owner. I am also a concealed weapons permit holder.

There have been a lot of statements made in front of me and behind me. I am supporting this bill because I have sat on several committees thus far regarding guns, regarding our Second Amendment rights. It is time that the dialogue gets started on why this is becoming an issue. I have watched people from every

age group, men and women, who are very concerned about losing their rights. One woman was almost in tears at the fear of losing her gun rights. You guys are up here to make laws and I think the Office of the Attorney General and the Office of the Governor need to see that those laws are enforced and to protect us as citizens.

The residents of this state are the state, so if the Attorney General is called on to protect the state, they are called on to protect the citizens of this state. I am going to ask you all to consider this bill. It is something we have seen in the past that has been tread on, that people have refused to do; whether it is this Attorney General or another Attorney General, whether it is this President or the next President. These offices, this chamber, are here to protect the citizens of this state as a whole. I think this is the first step toward making that a mandate. I would appreciate you all considering supporting this bill. There is no reason not to support this bill.

Kate Morra:

I felt it necessary to come back up after a comment I heard regarding possibly revising the Second Amendment for the general welfare. My opinion is that enacting more gun control is not going to stop the carnage such as what we witnessed at Sandy Hook Elementary School. Drugs such as marijuana, methamphetamines, and heroin are illegal, and yet they are everywhere. Bombs are certainly not legal, and yet the perpetrators at Columbine planted one in the cafeteria. Simply put, stricter gun control will not remove a criminal's access to weapons. It will, however, render law-abiding citizens helpless.

Chairwoman Benitez-Thompson:

I want to thank all of you for your support here today. As I discussed with the bill's sponsor, I wanted to make sure we kept the topic germane to the bill and the language of the bill regarding the Tenth Amendment. I think that happened today. We kept it focused on policy.

Assembly Committee on Government Affairs

March 15, 2013

Page 20

Seeing no more testimony in support of the bill, I will open up for testimony in opposition. [There was none.] I will move to testimony in neutral. [There was none]. I will call for public comment. [There was none.]

I will adjourn this hearing of the Assembly Committee on Government Affairs [at 10:17 a.m.].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 15, 2013

Time of Meeting: 9:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 196	C	Kate Morra	Written testimony
A.B. 196	D	Walter Nowosad	Written testimony
A.B. 196	E	Duncan Rand Mackie, representing Nevada Firearms Coalition	Written testimony
A.B. 196	F	Jim Sallee	Written testimony
A.B. 196	G	Richard Brengman	Written testimony