MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 10, 2013

The Committee on Judiciary was called to order by Chairman Jason Frierson at 8:13 a.m. on Friday, May 10, 2013, in Room 3138 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:

Assemblyman Jason Frierson, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Lesley E. Cohen
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Wesley Duncan
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblyman Andrew Martin
Assemblywoman Ellen B. Spiegel
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Greg Brower, Washoe County Senatorial District No. 15
Senator Tick Segerblom, Clark County Senatorial District No. 3
Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Dianne Harvey, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Bruce Leslie, Attorney, Armstrong Teasdale, Las Vegas, Nevada
Randall Sayre, representing Cantor Gaming
Bob Faiss, representing Cantor Gaming
Phil Flaherty, representing Cantor Gaming
Greg Gemignani, Attorney, Lionel Sawyer & Collins, Las Vegas, Nevada; and representing Cantor Gaming
A.G. Burnett, Chair, State Gaming Control Board
Alfredo Alonso, representing the Nevada Pari-Mutuel Association
Anthony Cabot, representing the Nevada Pari-Mutuel Association
Peter C. Bernhard, Chair, Nevada Gaming Commission
Jay Vaccaro, representing Las Vegas Dissemination Company
Lee Amaitis, representing Cantor Gaming
Frank Schnorbus, Private Citizen, Minden, Nevada
Scott Woodruff, representing Parentalrights.org, Purcellville, Virginia
Stephanie Schnorbus, Private Citizen, Reno, Nevada
Barbara Dragon, representing Nevada Homeschool Network
Lynn Chapman, representing Nevada Families for Freedom
John Wagner, representing the Independent American Party
Janine Hansen, representing Nevada Eagle Forum
Elissa Wahl, representing Nevada Homeschool Network
Robert A. Conway, Private Citizen, Las Vegas; and representing Ironworkers Local 433, Las Vegas, Nevada
Ruth Parker, Private Citizen, Las Vegas, Nevada
John T. Jones, representing Nevada District Attorneys Association; Clark County Department of Family Services; and Clark County Department of Juvenile Justice Services
Kevin Schiller, Director, Department of Social Services, Washoe County
Jennifer Batchelder, representing the Nevada Women's Lobby

Stacey Shinn, representing the Progressive Leadership Alliance of Nevada
Allen Lichtenstein, representing American Civil Liberties Union of Nevada
Jill Marano, Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services
Nicole Lamboley, Chief Deputy, Office of the Secretary of State

Chairman Frierson:
[Roll was called. Protocol was reviewed.] I want to recognize our staff as we could not do our jobs without them.

We have a very heavy agenda today. I have Senate Bill 314 on the agenda first, but I know that the Senate Majority Leader has other places to be this morning so we will accommodate him and call that one when he arrives. In the meantime, we will hear Senate Bill 346 (1st Reprint) and invite Senator Brower to introduce that bill.

Senate Bill 346 (1st Reprint): Revises provisions relating to gaming. (BDR 41-1051)

Senator Greg Brower, Washoe County Senatorial District No. 15:
It is my privilege today to introduce Senate Bill 346 (1st Reprint), otherwise known as the entity wagering bill. Senate Bill 346 (R1) reflects an expression of policy that licensed Nevada sports books should be permitted to accept wagers from entities operating in Nevada that meet certain transparency and regulatory requirements.

With regard to the transparency requirements, wagering entities would be required to disclose and register all of their members, partners, shareholders, investors, and customers with Nevada gaming regulators. As for regulatory requirements, this bill has undergone significant revision to address regulatory concerns, and it now contains explicit provisions that provide Nevada's regulators with broad powers to draft and implement regulations to assess necessary fees and regulate the activity in question.

As some of you may know, I have served as U.S. Attorney for the District of Nevada. I also served as an attorney with the Department of Justice in Washington, D.C. From a federal law perspective, in my view, Nevada occupies a unique position as the only state that can offer legal, broad-based sports wagering. Additionally, other federal laws restrict interstate activities related to sports wagering. This bill seeks to take advantage of Nevada's unique status and other federal requirements by making it clear only entities validly operating within our state that meet regulatory requirements will be eligible to place wagers with Nevada sports books. This means that such entities will be

required to have their wagering operations, management, and technology all located here within Nevada. All analysis and information regarding wagering decisions will be processed here in our state. All interactions between the entities and licensed Nevada sports books will occur here within Nevada. This bill does not alter the subject matter or scope of sports wagering. Rather, the bill resolves ambiguity as to whether entities other than sports books can place wagers.

The policy embedded in this bill is consistent with our state's overarching policy to foster the continued success and growth of gaming. There is a demand for sports wagering that only our state can legally provide. This bill aims to take full advantage of that.

We have a world-class regulatory apparatus that can regulate the activity to carry out the policies set forth in this bill while ensuring compliance with other laws and maintaining the public's trust. We have operators with experience and ability who will grow this sector of our gaming industry if given the opportunity within the appropriate regulatory framework. Along with this growth comes an expectation of increased taxable gaming revenue without an increase in taxes.

With me today is a team of collaborators. We have been working on this bill for some months now, beginning with a meeting I had with Bob Faiss to explain the concept. After some serious questioning by me about the transparency issues and the regulatory issues, I became a believer in the potential for this bill. We have amended the bill on the other side, and we are happy to present the amended version today. We will start with Bruce Leslie.

Bruce Leslie, Attorney, Armstrong Teasdale, Las Vegas, Nevada:
Thank you for the opportunity to come and speak to you today in favor of Senate Bill 346 (R1). I am a lawyer who has practiced in Nevada since the late 1970s. I have clients that are sports books and clients that wager at sports books. I am the person here today to answer the question, or to provide guidance on, if we build it, will they come?

I want to speak to you about my clients who are involved in sports wagering and trying to do a Wall Street role type of model. They are a combination of people who have technical skills and the ability to evaluate sports athletes. We were betting on college football. We had people who were from Baker and McKenzie in two roles: chaps who were involved in management and people called quants who are the statistical analysis people. They believed that sports events were mathematically predictable. With the proprietary database they had, with a rating system they would apply to the athletes themselves, and with an algorithm they created, they believed they could determine anomalies in

the lines that sports books were setting up, and with their model they could wager on one side or the other and be able to make a good return on it. Given the friction in the system now, we had a model where they would come to Nevada, set up a Nevada bank account, and be a Nevada entity. The investors that wanted to participate in the funds would have to come to Nevada themselves, sign all of the documents, and set up a Nevada bank account. The fund would close before any wagers were placed. The investors had no input whatsoever in terms of the wagers being made. These people were acting as real money managers in that, just as you probably do not call up your money manager or stockbroker and tell him that you are looking at something and think it is good—people who handle mutual funds make the decision on their own. My chaps were in that role. At the end of the season, the wagers were paid to a Nevada bank account. To make it clear, there was no cash involved in this; it was money already in the banking system and was traceable and could be tracked.

We looked at who would be the market that would be interested in this sort of product. You have people who were doing this illegally now who were not candidates because of the rigorous disclosures, the transparency that was required, the use of the banking system, the accounting, and the tax compliance. We did not fear that would be a problem. Since legal activity was taking place already, and the market was large enough for them, they were not going to come rushing to our system.

The second market would be professionals who were involved in this in a day-to-day basis. They were not candidates either because our people were the managers who were making the decisions, and the people I called professionals wanted to make their own decisions, whether in a group or otherwise.

Our people were financially savvy people—fund managers, people who are Wall Street types. I know you are wondering why anyone would want to be involved in putting money with someone else to bet on sports books. The answer is portfolio diversification. We believe that sports book wagering, while predictable by using either fundamental or technical analysis, in itself, looks like a financial instrument, but it is not. It is not correlated to the financial system. This means that treasury bills and the stock market go up and down and, if you are trading financial instruments, you are affected by that. Sports book wagering is an entirely different thing. It is not affected by the financial market. If the spread on Russian treasury bills changes, that is not going to affect whether or not Baylor beats Vanderbilt. We are looking for a group of people who would say that they have $2 million or $3 million in a $100 million fund and they want to diversify their risk, and they want to diversify it by

putting it in this particular event, and put it there because it is not financial instrument related. It is not correlated.

That was my clients' vision and, starting in 2010, they began to follow this path, and they believe there is a strong market. They firmly believe there is a true group of people that want to invest and participate in sports book wagering and do it legally. Nevada offers them that opportunity.

We believe this bill is necessary and think it makes it easier on the sports books. We think it answers the questions about messenger betting, and we advocate its adoption. I welcome your questions following the introduction of the bill.

Randall Sayre, representing Cantor Gaming:
Thank you for the opportunity to address an issue that I feel has great potential for this state.

Currently Nevada is uniquely positioned with a monopoly regarding broad-based sports wagering. This is due to the 1992 Professional and Amateur Sports Protection Act. How long we will enjoy this unique position is anyone's guess. The law is currently under challenge, with sound arguments on both sides of the issue. No matter the outcome, I believe S.B. 346 (R1) will greatly assist in securing our state's lead in this segment of our industry well into the future. For perspective, let me point out that Nevada sports wagering industry currently accounts for less than 1 percent of estimated sports wagering activity that occurs nationwide. This is an enormous untapped market, which historically has not been pursued due to limits in technology. Today we possess the technology and the proved regulatory architectures that will accommodate this commercial concept.

A fiscal note has been attached to this bill, which raises issues that I feel can be addressed by taking advantage of regulatory models currently in use today by Nevada. The bill, in its current form, provides broad regulatory authority for the Commission to adopt such regulations or other regulations as the Commission deems necessary to carry out the policies embodied in this bill. It has been suggested to oversee this model would require additional agents to handle the complexity of player disputes, to monitor for potential violations of existing law such as messenger betting, to review customer data to ensure that illicit operators do not participate, and to ensure that underage gambling is prevented. There also appears to be a question as to who is responsible for arbitrating disputes between participating members in the approved entity.

This bill does not alter the regulatory controls currently in practice. Entity wagering can be efficiently conducted as an account-based wagering

activity that in real time identifies each transaction in detail. Individuals participating in the approved entity pool are likewise identified in real time. The lion's share of any monitoring or investigative work can be at an agent's fingertips through computer access. This is not unlike the real-time monitoring the Commission required when we opened up salon gaming to compete for high-end customers. These are currently approved and deployed systems available either on or off site to assist in board staff processes. When I was on the State Gaming Control Board, we anticipated a significant increase in handle as customers take advantage of a concept that will manage their sports wagering activity. What I do not see is any historic correlation in an increase in handle or betting volume that increases stress in a regulatory oversight. If that were the case, additional agents would be needed each time a wide area progressive climbed to astronomical heights.

This bill is not adding a new product. It is accessing an untapped market by clarifying the types of customers a Nevada sports book can accommodate. Just to be clear, Nevada books can currently accept wagers funded by a group so long as an individual from that group places the wager. This bill does not alter that in any way. It does allow the group to be an entity and, if the entity meets certain transparency and regulatory requirements, the entity will be able to place the wager itself. As with the currently approved systems, account-based wagering brings transparency to the wager, the customer, and the book operations. The process significantly reduces the ground-pounding footwork necessary to regulate the industry. The required transparency itself reduces the risk of violating any controlling laws and simplifies enforcement.

The business model contemplated with S.B. 346 (R1) discourages messenger betting. As defined, messenger betting means a person places a race book or sports pool wager for the benefit of another for compensation. The entity is not a natural person and, therefore, does not meet the definition that the State Gaming Control Board's Regulation 22 directs. Underage gambling is a nonissue. You must be 21 years of age to participate in the entity. There are proven regulatory models in use today here in Nevada that address this issue.

The question of arbitrating disputes has surfaced. Any disputes between the licensed book and the authorized entity can be handled exactly as current law requires. Any disputes between a participant and the approved entity are commercial grievances that the state has traditionally avoided trying to influence.

As just one suggestion in drafting regulations to accommodate this legislation, I would suggest that the following be considered by all stakeholders to minimize cost, minimize time to market, and preserve an existing regulatory structure that

has proven to be effective in protecting all interested parties. Register the approved entity and the key individuals in a manner currently required of independent agents servicing our agency's high-end market. This system provides transparency and affords the Board and Commission the regulatory authority to monitor, license, and discipline as necessary, and establish audit requirements on both the approved entity and the licensed book. This bill provides the Commission wide latitude in adopting a regulatory structure. My suggestions are intended to point out that the process can be simple and take advantage of an existing effective regulatory structure currently.

In summary, as a state, we can do this. Historically, this state has remained the center of gravity for legalized gaming activity in the United States by recognizing opportunity. Through this body's guidance and the support of our system's Board and Commission, we now benefit from what were once unique ideas such as licensed corporations, licensed private equity firms, licensed foreign sovereign entities, wide area progressives, gaming salons, account-based wagering, and, yes, even Internet gaming. Thank you for your courtesy.

Bob Faiss, representing Cantor Gaming:
I am here today with my partner, Greg Gemignani, to express support of S.B. 346 (R1) on behalf of Cantor Gaming. I welcome this opportunity to appear before this Committee as it considers another bill to enhance the future of the Nevada gaming industry. As some of you know, my experience with Nevada gaming control and this Committee goes back a few years. I was a senior staff member for the first Nevada Gaming Commission, and I served as executive assistant to Governor Grant Sawyer, the architect of the adoption of the Nevada Gaming Control Act in 1959. I have had the privilege of appearing before this Committee on gaming bills over the course of the last 39 years.

Senate Bill 346 (R1) has the historic approach of major gaming bills during that time. It recognizes the potential of a model and entrusts the implementation of it to the wide discretion accorded by the Legislature to the gaming control agencies. As Senator Brower said, it is consistent with Nevada's gaming public policy. The Gaming Control Board studied the concept of entity wagering for some time. Both Randy Sayre, as a member of Gaming Control Board, and Mark Lipparelli, as its chairman, devoted attention to it. Mr. Sayre eloquently has just testified as to his position on the bill. I contacted Mr. Lipparelli to ask his position. He could not be here today, but Mr. Lipparelli authorized me to state to the Committee on his behalf, "Entity wagering is a good opportunity for the state and can be effectively regulated." Cantor Gaming is in accord with that evaluation.

Chairman Frierson:
Thank you for your introduction to the bill. I will open it for questions from the Committee.

Assemblyman Ohrenschall:
I would like to address a question about the fiscal note to Mr. Sayre. Online there is a fiscal note of about three quarters of a million dollars over the biennium. I notice that there is an amendment proposed. How does the amendment affect the fiscal note, if it does at all?

Randall Sayre:
The amendment that I saw this morning concerning S.B. 346 (R1) has addressed wide latitude about any anticipated funding that would take place. There is an interesting passage in that particular amendment which speaks to ongoing administrative costs in order to oversee or regulate. Traditionally, anytime you engage in a licensing process, registration process, and approval process, the burden of funding regarding those inquiries rests with the applicant, whether it is a new applicant to the system or an ongoing licensed entity seeking an additional approval of some type. I am unprepared to directly address how it affects the fiscal note. I would suggest, however, based upon the language in the amendment that I saw this morning, as you scroll down to the language that says, "in addition to fees based on costs of administration and enforcement associated with acceptance of race and sports book wagering made by an entity . . . ," it is broad in its powers to post licensing or approval, and assess fees with regard to oversight.

Assemblyman Ohrenschall:
Perhaps someone from the Gaming Control Board could speak to that later.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.] How does this bill benefit Nevada? It seems as though this might open the door for a new kind of gaming and significantly benefit those who have the ability to have a hedge fund, but how does it benefit Nevada?

Bruce Leslie:
If it did not benefit Nevada, I guess I would be speaking on behalf of the consumer and not Cantor or any other sports books. It attracts more capital for Nevada. The more people who come to the market, the more incentive there is to come to the market. For example, when we are sitting here trying to place sports book wagers and having trouble putting down $20,000 on a game, it does not lend itself to attracting. Once you open the entity wagering and you take some of the friction out of the system, our belief is that there will be more

people coming, more people wagering, and you will have a larger handle. My people established an office in Nevada, so the simple direct benefit to Nevada is that you had people coming here, setting up offices, employing accountants and lawyers, and then spending their money having fun while they were here. Our model also had the investors coming to Nevada to set up their accounts. That brought more tourism into the state. I cannot predict numbers with regard to what that will do in terms of tax revenue, but I will say, from our view, it increased commercial activity and brought more people in as tourists.

Chairman Frierson:
I do not know that we are talking about people who might not be coming here anyway, but the jobs might be something that is more tangible. What kinds of jobs would come here for the entity wagering?

Bruce Leslie:
To be honest, I would not have any sort of predictability on that for you. I can just look at our circumstances and what happened. I suppose you also have to look at the industry itself because if the activity increases, there are probably more casino jobs that would come on line as they had to handle the extra volume. All I can offer is that they did sign a lease and employed accountants and lawyers. I think the model, as you anticipate it, would have people actually moving offices and setting up offices, which would include not only the professionals, but also the staff that would be needed to support that.

Chairman Frierson:
I think it would be helpful to provide some insight at least for the firm that did open up shop here to let us know how many of those lawyers, certified public accountants (CPA), and staff actually came. Maybe we could extrapolate from that what other companies might bring. If you have any idea how many were considering coming here, that would be helpful too.

Bruce Leslie:
I would be happy to help. Ours was a small fund of less than $1 million initially. Within that context, you might look at what the limitations are on it because of that. When you are talking about raising larger numbers, if you are talking about funds that are $20 million, $30 million, or $40 million, they would employ exponentially more people.

Assemblywoman Spiegel:
I need some clarification. This bill will have no effect on an informal gaming club such as an office pool, for example, or someone who is coming to Nevada for the Kentucky Derby and collects money from coworkers to place a bet on a big race like that. It is not a formal entity, but a gaming club.

Randall Sayre:
You are correct; it would not.

Assemblyman Wheeler:
In pari-mutuel betting, the amount of money bet affects the line. In sports betting, I assume it is the same. When some of these large bets are made, how is that going to affect the line for the small bettors?

Bruce Leslie:
I think that the market becomes truer. As you have more people come into the market, the market finds its balance. You do not have people moving the market to their advantage. In regards to the small bettor, economic theory would tell you that he has benefited because it is a truer market.

Bob Faiss:
That is a profound question. I am going to ask Phil Flaherty to come to the microphone.

Phil Flaherty, representing Cantor Gaming:
My career has allowed me to run a number of hotels and casinos here in the state. When a large wager comes in, in a form for the sports book, we are always trying to get at the right price, the correct price that the marketplace sets. When someone wants to make a $1 million bet, the book call has to say, "Do we think there will be equal action on both sides?" At the end of the day the book is not really in the risk business, it is in the market business. It is trying to say, "What is the right price to attract both sides of the action?" It is very difficult for a fund to come in and make a $20 million bet. It is going to be bet over time and over adjustment of value. The benefit for the consumer, the small bettor, is that they get the right price. They get a good value and an opportunity to get a good bet. When you do not have a balance, there is just a proposition and it is a higher risk position for the consumer because they are saying that they think, for example, the San Francisco 49ers should win by six, but the book is saying that they are up by eight. Which way do I bet? The market will force it into the right direction with large bets when it hits those values. It gets to the right price for the consumer so they get a true balanced opportunity both through the book and for the consumer. It actually creates a risk reduction model for the books themselves because most book operators are in that situation at the end of the day when they say they could not get the books perfectly balanced so they had to take an exposure. A bad exposure in many ways could find its way to these funds.

Assemblyman Wheeler:
I am worried about when one person or one entity comes in and makes a very large bet and changes that line to cheat. Can it be done?

Phil Flaherty:
It is very hard to make a bet to cheat. Cheating in sports unfortunately takes place with player corruption. That is not something that is likely to happen through these funds because people who invest in the funds will not know which way the fund manager is taking the bet. Not anyone who is an investor would be incented to move a player activity. The other beautiful part about this type of event is that with all of the patrons and all the investors declared, you would not have a situation where a referee would be unknown in being a bettor. If you will remember the scandal that took place with the National Basketball Association (NBA) where one of the referees was involved in doing illegal sports wagering, this would identify people like that.

Chairman Frierson:
I have a similar question. I am not necessarily thinking of corruption and manipulation in that way, but similar to the stock exchange where if the public sees some entity buying a great deal of stock, how might that affect the market? Right now if someone goes to bet on a race and an hour later someone else does, the odds are different based on who has placed bets. Those are $100,000 or $200,000 bets at a time, as opposed to $1 million bets on a race. It seems that it could have a significant impact on the odds in that way. If there was a way for people to find out who is doing this and what they are betting, it could have the same impact that the stock market purchase implications could have.

Phil Flaherty:
You raised a very good question. Just like the marketplace, there has to be a buyer and a seller. There has to be someone who is willing to take the opposite position. Just as much as there is going to be a hedge fund or a fund manager that comes in and says, "Our analysis says that the 49ers should win by six," there could be an analysis from the hedge fund that that says, "We think the 49ers are going to lose by two." You end up with a natural offset of the funds themselves. From a patron aspect, the right price still comes into play. As wagering activity takes place, the market finds the middle ground, whether that is a $10 wager or a $10 million wager. It is no different in the marketplace itself today, the stock market. There has to be an offer on the other side to sell AT&T and there has to be a buyer for AT&T. If there is not a mutual position, that number moves until there is both an offer to buy and sell. Someone cannot come in and say, "I am going to hit you for $200,000 and drive a number," because the book acts as an intermediary and has to decide whether it is going

to accept it. What ends up happening is that no one can say, "Here is a $10 million bet—drive a number in a particular direction." They would make smaller wagers to a value position where the marketplace then has to move. I hope that clarifies this better. Do you want me to expand a little bit more?

Chairman Frierson:
Could you, please. In your analogy, you said there had to be a buyer. I have never heard of a book not accepting a bet.

Phil Flaherty:
Yes, it does happen. There are limits that books will accept and what they will not accept. At the end of the day, when the book takes the bet, they are taking the counterparty risk position. They have to decide if there is enough depth in the market to unload part of that position. Most book operators will say that they will take X tolerance of a risk position on a particular bet. In some books, it is as low as $5,000, and in others, it is as high as $500,000 to $1 million. It is a matter of where they see the assessment of the marketplace.

Assemblywoman Cohen:
Is this going on in any of the other states or any other countries with legalized gaming?

Phil Flaherty:
In terms of what goes on in other countries, there are open exchanges in other jurisdictions where it is truly consumer-driven to where the exchanges just operate on a pure percentage provision basis. Within the United States, the other states that offer sports wagering are currently limited to pari-mutuel, parlay cards, and smaller-oriented wagers. They do not take large individual direct bets. Other countries will have a larger pool, but they also have the same issue of liquidity. That bookmaker who takes a large bet is looking to place it somewhere else because, at the end of the day, they want to work on what we call the big. Every bet that you lay, when you bet $100 you are not betting $100; you are betting $110 to win $100. There is always that commission structure that the casino retains as part of its advantage in the deal.

Assemblyman Wheeler:
I want to give you a hypothetical. An entity comes in and gives you a $5 million bet for the 49ers to win by six. Most of the public thinks the same thing. No one, or very few, are betting on the opposition. Did we just knock 2,000 or 3,000 people out of betting because they cannot place their bets because they think the same way as the entity?

Phil Flaherty:
No, entity wagering is still a relationship between a wagering party and an acceptor, in this case, the book. Not all books will be involved in this. There will be an open marketplace. We tend to forget that we have over 100 unrestricted licensees in the state of Nevada that make sports bonds. Most entity wagering outfits will be with the large books. They are not likely to have an impact on John Ascuaga's Nugget. They will not have an impact on some of the smaller places but even still, the probability that a book is going to take that large of an individual wager is not going to happen in that order. It is going to be a marketplace buy-sell, buy-sell, buy-sell.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.] What are the implications of this in respect to federal law limitations and our ability to operate, or the threat of this being impacted after the fact by federal law?

Bruce Leslie:
My partner, Greg Gemignani, did a good deal of study on that.

Greg Gemignani, Attorney, Lionel Sawyer & Collins, Las Vegas, Nevada; and representing Cantor Gaming:
We have looked at this from a federal law perspective. Currently Nevada occupies a unique position in the United States because it is the only state in the nation that has broad-based sports wagering. It is allowed to conduct broad-based sports wagering under the Professional and Amateur Sports Protection Act. It was grandfathered in, so we are allowed to continue to do that. As long as this activity occurs within the state of Nevada as an intrastate activity, it should not affect federal law at all. This bill is proposing an intrastate activity.

Chairman Frierson:
What other states are looking to allow this?

Greg Gemignani:
New Jersey has enacted a statute to permit its gaming industry to engage in sports wagering. The sports leagues under the Professional and Amateur Sports Protection Act have a right of action to enjoin that. The sports leagues did file an action and the Department of Justice joined that action to prevent New Jersey from engaging in the activity. The sports leagues were successful at the district court level, the state has appealed that, and it is currently on appeal in the Third Circuit Court of Appeals. The Third Circuit has not heard the

matter yet, but the state of New Jersey is challenging the constitutionality of the Professional and Amateur Sports Protection Act.

There was just a news story about the number of states that have filed an amicus brief in support of New Jersey and states' rights issues. We will see where that goes. The state of California has introduced a bill to permit sports wagering within the state of California in the event that the Professional and Amateur Sports Protection Act is found unconstitutional.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.]

Bob Faiss:
I teach gaming law at the William S. Boyd School of Law at the University of Nevada, Las Vegas. We do not talk entirely about the law, the regulators, and the industry; we talk about the Legislature. You are under-recognized for the part you play. It all starts with you. Without you, we have no gaming control system. I take every opportunity I can to let the public know of the great job the Legislature has done through the decades. There is some uncertainty now; our questions are shaped to resolve that.

Back in 1967 and 1969, the Legislature took the dramatic step of changing a gaming industry owned entirely by individuals to one owned primarily by public corporations. No one had the answers as to what the effect would be of that change. The Legislature did its job, saw there was potential, and had the trust in the Gaming Commission and the Gaming Control Board to do what was right to establish a proper regulatory system. Within years, public corporations accounted for 95 percent of Nevada's gaming tax revenue. I am amazed to see some uncertainty here. The information the Legislature had about public corporations then and the information you heard about entity corporations does not differ.

Chairman Frierson:
Thank you, Mr. Faiss, for giving us that historical perspective. Are there any other questions from the Committee at this time? [There were none.] I invite those wishing to offer testimony in support of S.B. 346 (R1) both here and in Las Vegas to please come forward at this time. [There was no one.] If there is anyone who wishes to offer testimony in opposition of S.B. 346 (R1) here and in Las Vegas, please come forward.

A.G. Burnett, Chair, State Gaming Control Board:
I am offering testimony in opposition to this bill in accordance with your directive regarding anyone wishing to add amendments to step forward in

opposition. The amendments are the State Gaming Control Board's (Exhibit C). Specifically they address what we feel would be the addition of the ability of the Gaming Commission to craft regulations that would allow us to be compensated for the costs of regulating this bill, were it to pass. We feel that this bill and the activities it contemplates touch on many different areas within the State Gaming Control Board. You have seen our fiscal note. That addresses the cost that we anticipate related to enforcement of this bill by our Enforcement Division. Their jobs are not billed; what they do comes directly from the General Fund as far as their salaries are concerned. The amendments that I have proposed, and the State Gaming Control Board has proposed, go towards additional theoretical costs that we foresee in the effective regulation of this bill if it was to go through. The costs are about entities, acting upon the Commission's directives and desires, and the Legislature's directive and desires, as to how we go about regulating this activity and the entities and the individuals who may be investors, and the individuals who may be the fund managers who are responsible for the debts.

I am prepared either to address the bill directly to you or to address the comments presented and to answer any questions you and the Committee may have.

Chairman Frierson:
To your knowledge, is this a friendly amendment? Do you know what the sponsor's position is?

A.G. Burnett:
No, we did not share that with the sponsor. This was something we crafted last night after internal discussions. I am happy to hear any comments on that.

Greg Brower:
I did not see the amendment until this morning, but the team has been working with Chair Burnett as we have moved through this process. We do consider this to be a friendly amendment. We think it makes sense.

Greg Gemignani:
Cantor Gaming believes this is a friendly amendment.

Chairman Frierson:
Thank you for that clarification.

Assemblyman Wheeler:
Will this amendment remove the fiscal note?

A.G. Burnett:
No, it will not. This would be in addition to the fiscal note.

Assemblyman Ohrenschall:
Does it affect the fiscal note then?

A.G. Burnett:
We have several divisions within the Gaming Control Board that have the ability to bill for their costs and expenses in investigative activities they conduct. In this particular case, the fiscal note was originally submitted in anticipation of costs that our Enforcement Division specifically would absorb. The Enforcement Division agents do not bill for their time. Their salaries and activities are derived from the General Fund.

It is my contention this bill touches on various other divisions within the State Gaming Control Board, and after discussions with staff last night, it was decided that those divisions may be spending a significant amount of time on regulating and perhaps enforcing the activities contemplated by this bill. Those are divisions within the Board that bill applicants. As former member Sayre indicated, when someone comes to the state of Nevada with a license application, or needing a registration, or a finding of suitability, generally the burden is upon them for the payment of the costs related to that investigation. My amendment seeks to clarify the Gaming Control Board's ability to bill those costs.

In the bill you had prior to the amendment, there was language regarding some of those costs. I wanted to clean it out and make it as clear as possible that the Gaming Control Board would not be expending monies or time the agency and Investigations Division spent for activities that are not billable. I hope that answers your question.

Assemblyman Ohrenschall:
Would the fees contemplated in the amendment pay for those investigative activities?

A.G. Burnett:
After this bill passes, it is my hope that the Commission can craft regulations per the directive contained in the new amended section 1, subsection 3, enabling the Board to charge costs related to this. You are hitting upon a topic that, unfortunately, is difficult for me to answer because we have not had a lot of time to analyze this bill. Initially we objected to the bill prior to its offering in the Senate. As it went through the Senate, we have continued to analyze it,

but this is a reflection of what we see as possible costs that we will incur in trying to regulate this.

Assemblyman Ohrenschall:
Those are possible costs in the fiscal note?

A.G. Burnett:
That is not any fault of our own. This is staff's internal analysis of what could happen in relation to this bill, because what you have heard in the testimony prior to mine is many scenarios, what ifs, and possibilities. When you are dealing with something that is as new and fresh as this, there are still multiple questions, and this is our best determination as to how we go about regulating this should it occur and be successful.

Chairman Frierson:
Chair Burnett, if you could go ahead as I think you were otherwise planning on providing neutral information and responding to some of the points that were raised.

A.G. Burnett:
I also want to note that Chair Bernhard of the Nevada Gaming Commission is present. He may wish to add to my testimony. I notice that he is in Las Vegas, so I welcome him here today. It is always a pleasure to have him here with me. My comments are reflective of the State Gaming Control Board's thoughts regarding this.

In short, we still have questions. I should note at the outset that the Gaming Control Board is not opposed to a new method or manner of the state encountering new business. Indeed, it is something we have encountered for the last 50 years. I am lucky enough to have been part of that over the last 15 years. I have encountered a myriad of different issues and complex financial transactions. I have had a lot of experience in dealing with criminal law, gaming law enforcement, securities law, and regulation of publically traded entities. I think this touches on many of those issues.

First, as to Nevada law, right now we do not regulate bettors who come to Las Vegas. We do not regulate individuals who come in and wish to play baccarat, poker, slot machines, or even place sports bets. In the world of sports wagering, there are individuals and entities that have run into trouble, have run afoul of federal law, and have run into trouble with our Nevada gaming law regulations. Specifically, right now we have a regulation on the books regarding messenger betting. It has been enforced; there have been significant fines imposed against individuals who violate that law. It would be my thought

at present that were this law to pass, one initial question we have is what would that do to the messenger betting statutes? There may be a thought that this would enforce it but, on the contrary, it is my personal opinion that this would gut that law. This would legalize messenger betting. Messenger betting is the act of me paying you to place a bet for me. This is what this bill contemplates. If the Legislature seeks to legalize this activity, the Gaming Control Board supports that. Again, it is the wisdom and purview of the Legislature to do so; however, one question we have is what would that do to our current law and our regulation?

I have had a lot of experience licensing hedge funds, private equity funds, mutual funds, and institutional investors. I have spent time in New York City dealing with entities such as Goldman Sachs, Fidelity, Legg Mason, and the like in regulating what they do here in the state of Nevada. Entity wagering seems to be an attempt to allow those funds to bet on sports within the state of Nevada. The Gaming Control Board is not sure how that complies with federal law. We have spoken with our Attorney General's Office, and it is safe to say that they feel the same. I do not know if our concerns have been adequately addressed. They certainly have not been addressed adequately for the Gaming Control Board. In many cases, you have individuals who, in the sports betting world, run afoul of the Wire Act which was recently clarified by the Department of Justice (DOJ) to clearly include sports bets and wagering. We are not offering an opinion as to whether Nevada's legalization of the entity bill would somehow run afoul of the Wire Act. As I stated earlier, we have not had time to conduct a thorough analysis of that, nor have we had time to reach out to the true enforcers of the Wire Act, and that is the DOJ. We have attempted to open some preliminary dialogue with the DOJ, but those discussions are merely preliminary, as they do not comment on state regulation as part of their duties.

We also have concerns as to whether this could somehow be a conduit for money laundering. We have concerns as to whether this could run afoul of other states' laws. Additionally, as a quasi-securities lawyer who regulated publicly traded companies in the past, I have questions as to whether this runs afoul of any securities laws. These are all questions that I cannot answer today, but it is because we have not had time to digest these and, frankly, we are not the proponents of the bill and do not feel it is incumbent upon us to do so.

Should it pass, the divisions that would encounter this bill would be the Investigations Division, the Enforcement Division, the Audit Division, and the Tax and License Division. That is four divisions out of the six within the State Gaming Control Board. In the Investigations Division, our questions related to

this bill simply go to how do we license or register these entities. How do we monitor them? What are the costs involved with that? You have heard that monitoring these is easy; it can be done at a computer swipe or touch of the finger. I am not so sure that is the case. It depends on how deep we want to go into these entities. I have indicated that we traditionally do not regulate bettors, but that is what this would contemplate. Would we regulate the entities themselves? Would we tax the entities? Would the tax be directed through the sports book? When we look at an entity, are we going to look at one manager? In my mind, I see a hedge fund manager. To use a more recent example, within the last seven years Las Vegas and the state of Nevada encountered private equity with which I am sure all of you are familiar. The private equity model contemplates a limited partnership holding company or an LLC holding company that is an investment vehicle. You have two sides that hold shares in that entity. One side would be a nonvoting, noncontrolling group of investors. The other side would be composed of a group of voting investors, or voteco. I would imagine that we would encounter a similar type structure. Based upon my last 15 years of experience, there is absolutely no limit of the type of structures we may encounter and types of entities that can be created to conduct these wagers if, indeed, it is as popular as some might suggest. How do we regulate those? Do we investigate those? Do we send our agents to regulate them in New York City, where I assume they may reside? The cost of such an investigation is not small. For example, some of the private equity investigations ran into the millions of dollars. Do we investigate the non-voteco entity unit holders? Do we investigate the voteco holders?

One thing that put me at ease was some of the testimony by Bruce Leslie, who is a colleague of mine. He is a very good gaming attorney. He mentioned in his testimony that all of the activities would take place in the state of Nevada. I believe he testified that the fund would open, the investors would have to come to Nevada, pay their money, and the fund would close. Then I would also anticipate that those investors would have to come back to Nevada to pick up their money when the fund closes, if indeed they have won money, and that the manager of the fund would have to reside in Nevada. If that is the case, giving you an off-the-cuff legal opinion based on my experience, there probably would be a lesser potential for federal law violations, specifically money laundering and, more specifically, the Wire Act. As a regulator, the potential for money laundering concerns me. I think it is only that scenario that might be successful from a federal law standpoint. If the fund manager resides in Las Vegas, and investors are located throughout the rest of the country when those fund investors transfer their money into Las Vegas, I would submit that is problematic. If they were to travel to Las Vegas to submit their money, and the money is then held in some form of an account for the betting purposes to take place, then that is less problematic.

With the fiscal note, the Enforcement Division will probably be charged with doing what they do currently and have worked extensively on in relation to recent sports betting scandals that we have witnessed in the last year or so. They are charged with monitoring, enforcing patron disputes, and enforcing any criminal activities that may occur. I note that *Nevada Revised Statutes* (NRS) Chapter 465 has not been amended and the Gaming Control Board has not had an opportunity to look at whether that chapter should be amended. That is the criminal enforcement arm of gaming in the state of Nevada in the NRS.

We do have concerns regarding patron disputes. If there is a fund created, and investors are able to transfer money into that fund account for the purposes of sports wagering, and that entity is registered in the state of Nevada, what jurisdiction do the regulators have over that entity if it is deemed to have done something wrong? Mutual funds and private equity funds all have certain rules and regulations they live by on Wall Street. Would those govern these entities, or would the State Gaming Control Board and the Gaming Commission be charged with regulating them? If so, would we be the sole regulators of those? Would we be concerned with securities issues such as shareholder disclosures, proxy statements, Form 10-Ks, and Form 10-Qs, ensuring that the shareholders, being they are residents of the state of Nevada or elsewhere, are protected? One of our core duties in NRS 463.0129 is ensuring patrons are protected. These patrons may not even be residents of the state of Nevada. If there is a scandal, or if something happens, or if a fund manager closes the book and disappears to the Cayman Islands, as a regulator, it is my concern that the state of Nevada's reputation will be on the line and I may be in the untenable position in discussing with the press the fact that we have no enforcement authority over that fund manager. We have no ability to track him down and get the people their money they deserve.

These are things I am running off the top of my head, things that we discussed internally when this bill was first proposed and which led us to initially object. I tend to agree that this bill itself does constitute a wager. It is a wager that the entities will come here, that they will not run into trouble with the federal government in any way in terms of Wire Act or money laundering violations or other types of issues, that they will not engage in any other criminal or corruptive enterprises, and they will bet lots of money. In order for this to be successful, that is what needs to occur. The wager is also that so much money will be bet that sports books who collectively rake in anywhere from approximately 1.5 percent to 8 percent will make so much in rake that the state's taxation of that rake, 6 3/4 percent, will offset the one thing that the State Gaming Control Board feels this wager is certain to do—create regulatory overhead, costs, and issues that may or may not be equal to that return.

Chairman Frierson:
Are there any questions from the Committee? We apologize to anyone wishing to present bills. There are obviously some important issues being raised that I think warrant some deep vetting. I appreciate your bringing those concerns to our attention. I do not have any questions; I think you have addressed many of the ones that have been a concern.

Assemblyman Wheeler:
Have you talked to the sponsors of the bill to work something out that would be equitable?

A.G. Burnett:
No, we have had no discussions with them after the bill was submitted.

Chairman Frierson:
Are there any other questions of the Committee? [There were none.] Is there anyone else wishing to offer testimony in the neutral position, either here or in Las Vegas? [There was no one.]

Senator Brower:
We appreciate the chance to put this bill forward and your listening to the testimony today. This is a new concept. There are plenty of questions; we think the answers to all of the questions are the right answers. We have the gold standard when it comes to gaming regulation in this state. Chair Burnett is certainly part of that but, having said that, this bill was presented to the Gaming Control Board staff in January. The Board has had plenty of time to analyze it and, in light of that time, I would not expect any opinions of the regulators today to be off the cuff. I think we can expect opinions that are researched and have been well thought out. There has been plenty of discussion about this bill. Many of the questions raised today were not raised on the other side. We are happy to work with the Committee and with the regulators to make sure both the Committee and the regulators have answers to the questions that have been raised. We are confident that the answers are the right answers, that this concept, while new, is perfectly logical, perfectly legal, and necessary in some respects if this state is going to capture additional sports betting revenue that can only be a benefit to the state. We will continue to work with Chair Burnett and the regulators. Bob Faiss will make a final comment.

Bob Faiss:
I have the greatest respect for Chair Burnett and we are very lucky to have him here. I think historically what you have before you is what they had when public corporations were approved by the Legislature. This state had no experience with them whatsoever. The gaming control agencies did not know

how in the world they were going to deal with it. People came up with all of the possible problems. The Legislature gave the defining responsibility to the gaming control authorities. The bill does not move forward until they are satisfied they can adopt regulations that satisfy all of the requirements of law and the standards set by this Committee.

Chairman Frierson:
There is a lot of interesting information we need to ponder. We appreciate the information that was provided so we can take it back and absorb it.

I will close the hearing on Senate Bill 346 (R1). We will take a brief recess and then have Senator Segerblom introduce his bill.

[The meeting was recessed at 9:26 a.m. and then resumed at 9:28 a.m.]

Chairman Frierson:
I will open the hearing on Senate Bill 425 (1st Reprint).

Senate Bill 425 (1st Reprint): Revises certain provisions relating to pari-mutuel wagering. (BDR 41-1111)

Senator Segerblom:
Senate Bill 425 (1st Reprint) allows rebating in pari-mutuel wagering (Exhibit D). That means you are allowed to offer a discount to someone who places a bet. This used to be a part of Nevada law until the 1990s. An issue came up with California, and so we changed the law. Now we are going back to that. The testimony in the Senate was that this was necessary because we are losing a lot of business to states like Oregon, which has rebating. The way the bill is now, it does not mandate rebating, but we would allow rebating unless the Nevada Gaming Commission takes affirmative action against it. I have experts here to explain in detail how this would work. It takes us back to where we were before the law was changed in the '90s.

Greg Gemignani, Attorney, Lionel Sawyer & Collins, Las Vegas, Nevada; and representing Cantor Gaming:
I am appearing before you in support of S.B. 425 (R1). As Senator Segerblom mentioned, this bill will permit race books in Nevada to engage in competitively pricing pari-mutuel racing wagers. Nevada used to be able to competitively price pari-mutuel wagers; however, in 1997, under pressure primarily from California racing, Nevada enacted a statute to outlaw the practice of rebating, which is the practice of competitively pricing pari-mutuel wagering or giving a rebate to customers who place pari-mutuel wagers.

California did this because they believed that Nevada was depriving California tracks of attendance and wagers that would otherwise be retained in California. Since then, Nevada books have worked hard to compete without actually having the ability to compete on price. California was fairly successful. Nevada has not been able to compete on price since then.

Nevada books have been provided a number of competitive tools to try to compete. They are provided with call center tools, account wagering tools, the ability to accept wagers from jurisdictions outside of Nevada where such wagering is legal, and even the ability to provide some rebates under limited exemptions. It was clear under the testimony and the legislative history that these limited exemptions were a carveout and not a lifting of the prohibition. These tools were enhanced in December when the Gaming Commission altered certain definitions relating to pari-mutuel account wagering to permit the use of the Internet for such wagering.

Despite these tools, our state system provider, which provides the processes for all pari-mutuel wagers for Nevada race books, has indicated that pari-mutuel wagering handle in our state is down about 9 percent for the year to date. In comparison, according to a report in *The Blood Horse* magazine, which is an industry magazine, pari-mutuel race handle is down about 2 percent nationally. We are falling behind even further this year. If we do nothing, we know what the future of pari-mutuel horse racing looks like in Nevada because we are living it. It is a slow death by declining handle year after year. It also means a slow decline in taxable revenue.

Like other consumers, race bettors will consider price when making significant purchases, in this case, wagers that are identical from every provider. This bill gives every pari-mutuel race book in the state the same opportunity to compete for significant bettors. Just as this prohibition was thrust upon Nevada by interstate pressure, I believe this issue is less about intrastate competition and more about interstate competition. If Nevada books are ever going to entice significant pari-mutuel bettors and handle back to Nevada, our books need to be able to compete on price with other jurisdictions. With this bill, Nevada race books have a fighting chance to regain lost ground. Thank you for your honest consideration.

Chairman Frierson:
Are there any questions from the Committee? [There were none.] Regarding the activities that California engaged in to pressure Nevada to take action, were those done in statute or in regulation? I am not entirely sure how it works in California.

Greg Gemignani:
The California Horse Racing Board passed a regulation that prohibited its tracks from providing racing signals and comingling funds with off-track betting facilities that engaged in rebating. They did that in 1996. After coming to Nevada and forcing Nevada to stop the practice and Nevada capitulating in this regard, they did not enforce it anywhere else as far as I can tell. Actually, tracks in California started engaging in stimulus programs shortly after that. The rest of the pari-mutuel racing market caught on to rebating. I think this practice started in Nevada. California did this because they saw large wagerers coming to Nevada who they thought could be captured back in California. They wanted to cripple Nevada competitively, and it has worked. We are not competitive on price. In 2009, California finally repealed that regulation. We still have our statute on the books that prohibits our books from engaging in price competition. We are not allowed to rebate, and yet California has repealed their regulation.

Chairman Frierson:
In California, is it in statute or in regulations?

Greg Gemignani:
It was in the regulations, but they repealed it.

Chairman Frierson:
If you were able to review a proposed amendment that shifts this to the Commission rather than statute to regulate, would you consider that a friendly amendment or not?

Greg Gemignani:
I have not seen the amendment.

Chairman Frierson:
In concept, considering California did it in regulations, would this be something that would be appropriate to have done through regulations as opposed to statutes?

Greg Gemignani:
Considering our prohibition was statutory, I think the appropriate way to handle this would be in the statutes. Even though California never had a statutory prohibition, having a regulation and then repealing that regulation was appropriate. In Nevada, we have a statutory prohibition. The way this bill started was a repeal of that prohibition. As it moved through the Senate, they changed it from a repeal to an affirmative policy statement that rebating should be permitted.

Senator Segerblom:
Our proposed bill actually allows the Gaming Commission to put prohibitions or some types of limitations on rebating into regulations, but it takes out that it is prohibitive. We are essentially in the same place. We just put it in affirmative that the Commission has to take action. One of the things we found in our hearings was that over the years, the State Gaming Control Board has been protective of the industry and resistant to change. We are trying to encourage them to rethink many of these things and see if they should be revisited. We are saying you can do rebating, but if they want to go ahead and enact regulations restricting that or limiting that, the ball is in their court.

Greg Gemignani:
The way the bill is currently drafted, it preserves a role for the Commission to enact regulations to restrict rebating when it is not in the state's best interest. It should be clear that with pari-mutuel wagering, it is a little different from sports wagering because the bettors are betting against each other. The race book takes a piece of that wager out, called the take-out, and the state taxes it, so as racing handle increases or the amount that is bet on horse racing goes up, so does the state's tax revenue from racing. If rebating can stimulate more race wagers, the state's tax revenue from horse race wagering goes back up. If we can stimulate this industry to grow again, it benefits the state. It should be in the state's best interest to encourage rebating.

Chairman Frierson:
You do not have the benefit of having the amendment, so I realize it is difficult to answer a question about that. I do not think the proposed amendment disagrees with the point you just made. It looks like it adds that it is the Commission that determines whether to approve by regulation the offering of rebates. I would like to keep you here and available so we can have those people talk about it and then give you the opportunity to address it.

Senator Segerblom:
The reason we did it this way was that we felt they needed the impetus to act now. As I understand the amendment, the Commission would have the ability to do this regulation, which could take time, and they would not have to do anything. We felt, based on the testimony, particularly what Oregon is doing as far as the amount of revenue they are taking in now, that time is of the essence. We are trying to spur things on by allowing the rebate now but, if the Commission wants to restrict it, then they can take actions to enact regulations.

Greg Gemignani:
Oregon is doing $2.2 billion in off-track betting handle right now. The state of Nevada is doing just north of $300 million in off-track betting handle this year.

I know that the systems are different, but we really are talking about off-track betting. We have most of the tools that Oregon has. We can do call centers, we can do account-based wagering, and we can now do Internet-based wagering. The thing that we cannot do is price compete with Oregon. An affirmative policy statement in statute seems to be the most appropriate way of handling this because our prohibition is in statute.

Chairman Frierson:
We are walking blind as far as the amendment goes. I hate to spend a lot of time talking about something that we all agree on. I would rather go through the testimony, and you can provide insight afterwards about the intent of the proposed amendment.

Are there any questions from the Committee on the bill? [There were none.] I invite those who wish to offer testimony in support of S.B. 425 (R1) to come forward at this time, both here and in Las Vegas. [There was no one.] Those who wish to testify in opposition here and in Las Vegas, please come forward.

Alfredo Alonso, representing the Nevada Pari-Mutuel Association:
The Nevada Pari-Mutuel Association consists of 56 sports books around the state, which is about two-thirds of the market. We do not necessarily disagree with the need to revisit this issue; we simply believe that it should be in the purview of the Nevada Gaming Commission to make that determination. Oftentimes, we have to deal in brutal fights about what those fees look like in terms of getting them from race books around the country. California is just one state which we have to deal with.

Given the fact that it has been about 20 years since this has been revisited, it makes sense to have a study. In essence, that is the amendment you have before you (Exhibit E). This is essentially the same amendment that was proposed on the other side, with changes due to the amendment that was placed in the Senate. Have the Gaming Commission look at it, and if it deems it appropriate, they would allow for these types of rebates. I want to make sure that everyone understands that current law allows you, on a case-by-case basis, to come before the Commission and ask for these rebates to be allowed. I think that is an important fact that it is not just prohibited; there are conditions in which you can come in and ask the Commission, on a case-by-case basis, to determine whether it makes sense.

I have Tony Cabot in Las Vegas, who is also with our firm. He has been working with the Pari-Mutuel Association for many years. He can go further into the history and why this is important.

Chairman Frierson:
We will go to Las Vegas and then we will entertain questions.

Anthony Cabot, representing the Nevada Pari-Mutuel Association:
For some 20 years or so, I have been the attorney who has worked most closely with the Nevada Pari-Mutuel Association. The Nevada Pari-Mutuel Association supports the rate committee that negotiates the rates with all of the racetracks all over the United States. We have 11 members on that committee which include the Mirage Hotel & Casino; William Hill; the Wynn Las Vegas; Caesars Palace; South Point Hotel, Casino, and Spa; Aquarius Casino Resort in Laughlin; Ellis Island Casino and Brewery; Excalibur Hotel and Casino; Leroy's Sportsbook; Bally's Las Vegas Hotel and Casino; and the Orleans Hotel and Casino. We got together as a committee a few weeks ago to talk about this particular amendment. As you can see by virtue of who is on our committee, we represent 56 books and over two-thirds of all the licensed sports books in the state of Nevada. We are not here to not make money, to turn business away, and not be competitive.

The committee is not unanimously against rebates; there are members that want to visit this issue. We are against the process that we are trying to somehow emasculate the Gaming Commission from doing what the Gaming Commission does best. We have a simple process in place right now. Rebates are prohibited unless exempted by the Commission. Any race book in the state of Nevada can file a petition with the Commission, and the Commission is obligated by law to consider that petition within 45 days of when it is submitted.

We hear about 1996, when we passed this law to prohibit rebates unless exempted. I was involved with that. I was involved in that brutal battle with the state of California when they shut off their signal to the state of Nevada for almost a year. We had no signal from California whatsoever until we came up with this solution.

I know the controversies that rebates can cause. Has anyone in the last 15 years actually asked the Commission to allow rebates? No. Why not? Is the system broken? Of course it is not. The Commission adopts regulations efficiently all of the time. Is there any allegation the Commission would not give the proponents a fair hearing? Of course not. Is this something that the Commission does not have the expertise to understand? Of course not. Since the Commission was created in the 1950s, it has regulated horse racing to ensure that the rates are fair and equitable for all race books and what is in the best interest of the state. The Commission has the best expertise in this area.

The problem is this issue is much more complicated than the proponents ever want you to imagine. It would take me hours to go through the information necessary to fully understand what would be good policy in this area. Let me touch on a few things. Rebates need to be regulated. I am not saying they need to be prohibited; they need to be regulated because we have no assurances there will not be another issue like the one we had with California when we go to negotiate rates. I do not think anyone here will argue the point that rebates will cost our books more to get the signals from out-of-state tracks. If we give rebates, they will raise the rates on us. There is no fact before this Committee that the impact of those additional rates in the state of Nevada will not have a more substantial impact in the ability to use the rebates to stimulate business.

Get Oregon off the table; it is not apples to apples. Oregon allows, and has allowed, its books to do interstate account wagering; that is from outside of the state. We, as the Committee, went forward and convinced everyone to allow us to do account wagering so we could try to be more competitive. We are a different environment. The Nevada books have not gone forward to take bets on an interstate basis because they are worried about compliance with the law. Oregon licensees are not so concerned about compliance with the law. That is why they have been more successful; they have done it for a lot longer.

There are other concerns with regard to rebates. They can be used to launder money. Race books in Nevada have been used to launder money—where you attempt to get money that is dirty money, run it through the system, and get it back as clean money in the form of winnings. If a dishonest book decides they are going to give rebates, it is not hard to facilitate this activity. It needs to be regulated to be sure it is not occurring.

Rebates can change the fundamental nature of the industry. Big rebate books may draw business from small books that are used by some casinos for player convenience. What is better for Nevada? Many smaller books that employ many people, or consolidated books that take over large markets of that segment. I do not know, but these are things that the Commission can look at when they make a determination as to whether to allow rebates.

Rebates could be used for predatory pricing. This is an unusual industry because we are price controlled. We cannot take out any more of a bet that a bettor makes than is allowed by the track. Our maximum profit is set by the tracks, not by us. Therefore, if someone wants to come in with a lot of money and give a lot of rebates, they can starve all the rest of the books out. Is that a concern? Maybe it is; maybe it is not. Is that something the Commission should consider when they decide to look at rebates?

There are other issues besides the ones I just mentioned. An example is skimming. Is the ability to give rebates by a casino allowing one of its owners to actually get money out as winnings when he does not pay taxes on it? I do not know—maybe, maybe not. If I had three hours, we could go into that. We could talk about all of these things if I had an economist here, or if I had someone else to look at all of these issues to give evidence on this. It is not a simple issue. All we are saying is we want to maintain the current system. If someone thinks that rebates are a good idea, they might be. We are not debating that. In fact, I think some of my committee members might agree with that. We need to get it before the Commission where the Commission has the ability to spend hours, days, maybe weeks looking at all of the evidence, having the staff review it carefully, and coming to some careful decisions with regard to whether to allow rebates.

Our amendment says that if you people want to do it, that is fine. Make the petition; it has been available to you for 15 years. If you have good arguments, I am sure the Commission will agree and we will pass regulations to allow rebates in this perspective. We clearly disagree with the original bill which was to cut the Commission out altogether. We disagree with the current bill which says that the Commission has to act and, if they do not, it is unregulated rebates.

I echo what Bob Faiss said at the conclusion of the comments on Senate Bill 346 (1st Reprint). He said we should not move forward with any type of activity unless, and until, the Commission can fully vet all the facts, and then the Commission can make the decision, not by default, but by actually looking at the facts and making a decision.

Assemblywoman Spiegel:
Mr. Cabot, I hope you can explain something to me. While you were speaking, I was looking at the Nevada Pari-Mutuel Association website. I learned how in 2008 and 2009 Regulation 26A was passed. I am reading from the website, "Regulation 26A is passed which allows race and sports books to offer pari-mutuel wagering in Nevada that would be combined with the betting pools at the host tracks." I know the host tracks are out of state. I went to see what happens in a state like New York, which I know has pari-mutuel betting. I looked at New York's Off Track Betting (OTB) website. They say they do rebates of up to 17 percent. If the betting pool is comingled between the host track and here, and New York is giving 17 percent rebates, what does that mean for Nevada and for Nevada's race and sports books? How does that work?

Anthony Cabot:
The economics of the book works this way. A person places a wager. It could be anywhere—it could be at the track or it could be in Nevada. Let us say they bet $1 and the takeout is 18 percent. What that means is of that dollar, 82 percent goes into a pool to pay the winners, and 18 percent will go to the person who accepted the wager. That person could be a book in Nevada, or it could be a racetrack in New York. With that 18 cents, the Nevada books have to pay a number of different people. We have to pay the system's operator, the track fees that usually run up to about 4 percent to 5 percent, for our facilities, telecommunication lines, and the staff. We take all of these different expenses out of that 18 percent. Effectively it would be impossible for us to give rebates in the area of 17 percent because it would take out almost the entire amount of our margins on those bets. Is it possible that books could potentially give some rebates? Yes, it is possible. All we are saying is, if we are going to go down that road, let us make sure it is properly analyzed and the rebates are good or bad for the state of Nevada. The Commission can then properly regulate those to prevent money laundering, skimming, and all the other potential issues that could come along with those rebates.

Assemblywoman Spiegel:
You are saying that any rebate has to come out of the margin that the administrator of the betting keeps? They can use that margin for marketing dollars in the form of rebates or administrative overhead, but it is up to their own discretion? The fact that New York is giving up to 17 percent rebates does not affect anything in Nevada, unless someone from New York is in Nevada and chooses to not place a bet in Nevada and waits until he goes home. Is that right?

Anthony Cabot:
Yes, that is accurate. One of the important things is we pay a lower rate to the tracks because we do not rebate. If we rebate, I think there is no question that we will pay higher track fees. Now, the question coming from an economic perspective, will the higher fees that we pay the tracks make up for the money that we will possibly make by virtue of attracting people by getting the rebates? That is an economic question, and is one of the things that the Commission should look at when making a determination as what is in the best interest of the state.

Assemblywoman Spiegel:
Is there any relationship between the purse and the dollars available for the win for the jockey and the owners of the horse? Is that tied to the number of people who bet on the race and, by having more people betting on races, does that then expand the overall market for racing?

Anthony Cabot:
The purse fees that are paid to the horse owners and the jockeys are negotiated between the racetrack, the owners, and the jockeys at that particular track. The tracks that have higher handles have higher purses. The most popular tracks will have higher purses and higher amounts paid to jockeys and the owners. That is between the racetrack and them, not between them and us.

Assemblywoman Spiegel:
It is safe for us to say that they do derive a benefit from having increased people betting on and watching the races.

Anthony Cabot:
They clearly do.

Chairman Frierson:
In the introduction to the bill, there was an indication that adopting regulations could be a timely process. How long would it take for regulations to be adopted? It looks as though the amendment says it should be done on a case-by-case basis and that individuals apply. In your testimony, you said that no one has applied. If someone were to, how long would it take them to be approved, and how long would it take for regulations to be adopted?

Anthony Cabot:
Under the law, when a petition is received, the Commission will have 45 days to act on that petition. At that point, they could reject the petition. I doubt that would be the case with this, given the fact that no one is arguing that we should not look at rebates. The Commission requests the Board to do intense industry workshops. The Board will ask the industry and anyone in the industry to give their input, to give statistical evidence, procedural evidence, raise any single issue they can possibly think of about the topic that is being debated, and share it in these workshops. Some of these workshops have taken eight hours a day, and some are over multiple days. The staff of the Board will get the information, work it up, and then schedule either a board meeting or a Commission meeting to hear all of the evidence and to get the Board's analysis of how this might affect regulation. Then the Commission can act. Chair Burnett and Chair Bernhard are here and might give additional edification to that process. That process should not take more than another 60 days after they accept the petition.

Chairman Frierson:
My other question is related to the bill itself where in section 3, subsection 3, it says, "The Nevada Gaming Commission may adopt regulations to carry out the provisions . . . ." Would that not enable the Commission to adopt regulations to

further require the case-by-case basis or anything like that the amendment is proposing to do?

Anthony Cabot:
Mr. Chairman, I am not sure I understand your question.

Chairman Frierson:
The bill allows the Commission to adopt regulations. Could the amendment be accomplished through those regulations that subsection 3 is enabling the Commission to adopt?

Anthony Cabot:
As it came over, the bill shifts the burden onto someone else other than the proponents of the rebates to come forward to show that the rebates are in the best interest of the state of Nevada. If no one does that, they automatically become unregulated rebates. We think the current process makes a lot more sense than the proponents of this bill who have spent a lot of time and effort in bringing this bill forward. They think that rebates are a good idea, they make the petition, and they bring forth their supporting evidence as to why it is a good idea. They are going to get support from the industry as well as opposition. That process would then allow the Commission to fully vet the issue and then come to a decision. Obviously if the decision is favorable, they adopt the regulation, if not, then they do not. These issues are very complicated; they are very controversial. Every time it comes up, you will find numerous sports books that think this will be the worst thing that has ever happened to the state of Nevada and the race book industry. Other ones think it will be a good thing. At this point, we suggest that we not move forward, not by default, but by the Commission making a reasoned decision after looking at all the facts and coming to a conclusion as to what should be permitted under what circumstances.

Chairman Frierson:
I see the proponents coming up. We do not talk back and forth. We will stay in opposition and I will allow the supporters to come up at the end if they have any closing remarks. Make some notes of some of the things that are raised if you think it is appropriate.

Are there any other questions for Mr. Cabot? [There were none.]

I would like to get more clarification from Mr. Bernhard and Mr. Burnett. What is the time it would take if someone were interested in coming forward? Does subsection 3 allow the Commission to do what the amendment is asking to be done anyway?

A.G. Burnett, Chair, State Gaming Control Board:
Chair Bernhard is present as well. I do not know if you would like to hear from one of us or both of us.

Chairman Frierson:
Both would be fine. Please give any responses you have and then we will go down to Las Vegas.

A.G. Burnett:
I am not here necessarily in opposition to this bill. The Board was presented with this question a while back from Cantor Gaming, and Cantor was instructed to seek a regulatory change. There were others in the industry that objected, and here we are looking at legislative changes.

As to the Commission's timeline, I am wounded by Senator Segerblom who feels that we may be resistant to change. Nothing can be further from the truth; all we do is encounter change. We embrace it, we analyze it, we understand it, and we regulate it. I want the record to be clear that the Board is not a roadblock to mechanisms that may end up enhancing gaming in the state. We spend an overt amount of time behind the scenes assisting gaming attorneys and bringing their companies in the door in a legitimate licensing process.

That said, I could not agree more with Mr. Cabot. He is a preeminent gaming attorney in the state and, in my opinion, his testimony is 100 percent correct. I believe if a petition was received in asking for regulatory changes to enable rebates, that could be up and heard. A reasonable period would be 60 to 90 days. The process that Mr. Cabot outlined is correct.

Chairman Frierson:
Do you anticipate a need for the ability to make adjustments based on changing the industry that 60 to 90 days would affect?

A.G. Burnett:
I am not sure if Chair Bernhard would rather answer that as the policymakers. I defer to him.

Peter C. Bernhard, Chair, Nevada Gaming Commission:
Before I get to your question, I would like to make a few quick comments. Mr. Cabot is correct. It is a very complicated issue with many moving parts that would require us, under our duties under state law, to go through the workshop and public hearing process to let every constituency who might be affected by this present testimony as we try to make a reasoned decision.

Mr. Cabot is also correct that no petitions seeking to allow rebates have been submitted to the Commission since 1996. No one has asked us to consider whether to allow rebates under certain circumstances. Mr. Cabot is also correct that if anyone did file that petition, we have an obligation, by law, to decide that within 45 days so the process must go very quickly. Other petitions in other areas of gaming law have been brought to us and we have decided those within 45 days.

Regarding the timing for the regulations, Mr. Cabot is correct that the workshop and hearing process can take place within a 60- to 90-day period. In fact, when this bill was on the Senate side, in anticipation of something being adopted by the Legislature and signed by the Governor, our staff worked backward from the October 1 date in section 4 of the bill and set a tentative schedule which is not public yet. It would comply fully with the requirements that regulations be enacted based on whatever the final form of the bill is by that time. In addition, I assigned one of our commissioners to be the lead commissioner in monitoring these activities, including the workshops, so that we, as a commission, will be educated with all of the different views of all of the different constituencies.

I do believe that it is a major change when you change the burden of proof as this bill would do. Instead of the petitioner saying particular rebates should be allowed, the burden would now be on the Commission, with the advice and consent of the Board, to say what rebates would not be allowed. That is a change that we do not have a position on if the Legislature decides that is an appropriate change. Obviously, we will fulfill those responsibilities.

Section 3 gives us the authority to adopt regulations that may set up prohibitions against certain rebates. I assume if the literal sense of the law went into effect, we could adopt a regulation that said all rebates are prohibited. That would be an extreme. We would need to have evidence on what rebates should be allowed, what rebates present problems, some of which Mr. Cabot has addressed, and what rebates would be neutral as far as the interest of the state. We are prepared to go forward either way, whichever way the Commission is instructed to do through this legislation. Back to answering your direct question, Chairman Frierson, yes, section 3, subsection 3, does allow us to adopt regulations to govern the process; however, more importantly the bill changes the burden on what responsibility that we, as a commission, would have in enacting those regulations.

Assemblywoman Spiegel:
If a sports book wanted to send a customer a coupon for X amount of dollars off of your next bet and that coupon was based on prior betting activity, would that be considered a rebate?

A.G. Burnett:
I think that it would. I will let others who are more expert in those matters answer that and clarify if that is the intent.

Assemblyman Wheeler:
Mr. Bernhard, you said no one had approached the Gaming Commission in 18 years. Mr. Burnett, you said that Cantor Gaming came to you last year with this. Can you clarify that?

A.G. Burnett:
I can clarify that. Typically, what happens is a petitioner for a potential regulation change will come to the Gaming Control Board first. We will work with them and we will draft a proposed regulation for the Commission's review, or the proponent will subject himself or herself to the timeline that Mr. Cabot referenced by filing the petition themselves. When they file the petition themselves, that is when the statutory timelines kick in. Most regulations are crafted in that manner.

The particular case that I am referencing was in approximately 2011 where former Board Chairman Lipparelli was presented with the concept wherein Cantor Gaming requested the feasibility of rebating. I believe, and I support, former Chairman Lipparelli's position and how he handled that because it is the same way I would handle it. It was essentially, "Okay, we will look at it. What do the others in the industry have to say?" At that time, I believe Chairman Lipparelli contacted other constituents in the industry, many of whom Mr. Cabot represents, and it was ultimately determined that the best method for doing this was for Cantor Gaming to file a petition before the Commission. That is what I was referencing. That is why Chair Bernhard has not seen such a petition, as Cantor Gaming chose not to file that. I believe that the preferred mechanism for them was to come to the Legislature after that.

Peter Bernhard:
That is correct. The agencies are separate and we, as a commission, get those petitions as soon as they are filed. Cantor decided not to file a petition so discussions at the board level concerning a concept does not amount to a petition. Had a petition been filed in 2011 or whenever those conceptual discussions were, the Commission, by law, would have acted upon it. Cantor decided not to submit any petition under Regulation 2; they chose to go to the Legislature instead.

Assemblyman Wheeler:
Has there been any other company that has gone through the same type of process in the past 18 years that came to you and decided not to file a petition?

A.G. Burnett:
Do you mean in general contacts of gaming law in general? I do have discussions at times with companies or entities or individuals that would like to talk about a regulation change. Usually the process is worked out that we either come to terms without a petition being filed, or we find another way to do it without the petition being filed. Often the petitions are filed, and several have been filed over the years, both in the context of the Gaming Control Board being the actual proponent of the regulatory change.

Pursuant to Governor Sandoval's first Executive Order 2011-01, we were mandated to clean up our regulations and make them more business-friendly, streamlined, and less bureaucratic. We started a process after that where we swept through all of our regulations and worked with the industry. There have been some sweeping regulatory changes.

As to petitions, as Chair I have dealt with one petition that I recall. I am sorry, my memory is bad, and I cannot recall the exact context. I believe it was in registration of entities and their shareholders.

Chairman Frierson:
Thank you, Chair Burnett and Chair Bernhard. I realize that neither one of you signed in to testify on this. I appreciate your coming up to provide some insight.

Is there anyone wishing to offer further testimony in a neutral position?

Jay Vaccaro, representing Las Vegas Dissemination Company:
I am a proponent of the rebates.

Chairman Frierson:
Are you a proponent of the bill, or an opponent of the bill?

Jay Vaccaro:
Yes, I am a proponent. I did not get a chance to get to the microphone quick enough the first time. This is my first time doing this.

Chairman Frierson:
Would you please restate your name? You want to be on the record in support of this bill?

Jay Vaccaro:
That is correct.

Chairman Frierson:
Thank you very much. I am glad we were able to get you on the record, but we are going to have to move back to Carson City so we can close out the hearing and move forward.

I am going to have Senator Segerblom and the sponsors of the bill address some of the concerns that were raised, or clarify anything they think is appropriate.

Phil Flaherty:
There are a number of points that need to be clarified; one in particular is Cantor's previous efforts to seek guidance with regard to rebating. In those conversations with former Chair Lipparelli, the discussion under his guidance was to seek regulatory change because of the unique nature of how the contracts, the rate committee, the process, the legal stature, and the Commission structures interface. One of the things that has not been raised here is Nevada pari-mutuel contracts where the individual tracks are negotiated by a group called the rate committee. Mr. Cabot referred to this body earlier. One of the things that becomes interesting is, even if the law was to be amended to permit rebating, the contracts that the rate committee negotiates still have to reflect that rebates are even allowed. Even if we went to the Commission and sought permission to do a rebate, the contracts with the tracks that the rate committee controls would have to be amended. Without guidance from the Commission, or guidance from the Legislature saying the state is willing to endorse and allow rebates, they would not even exist in the first place.

It needs to be clarified and understood that the commercial motivation for this is very simple. Nevada had a high-end wagering, almost $800 million. It is going to struggle to crack $300 million this year. At the same time, whether it is Oregon or California, to Mr. Gemignani's point earlier, the state's decline in race wagering is going down fast. When we talk about the impact on jobs, nothing is going to impact jobs more thoroughly than the evaporation of a line of business. If the state wishes to remain competitive, retain employment of race book employees, and to be competitive on a nationwide basis, these are the tools that are necessary. Cantor is not asking anything unique for itself, they are asking for something so the industry can be competitive on a nationwide basis. I would rather fix something before it is fully broken, than to see it broken and wonder how we claw back.

Greg Gemignani:
I want to reemphasize something that Mr. Flaherty just mentioned. The reason you have not had any petitions to the Gaming Commission is that the rate committee Mr. Flaherty mentioned, under NRS 464.020, has the exclusive right

to negotiate contracts with racetracks. Those contracts currently prohibit rebating. Even if Cantor Gaming wanted to petition the Commission to engage in rebating, it could not negotiate a commercial deal to permit rebating because the rate committee is the only entity that is permitted to negotiate those deals. Without an affirmative policy statement by this body in statute, I do not think we are going to see rebating. You could do a study, but right now the policy statement that is set forth in statute is that rebating is prohibited.

I know you heard the parade of horribles about potential problems from rebating. We did have rebating in this state. We invented rebating and we successfully had rebating; it was so successful that California became angry and forced us to stop it because we were competitive. All that we are asking is to be able to be competitive again.

Senator Segerblom:
I will turn this over to Mr. Faiss, who will briefly describe the role of the Legislature versus the Commission. It has come up as to who should be setting policy here.

Bob Faiss, representing Cantor Gaming:
The historic position has been that the Legislature recognizes the need for inquiry into possible new ventures that enhance the ability of the gaming industry to compete. They do that in the way of giving broad policy. They do not take the time to dictate to the excellent Nevada Gaming Commission and State Gaming Control Board how they should implement the policy that you deem worthy of a consideration. I think that is true for this bill and every other bill.

In 1959, the great threat to the gaming industry was mobster influence. Governor Grant Sawyer was the architect of that bill. In his first meeting with the Nevada Gaming Commission, he gave his policy directive based on what the Legislature had done. He said that if there are mobsters here, get them out. If they are not here, keep them out. That was the policy directed to the Gaming Control Board and the Gaming Commission, and over the years, they fulfilled that directive.

Senator Segerblom:
This was the law until 1996. It was changed because of the regulation in California. California just changed their regulation, so we are asking the law to go back to where it was. This bill specifically says that the Nevada Gaming Commission can adopt regulations. They will have between now and next October when this law becomes effective to do exactly what you heard.

We are saying that we are going to light the fire under their feet. I urge your passage.

Chairman Frierson:
I have to say that I am surprised this could not be reconciled. I am baffled by it. You are the experts. It does not sound as if anyone disagrees about the need to address the issue and put Nevada back in a competitive position. I encourage you to talk and see where we can agree and where we cannot, and we will certainly make some policy decisions on the Committee's side.

Senator Segerblom:
We are available too.

Chairman Frierson:
I will close the hearing on S.B. 425 (R1) and open the hearing on Senate Bill 418 (1st Reprint).

Senate Bill 418 (1st Reprint): Revises provisions relating to the acceptance of wagers on certain events. (BDR 41-1106)

Senator Tick Segerblom, Clark County Senatorial District No. 3:
This bill, unlike the last, is very simple. Senate Bill 418 (1st Reprint) allows Nevada sports books to wager on federal elections (Exhibit F). This is done in England regularly. If they can take bets and make money in England regularly, why should we not do that here in Nevada on our own elections? I raised the issue, and no one said we could not. I do not think you will hear any opposition to the bill.

When I introduced this bill, I had more inquiries from around the world than I have ever had in all my other bills and ideas combined. There is a vast amount of interest. It probably would not make that much money for Nevada, but it would certainly raise our profile that we would be setting odds on who would be the next nominee for the Democratic Party in 2016. I think it is a win/win situation, and so far, I have not heard any reason why we cannot do it.

Assemblyman Hansen:
Why not open this to local elections, too, for the State Senate, school boards; shall we make this like a game? You are picking federal elections of leaders of the nation, and the idea to open this up to make it like a game—3 to 2 that the Democrats are going to take the Senate this time. There is something about it that makes me uncomfortable. I understand it might be great for the gaming industry, like any kind of betting, but are there currently any federal laws prohibiting this? Are you allowed to openly bet on Obama versus Romney?

Senator Segerblom:
There currently is no federal prohibition against this. Nevada has prostitution—we are not a role model for what we do and do not allow. I think betting on federal elections would raise our standards as opposed to lower them.

Assemblyman Hansen:
Would we allow this same principle on local elections as well?

Senator Segerblom:
This is strictly federal elections. It would allow betting on Congress, the Senate, and the Presidency. The Presidency would draw the most money. In England, they bet tens of millions of dollars on our election. Why would you have people go to England to bet, when they could come to Las Vegas, make a weekend trip out of it, and bet on their favorite candidate?

Chairman Frierson:
A few issues have been brought to my attention. One involves whether we want people voting for people to win money on the ticket, or voting for people they think are the best candidates. If the odds change, will that affect voter turnout and the way they cast their ballots?

Senator Segerblom:
Those are two good questions. The reality is if you go online right now, you can make all these kinds of bets. As far as polling goes, a poll comes out that so and so is 10 points behind, the financial contributions fall, and this could be a very similar thing, but I do not think it introduces a new element. We are essentially already betting on elections. This just allows us to be the leaders as far as setting the line, and to make some money out of it.

Assemblyman Carrillo:
How many states are currently doing something like this that have legal gaming?

Senator Segerblom:
We will be the only state. When I introduced this bill, not thinking about it, the publicity was incredible. I am getting calls from *Sports Illustrated* and *Time Magazine.* The interest is phenomenal.

Assemblyman Carrillo:
Are they doing this in other parts of the world?

Senator Segerblom:
Yes, they are doing this on our election. They spend tens of millions of dollars on our presidential election.

Assemblyman Wheeler:
Senator, I want you to hear this on the record. I do not see a problem with this bill.

Chairman Frierson:
Are there any other questions from the Committee? [There were none.] I invite those in support of Senate Bill 418 (R1) to please come forward.

Lee Amaitis, representing Cantor Gaming:
I am here to give you some facts about Senator Segerblom's bill. Before relocating to Nevada, I resided in London for a number of years. I observed the British propensity to wager on just about anything, including elections in the United Kingdom and in the United States. The type of bets offered covered the range from specific election results such as the United States Presidential Election to how many seats that each party would carry. Typically, and not surprisingly, the tighter the election race, the greater the activity. For example, in the 2004 Presidential race, the betting exchanges, which are the only ones to report the election wagering activity, took in over $27 million in wagers. In the 2008 Presidential race, there was over $35 million in wagers. Conversely, about close campaigns driving more attention, the 2012 Presidential race only attracted about $15 million in wagering. These were reported at the reporting exchanges. Mike Smithson, who wrote about political elections in general in the United Kingdom, has documented all this in his book *The Political Punter: How to Make Money Betting on Politics*.

As there are many unique factors that would affect wagering interest on particular political races, it would be hard to estimate how much wagering action Nevada bookmakers would receive if we were committed to accept wagers on political races. It should be noted that the quoted figures are from only one exchange and the turnover on those events is probably two to three times the amounts that I quoted from the exchanges. However, if there is nothing else during the course of the campaign, we would hear regularly as part of our nightly news reports that Nevada bookmakers show candidate X as a favorite or underdog to incumbent Y as a marketing reminder to come to Nevada for all of your gaming interests.

Event wagering is not legal in the United States other than in the state of Nevada. Senator Segerblom makes a point when he said we would be the only

place able to have it. It is legal throughout the United Kingdom and in the European community.

Assemblyman Hansen:
This bill would have to go through the Commission before the regulation could be adopted. As I read it, you would be allowed to bet on any national race. Is that correct?

Lee Amaitis:
I believe Senator Segerblom's response would be this is for federal elections, not for state.

Assemblyman Hansen:
By federal, would that include U.S. Senate races and U.S. Congressional races? That would clearly be by district in the state.

Lee Amaitis:
For the record, yes, I believe so. Generally, the odds would be how many seats the House would carry, or how many seats the Senate would carry. Who is going to win—Republicans versus Democrats?

The betting that goes on in the United Kingdom is generally high profile, such as the prime minister or the president in the United States. The rest of it is drilled down to Labor versus Conservatives or Republicans versus Democrats.

Assemblyman Hansen:
There is nothing in the bill that would say you could vote on Reid versus Whoever or Amodei versus Whoever?

Lee Amaitis:
I do not believe so; I can ask Senator Segerblom to comment on that. I believe you would be able to make a price on individual races as well.

Chairman Frierson:
In reviewing the bill, can you tell me what the presidential elector is? The bill lists the things that can be proposed to be bet on. It includes president, vice-president, presidential electors, and members of the U.S. Senate or members of the U.S. House of Representatives.

Senator Segerblom:
I believe what they are referring to is the Electoral College. For example, you have to win by 300 electoral votes versus 235.

Chairman Frierson:
That would not be referring to a person as much as the odds.

Senator Segerblom:
Right.

Chairman Frierson:
Are there any other questions? [There were none.] Is there anyone else wishing to offer testimony in support, either here or in Las Vegas? [There was no one.] Is there anyone wishing to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in the neutral position? [There was no one.] I will close the hearing on S.B. 418 (R1) and open the hearing on Senate Bill 314.

Senate Bill 314: Provides that the right of parents to make choices regarding the upbringing, education and care of their children is a fundamental right. (BDR 11-880)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:
I respectfully submit Senate Bill 314 for your consideration. The intent of Senate Bill 314 is to place an inherent liberty in the *Nevada Revised Statutes* in order to better assure that this liberty will be observed. I would like to tell you that putting this liberty in the law would eliminate disregard and breaches. Unfortunately, though, we know that prohibiting an action by law does not prevent the action from ever occurring. Still, I firmly believe it is more worthwhile to acknowledge in statute that it is a fundamental right of a parent to direct the upbringing, education, and care of his or her child, because doing so will dissuade and reduce instances of infringement on this liberty. Additionally, stating the fundamental right in law will help courts in their contemplation of parental rights cases. With that, Mr. Chairman, if it is agreeable to you, I will go through the contents of this short bill.

After we presented this on the Senate side, an individual came up to me and said they had a niece who had had a baby in Summerlin Hospital in Las Vegas. The baby had jaundice. They talked to the doctor and the doctor thought it was okay for them to go home after the birth. The nurse apparently thought they needed to stay. When they tried to exit the hospital, the mother and the father were arrested. The child was taken away from them. I thought this bill would not do anything in this respect because it does not stop things from happening. This gives judges some tools they can use when they are talking about parents and families.

The bill has two paragraphs. The first paragraph, section 1, subsection 1, is the core of the bill and simply states, "The liberty of a parent to direct the upbringing, education and care of the parent's child is a fundamental right." The paragraph goes on to say the fundamental right cannot be violated absent "a compelling governmental interest . . . of the highest order."

The second paragraph, section 1, subsection 2, sets forth that the bill's provisions apply to statute, local ordinance, regulations, and implementation of the same unless otherwise specified by statute. That is the entirety of the bill.

Based on what I have been hearing in the halls, I think it is important that I clarify a couple of things about the legislation before you. First, I need to specify that it is not intended to entitle parents to interfere with or obstruct curriculum of public education. It is not intended to allow parents to shirk their fundamental parental duties and responsibilities. It is not intended to place the rights of parents above all others, and in no way is it intended to endanger a child in the name of protecting a right of the child's parents.

Instead, the language of the bill is aimed at benefiting families. It will benefit families directly through the protection of a liberty and through providing the courts a statutory citation that unequivocally says that the liberty of a parent to direct the upbringing, education, and care of the parent's child is a fundamental right. That concludes my initial remarks. I have some other people here to support the bill and testify.

Chairman Frierson:
It is your preference whether you want questions now, or if you prefer that we wait until some of the supporters have testified.

Senator Denis:
I could take a few, but I think some of the questions will be answered as you hear some of the other testimony.

Chairman Frierson:
Does anyone have questions before the others testify?

Assemblyman Duncan:
I have heard arguments on the other side that this language may impinge upon the state's compelling interest to watch after a child's welfare. I want to get your intent on the record. I know that you stated it would not impinge on the ability of a parent respecting school curriculum, but I would like to get your intent on the record about that other issue.

Senator Denis:
I said that the bill is in no way intended to endanger a child in the name of protecting a right of the child's parent. I have been involved in PTA, and I just want to have the ability of being involved in my child's life, whether it is in respects to education or other things that I do. It is not looking to take away any protections that a child would have. If a parent were not doing what they needed to be doing, that is wrong, and it would not impinge on that.

Chairman Frierson:
I invite those in support of the measure to come forward now. Senator Denis, please stay because I want to get your input on the proposed amendment to the bill.

Senator Denis:
I also have some closing comments.

Frank Schnorbus, Private Citizen, Minden, Nevada:
I am a father, grandfather, foster parent, and I am also a CASA volunteer (Exhibit G). I do not represent the CASA program or foster parenting in this testimony, but it is just part of who I am.

Children and parents need the assurance they are safe within their own families. My wife and I have seen the effects of disrupted families; families where the parents have not done the things they were supposed to do. The state has rightfully stepped in and taken control of the situation. Most families are the best protectors of their own children. That is why we need Senate Bill 314.

Right now, the only real reason a child should be removed from the loving care of his parents is if there is an immediate or imminent danger, or if there is clear evidence of abuse or neglect. Allegations and things of that nature should not have the same standing as clear evidence.

Chairman Frierson:
Please recognize that there is a Court Appointed Special Advocate (CASA) here on the Committee and I am a district attorney that works in that field. Are you saying that a child has to be injured first, or in immediate harm or threat of being injured first, in order for Child Protective Services to have the ability to get involved?

Frank Schnorbus:
No, Mr. Chairman. Obviously, that would be a little too late. I think that law enforcement, the Division of Child and Family Services (DCFS), and Child Protective Services (CPS) workers are all trained to recognize situations where

children are in imminent or immediate danger, or are just in a bad situation. At that point, they need to do what is needed according to the policies they have, which are presumably in accordance with Nevada law, which is also in accordance with Nevada Supreme Court case law and United States Supreme Court case law. No, this would not allow that to happen or go too far. It is my opinion that it is the obligation of government to intervene, but that must be kept intact. Senate Bill 314 does not do anything to that at all. It does not address that part of it. This is intended to be for the courts.

I would note that the American Civil Liberties Union (ACLU) of Nevada submitted some testimony in the other house opposing this. We have researched and have found three federal lawsuits that have been filed by the ACLU in other states defending parental rights; the exact same thing we are talking about putting in statute here, trying to put in a fundamental parental right (Exhibit H).

I am not a legal expert, I am who I am as a parent and a foster parent and a CASA. I would like to turn this over at this point to Scott Woodruff, who is an expert. I ask that you pass this bill.

Scott Woodruff, representing Parentalrights.org, Purcellville, Virginia:
The most important job of the Nevada Legislature, bar none, is to protect the rights of the citizens, but there is one area of rights where the Nevada Legislature has maintained a deafening silence, you might say. That is in the area of parental rights. The Nevada Legislature has never put in black and white what the rights of parents are. That has not been a problem for a while, but there are some clouds on the horizon that cause us to take a very sober look at the situation.

I need to give you a bit of historical background. In 1923, the United States Supreme Court, in the case of *Meyer v. Nebraska*, 262 U.S. 390 (1923), declared that a parent's right was a fundamental liberty interest. They followed this up quickly in 1925 in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) confirming that is a fundamental right. This was considered the standard for parental rights protection in America until the year 2000 when the Supreme Court entered a decision called *Troxel v. Granville*, 530 U.S. 57 (2000). The *Troxel* case was the first U.S. Supreme Court case ever to back away from the idea that a parent's right is fundamental and that it deserves protection unless there is an compelling governmental interest.

I want to give you some examples of how the *Troxel* case has spawned confusion among the courts. I am going to read some quotes. These are all in the appendix of the written testimony I have given you (Exhibit I). "*Troxel* did

not articulate any constitutional standard of review," *Price v. New York City Board of Education,* 51 A.D. 3d 277 (N.Y. 2008). [Continued reading from prepared text (Exhibit I).]

There are others that I could read that have the same input. After *Troxel*, courts do not know what to do with parental rights because the *Troxel* case was so confusing. Nevada, at this point in time, is on track and is respecting the historic status of those rights as fundamental. Just in February of this year, in the case *In re Parental Rights as to A.G.,* 129 Nev. Adv. Op. 13, 295 P.3d 589 (2013), the court said that parents' rights are fundamental in Nevada.

The status of parent's rights as being fundamental is a middle ground. Our jurisprudence recognizes three levels of rights. One level is absolute. No government regulation could ever infringe upon that right. For example, the right of conscience or the right to choose one's own faith are rights that cannot be touched by any government action. The middle ground is fundamental rights. These are rights the government can restrict when there is an appropriate warrant for it, a compelling interest. Those rights include the right to move about within a state, the right to move from one state to another, procreative rights, the right to privacy, and the right to choose a type of education other than public. These are all considered fundamental rights protected by a compelling interests standard. The bottom tier of rights is called ordinary rights. The government can infringe upon these rights for any reason at all as long as it is rational. Rights in this category are a right to a driver's license, welfare benefits, a law license, a medical license, or to build a house on a piece of property. We can call those rights, but they are subject to any regulation the government wants to impose that is rational.

The question that needs to be addressed is, are parental rights going to remain in the category of fundamental, or are they going to be downgraded to ordinary? Nebraska has already followed the course of reducing parental rights to ordinary. In the case of *Douglas County v. Anaya,* 694 N.W. 2d, 601 (Neb. 2005), they ruled that the government can burden a parental right for a reason that is merely rational. I submit to you that is not good for parents or for children.

We have an opportunity today to express what the Legislature of Nevada says is the level of parental rights to be protected. Without this guidance, the courts will make their own decision. This should not be left to every judge to make up his own mind without any guidance from the Legislature. There should be a specific set of statutes that tell the judges this is how the states want parental rights protected. That is what this statute does.

Assemblywoman Cohen:
I do not understand why we are here because in the *In re A.G.* case the Nevada Supreme Court said, "The United States Supreme Court has held that the parents have a fundamental liberty interest in the care, custody, and control of their children." I reread *Troxel.* I see what the Nevada Supreme Court is saying I do not see where there is any problem here, and where there is any way that we are not saying that this is a fundamental right already through the courts.

Scott Woodruff:
The issue is whether the chief protector of rights should be the Legislature or the court system. If it is left to the courts, Nevada could be the next state that follows Nebraska and downgrades parental rights to merely ordinary. Without a Legislative statement, the courts will pursue their own philosophy and their own preferences. I submit that is not an ideal situation. This bill gives the courts marching orders and says, "The Nevada Legislature directs you, that parental rights shall be maintained as fundamental." Without a statement like this, the next time the issue comes up before a court, the Nevada Supreme Court or a lower court could follow the example of Nebraska and downgrade parental rights to merely ordinary.

Assemblywoman Cohen:
We have not seen that happen in Nevada. Correct?

Scott Woodruff:
That is correct; it has not happened in Nevada yet.

Assemblywoman Cohen:
What would this do to Nevada's grandparents' rights statute? If we pass this bill, would there be an effect on our limited grandparents' visitation rights statute?

Scott Woodruff:
I am not familiar with that statute, so I would not offer a comment on that. This statute does not predict outcomes; it just creates a set of principles.

Assemblyman Hansen:
It is interesting because we had the grandparent hearing a while back. They brought up *Troxel* to shoot down grandparents getting additional rights. Here we are hearing that *Troxel* is too vague and does not give the rights. I certainly support the right of parents having the maximum amount of rights, but where does the extended family fit in? Is that a part of this bill, or is it simply dealing with the immediate, fully intact family with no divorce situations? The very first line says, "The liberty of a parent . . . ." You obviously have two

parents with any child. How do you determine which parent gets to be the one that determines the care of the child?

Scott Woodruff:
This bill does not predict outcomes. This bill gives a set of principles for courts to follow. We are never going to eliminate the need for a judge to resolve discrete issues. We are never going to eliminate the need to decide which parent gets the child in a divorce. We are never going to eliminate the need to decide if this parent abused their child. Those decisions are rightfully left to the judges, but it is vitally important that those judges receive guidance in the form of a broad statement as the statute to help them make those decisions. Which parent is involved? Judges are prepared to make that decision if the Legislature gives them appropriate guidance.

Assemblyman Hansen:
Am I correct that this has nothing to do with the grandparent issue we talked about earlier? Is this trying to reinforce what *Troxel* said and push the grandparents out of the fundamental decision making process for the parents?

Scott Woodruff:
As I said, I have not read Nevada's grandparent visitation statute. The *Troxel* case was far clearer on the discrete issue of grandparents' rights than it was on the broader issue of parents' rights. It was actually a grandparent visitation case. Even so, there was no decision that the majority of the court agreed to—it was a 6 to 3 split—and four judges wrote a plurality decision, but it was a very fractured decision. The courts are still out at sea, because *Troxel* was so confusing. I began my testimony by quoting some courts describing how confusing the *Troxel* case was. We have an opportunity to clear that up now and give the courts clear directions as they make individual decisions in difficult cases.

Assemblywoman Spiegel:
As I am reading this, I know there are a number of parents who are opposed to having their children immunized for certain childhood diseases. Many of those children end up being home schooled because the children are not allowed in public schools without immunizations. If this bill was to go forth, would the school districts be forced to take those children who are not immunized?

Frank Schnorbus:
There is a current clause in Nevada law that allows a parent to fill out a form and not have a child immunized. I do not know the exact terminology of that, but I do know that it exists. I know there are some people who do take advantage of that but, of course, the majority of parents want to have their

children immunized whether they are home schooled or in a public or private school.

Chairman Frierson:
I have questions and concerns. My major concern is that in the introduction of the bill, we are talking about fundamental rights and putting in statute what is already law. There is clearly more to what is going on here. The case that you cited, *In re A.G.,* is a termination of parental rights proceeding case. That is what we are talking about. I think it is fair that the Committee know we are talking about whether the state can remove a child, and be required to return a child, based on a perception of a dangerous situation or safety issue. I think we need to make sure it is clear that that is what we are talking about, or at least the cases that we are citing in support of this notion involve those types of situations. I think it is a little different that that has not come up at all in the introduction of the bill. The *In re A.G.* case involved a mother who had a drug problem. The child was not safe, so the child was removed. It also involves a father who was not there during the time the mother was under the influence, but was also using drugs. Because he was not there when the child was removed, he was not a subject of a petition. The issue was even though he was using drugs and not complying with a social services case plan to show the child is safe to come home with him, he still thought that he could take the child home. This puts that in a different light when we recognize the case being used to support this notion was a case involving social service's reluctance to send a child home to a parent who had tested positive for drugs and did not want to comply with the case plan.

Scott Woodruff:
The father in that case never had a chance to present his side of the story because the Division dismissed the case against him. He never had a chance to present his testimony in his defense. There was never a finding that he had neglected or abused the child. He was a non-offending parent. The Division could have come back and filed a petition to seek a finding or a ruling that he was negligent, in which case due process would have been satisfied. The Division did not pursue the father and, therefore, he had the status of a non-offending parent. The Nevada Supreme Court ruled that it was against his constitutional rights to terminate his parental rights without previously having had a chance to defend himself on the claim of abuse related to neglect.

If the Nevada Supreme Court had not believed parents' rights were fundamental, then they easily could have, and probably would have, taken away his parental rights, even without that finding of neglect, because there was a statute that said if a child is out of a parent's house for so long, there is a presumption that his rights can be terminated. If the Nevada Supreme Court

had not protected parents' rights as fundamental and had treated them as ordinary, he probably would have lost his parental rights.

This bill will guarantee that the next time this comes up, where a parent is threatened with loss of their rights without having the right to defend themselves, they will still have the status of a fundamental right, rather than losing their rights merely because parental rights are treated only as ordinary.

Chairman Frierson:
I think the question was raised earlier whether the state of the law in Nevada was settled. There are Supreme Court cases dating back to 1920 that clearly say it is a fundamental right. There has never been an indication in the Nevada Supreme Court that there is any move towards ordinary as opposed to fundamental. It seems to me that the state of the law in Nevada is clear; it is not in statute, but in case law that may make some people uncomfortable.

This bill proposes to expand it beyond any language that the Nevada Supreme Court or federal court uses. For example, "of the highest order . . ." is not a standard that even exists in law. I want to make it clear what we are talking about here. You suggested that the father in the *In re A.G.* case did not get due process. What happens is the district attorney may decide he or she does not want to file a petition against this parent although this parent has some issues. You are saying that they should have filed a petition against the parent rather than trying to work with him and not file a petition, which leads to ultimate termination of parental rights proceedings. They would rather the parent get on a case plan, get clean, and close it out without ever having to file a petition. It sounds as though you are saying they should have filed a petition.

Scott Woodruff:
Yes, they should have because a petition would have guaranteed that the father had a right to present his case. The petition is a fair, equitable process to determine if a parent's rights should be terminated. That would have been the correct procedure.

Chairman Frierson:
You believe in the harsher option, which would expose him to possible termination and would be better than working with him informally.

Scott Woodruff:
The petition is not a harsh procedure; it is a fair procedure that gives everyone a chance to present his or her side before the judge.

Chairman Frierson:
In *In re A.G.*, did the father appear in court? The father appeared in court several times, submitted to drug testing, signed a case plan, and tested positive for drugs, according to the Supreme Court case. The notion that he was not given his day in court seems to be belied by the case itself that shows he appeared in court several times, submitted to drug testing, signed an agreement with Child Protective Services, and simply did not comply with it.

Scott Woodruff:
The issue is not whether he appeared in court, but whether he had a fair chance to present his side of the story after being accused. The Division filed a petition accusing him of neglect and soon thereafter dismissed it. He never had a chance to fully present his side of the story. He never had a chance to get a judicial resolution declaring him either to be a negligent or nonnegligent parent. There was no finding against him that honored due process procedures. Despite that, the Division sought to terminate his rights. I commend the Nevada Supreme Court for protecting that father's due process rights, hinging again on parents' rights being fundamental.

You are correct in saying that Nevada currently honors parents' rights as fundamental, but there is literally nothing to prevent Nevada from becoming the next Nebraska, where parents' rights have been downgraded. If the Legislature continues to be silent on this subject, there will be a gap, a vacancy, into which a judicial philosophy can move in and downgrade parental rights to ordinary as has already happened in Nebraska.

Chairman Frierson:
I do not think anyone would have an issue if this bill only said that parental rights are fundamental rights. If the bill said that, this would probably be a two-minute hearing. It is clear that it goes beyond that.

Scott Woodruff:
The concept "of the highest order" dates back to *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Interestingly, the Nevada Supreme Court used that exact same standard two months ago. They were discussing a case of possible judicial conflict of interest where a party had donated to a judge's campaign reelection fund, and the other party to the divorce challenged the judge to step down. The judge refused. That party filed a lawsuit. The Nevada Supreme Court in the case of *Ivey v. District Court*, 129 Nev. Adv. Op. No. 16, 299 P.3d 354 (2013) said that even though the father had made a contribution, that did not disqualify the judge. In the process, they said that the integrity of the judiciary is a state interest "of the highest order." I mention that just to say that the court system knows what that phrase means, they know how to use it, they

know what things are "of the highest order." They did not pull this out of thin air. The Nevada Supreme Court has used this nomenclature before.

Chairman Frierson:
While it has been used before, it has not been used in the context of parental rights. Am I right?

Scott Woodruff:
That is correct.

Assemblyman Duncan:
Did you say that "of the highest order" language has not been applied to parental rights, or it has in that Supreme Court case?

Scott Woodruff:
It has not been applied in Nevada to a parents' rights case. These are cognate ideas. The idea of the state having a compelling interest and the idea of the interest being "of the highest order" are somewhat synonymous. Some cases will speak in terms of "in the highest order," other cases will speak of "a compelling state interest." They are somewhat cognate terms.

Assemblyman Duncan:
The initial argument was the Legislature is going to determine that it is a fundamental right as opposed to an ordinary right. If we are affirming the court's interpretation of parental rights by saying that it is a fundamental right, why does that not do the trick?

Scott Woodruff:
Certainly, the bill could be worded a little differently. Other states have parental rights statutes that are worded somewhat differently. If there is a suggestion for an amendment to tweak the language, we could definitely consider that.

Assemblywoman Cohen:
Where does the best interest of the child standard fall into this?

Scott Woodruff:
The best interest of the child standard has been created during the time when it is universally recognized that parents have fundamental parental rights. The two work in perfect harmony. Parents' rights being fundamental works in perfect harmony with the best interests standard.

Assemblywoman Cohen:
How would that work in practice? In effect, you could have two conflicting interests—the best interest of the child versus the fundamental rights of the parents.

Scott Woodruff:
In the case *In re A.G.*, the Nevada Supreme Court also confirmed what the U.S. Supreme Court has said ever since *Parham v. J.R.*, 442 U.S. 584 (1979), which is that parents are presumed to act in the best interests of their children. That is a presumption the Supreme Court has given us and the Nevada Supreme Court reiterated two or three months ago. When you get into a situation where that presumption no longer applies; for example, if a parent has been found negligent or abusive, or if there is a divorce and the parents' rights are equal, then we go back to the best interests of the child. That then becomes the controlling principle because we do not have a parent with the same fundamental rights that would benefit from the presumption that is described in *Parham v. J.R.*

Chairman Frierson:
I hope that someone from the Nevada District Attorneys Association is planning on testifying to provide some clarification. My understanding is that the best interest of the child is always paramount. I will get clarification from the District Attorneys Association on that.

There has been an amendment proposed. Have any of you seen the proposed amendment, which I believe is from the Division of Child and Family Services?

Scott Woodruff:
Yes, we have.

Chairman Frierson:
Do you consider that a friendly amendment? Do you consider that acceptable?

Scott Woodruff:
We are still evaluating that.

Chairman Frierson:
I will, of course, give Senator Denis an opportunity to address that in closing. Are there any other questions at this time? [There were none.]

Stephanie Schnorbus, Private Citizen, Reno, Nevada:
I am here in favor of S.B. 314. My doctorate is in history and I specifically studied the history of American education with an emphasis on primary

education and parental choices regarding schools before the common school era—what schools were there, how were they choosing to support them, where did they send their children. I studied under Carole Shammas, who quantitatively studied household government, which basically covers the rights of the heads of households and their dependents throughout American history. I actually indexed her book on that over a summer.

I am not here on behalf of anyone. I am here just as a concerned citizen. I have studied some related things, although not law. I have studied education, parental choice, and household government. I also teach, and I have studied the fight over the ratification of the *United States Constitution*. Part of that fight was resolved in favor of the *Constitution* by saying that the states would have the ability to create the Bill of Rights that would protect rights that the authors of the *Constitution* felt there was no need to protect, because they were obvious. People were concerned that things would come up in the future that would impinge on those rights. We now have the Bill of Rights and that obviously has been a very important part of our history. I agree that this bill fits with the historic understanding and with the spirit of American history as far as parental rights are concerned.

Barbara Dragon, representing Nevada Homeschool Network:
We are talking about the courts and judges and with parents facing problems with their parental decisions. We are not thinking about the parent at the time he or she is making the decision. Specifically, I refer to medical decisions in a doctor's office, or in a hospital at the birth of a child such as Senator Denis referred to. My concern is that I am a grandmother now, and I raised three boys. I took all of my children to the doctor's office for well-baby checkups the first year, and annual checkups every year until they became adults. There is a fear today that was starting when I was a young mother, but now I am seeing it. I work with many young parents who are afraid to go to the doctor or the hospital because they fear someone will accuse them of doing something wrong. That is a great concern to me because I believe parents should take their child to the doctor if they are injured. They should not have a fear of being accused of doing something wrong. I reassure them that they have a fundamental parental right.

I will tell you a story. I live in Douglas County and was driving up Highway 395. I wanted to make a turn at Johnson Lane, but there was a red light so I stopped. The cars coming southbound turned onto Johnson Lane. I waited. Then the cars on Johnson Lane that were going southbound came out and made their turn. I proceeded on a red light to make a right-hand turn. Immediately, flashing lights went on and I was pulled over by a highway patrol person. She asked if I knew that I had made an illegal right-hand turn on a red

light. I had been making this turn often. I told her I was sorry and asked if it was posted. She told me that it did not need to be. I asked if that was a new law and asked about the law in *Nevada Revised Statutes* that says it needs to be posted "No Right Turn on Red." She turned around, told me not to do it again, and walked away. What did I do? I used the *Nevada Revised Statutes* to stop from being accused of something that I did not do wrong.

Chairman Frierson:
I know you are telling a story and I hate to interrupt, but I need to get to the bill and that is about a traffic stop.

Barbara Dragon:
The point is, when a parent is in a hospital, they know they have constitutional rights. When social workers face them, or nurses want them to make a different decision—for example, to have a jaundice test in the hospital versus taking the baby home for natural treatment under a window light—if they can refer to statute, it would help parents know that they have the right to make these decisions. They do not have the right to abuse and neglect their children, but they have the right to make the reasonable decisions.

Assemblywoman Fiore:
Are you saying you are finding people of authority or people in positions at hospitals are not following Health Insurance Portability and Accountability Act (HIPAA) laws that are telling them they have to disclose the choices?

Barbara Dragon:
I am confused because HIPAA laws protect you from the doctor disclosing unauthorized information.

Assemblywoman Fiore:
In addition, when you are in a hospital, and you are a new parent, the doctors and nurses that are giving you their opinion could say they would not want you to leave the hospital; however, you can leave without their permission. They have to disclose what you are able to do.

Barbara Dragon:
Correct. In the Summerlin situation that happened in 2011, they have to tell you what is available treatment-wise for your child. In this case, the pediatrician signed off on releasing the child saying he could go home. There was an intensive care nurse who did not agree with that and called CPS. At that point, CPS called the police and the police came before CPS who then put the baby on police hold. This is a young couple in their 20s that did not

know their rights and all of a sudden, the pediatrician has lost the authority in making that decision. He had signed off on that child leaving.

Assemblywoman Fiore:
We have to make things clearer. That seems to be a huge problem. I understand that point.

Lynn Chapman, representing Nevada Families for Freedom:
Years ago when my daughter was a baby, I heard the state superintendent of schools say that the parents are the guardians of the children; they house and feed them, but the state owns them. That chilled me, and I decided at that point that I was going to home school my children, which I did. My daughter was not able to have vaccinations because she had seizures. When she was a senior, she wanted to take a Japanese class at the high school. Since I could not teach Japanese, I thought I would send her to the high school. All I did was write a letter, signed by my husband and me, saying that she could not have vaccinations. We took it to the school nurse, which was the procedure at that time, and she was excused from having vaccinations. There is a way to take care of that. It was a parental right to decide to home school and for my child to not have vaccinations. We do need to have parents in control of their children and the decisions that need to be made for their families.

[Vice Chairman Ohrenschall assumed the Chair.]

John Wagner, representing the Independent American Party:
I am a parent, a grandparent, and a great-grandparent. As a parent, I believe the parent is responsible for the child. If the child gets into trouble and vandalizes his brother's or sister's room or his neighbor's property, or there may be some civil things involved, generally the parent is responsible for that child up until the time he is 18 years old. The parents should have some kind of leeway to discipline the child without anyone interfering. Obviously, you are not going to do corporal punishment or break his bones or anything like that, but you may want to ground him for a month. He may be the star player on the high school football team—too bad kid, you are grounded for a month; season is over, that is too bad for you. I think the parents should have some legal rights. As a grandparent and a great-grandparent, I have never interfered with the way my grandchildren or great-grandchild have been raised. I think it is their parent's responsibility. I may not like it, but I go along with it as long as there is no physical abuse.

[Chairman Frierson reassumed the Chair.]

Janine Hansen, representing Nevada Eagle Forum:
Eagle Forum, nationally and in the state of Nevada, has been very engaged in protecting parental rights. In fact, it was Eagle Forum nationally that was responsible for getting the Family Educational Rights and Privacy Act through the United States Congress. In addition, we were able to get it through the Nevada State Legislature.

I want to follow-up with a personal example on immunization. When my daughter was a baby and got a pertussis vaccine, she had a temperature of 105 degrees and stopped breathing. I was able to resuscitate her and we called the paramedics. Luckily, there was no permanent harm. As the result of that, I had to have her excused from the pertussis vaccine when she was in school and we had to continue to watch that sensitivity in order to protect her life. When her baby was born in the hospital, I was there with her and she signed the form that her daughter should not get the vaccine that was to be given in the hospital. The hospital disregarded her authority as a parent and gave the child the vaccine anyway.

These instances of ignoring the fundamental right of parents to determine these things do happen. That is critical because I almost lost my own daughter because of a particular vaccine. We need to be sure that parents feel secure, and that they do have the right, with the state behind them, to make these important decisions.

Chairman Frierson:
Are there any questions for Ms. Hansen? [There were none.] Is there anyone else in Carson City who wishes to testify in support? [There was no one]. I will go to those in Las Vegas who wish to testify in support.

Elissa Wahl, representing Nevada Homeschool Network:
I am an education advocate and a parents' rights advocate. Truly, I advocate for many things pertaining to parents. My desire is to strengthen the family unit, thereby strengthening our community and our educational system.

Parents do not know they have many rights. They think the doctors, the school, and the state are the end-all, be-all. This is backwards. Parents are the ones that should be making the decisions for their children and our state Legislature should enable them to do that. As an advocate, I would love to be able to say Nevada wants you to be responsible for your children because they recognize your fundamental right to direct your child's upbringing.

It is important for you to know that in the Senate, we talked about *Troxel*, immunizations, and the Clark County School District is on record acknowledging

that shots are not required for school. This is propaganda; it is meant to subordinate our desires as parents. I mentioned in the previous Senate hearing that here in Clark County there are billboards that say, "No shots, no school." It comes out in the *Las Vegas Review-Journal* every August. It is not law. Law says the public school, the private school, the day care, or whatever, needs to have the child's shot file on record, or a written statement from the parents claiming a religious exemption, or a medical waiver from the doctor. I want to put that immunization question to rest.

Do we want to be proactive or reactive? How easy would it be if the Nevada Supreme Court came down with a decision against parental rights as Nebraska has done? How easy would it be for you, for any court to go against another court's decision? I would rather we mirror in our state law what the Supreme Court has said and what we all agree to, that parental rights are fundamental rights. I want that in our Nevada law so we can stand sure of our parental rights here.

We also talked about the testimony for the grandparents' bill. I think the grandparents' bill came before you, and we talked a lot about *Troxel* there. If you remember, one of the attorneys, Kimberly Surratt, spoke and said that *Troxel* is the standard, and Nevada is nowhere near that standard. If we let the grandparents' bill go forward, we would be further from the standard of parental rights. Of course, you all said that was not constitutional, parental rights are the standard that need to be upheld, and that bill died in your Committee. Do we want to remain further from *Troxel*, or do we want to move closer to *Troxel*? I think we want to go closer.

I do support S.B. 314 and I would like to see this mirrored in our Nevada state law.

Robert A. Conway, Private Citizen, Las Vegas; and representing Ironworkers Local 433, Las Vegas, Nevada:

I represent Ironworkers Local 433, but this morning I am speaking for myself as a parent. Earlier when this bill was introduced, someone pointed out a case of jaundice where the nurse did not want to let the parents take the child home. I ran into something similar to that. My daughter was born six weeks premature. We got to take her home a couple of days later. After she had been home a day and a half, her temperature dropped from 98 degrees to 95 degrees, so we took her to the hospital. After they worked on her for several hours, they asked me to sign a release for a spinal tap, which I did. I thought my wife or I was going to be able to witness the procedure, but they told me that would not happen. They walked by with the tray that had the needle which was as big as my foot, at least 10 or 12 inches long. I told them

that I would like to change my mind, because I did not want my daughter to be subjected to that needle. I told them whatever the test was going to tell them, to assume the worst, and if she needed antibiotic X or Y, just go ahead and give her that and forget the shot. They told me that would not happen because I had already signed the release. I advised them I would take my daughter and leave. They responded that if I persisted they would get security and the police and have me arrested. They proceeded to do the procedure on my daughter after I refused to allow them to do it.

I did not come in here to testify on this bill; I happened to be in here for something else. After I heard Senator Denis' statement regarding jaundice, it struck a chord that went along with what I just described to you. If any of you have children, imagine sitting there and going through what I just described and deciding this is what you would not like to do and then the doctor telling you that they are going to have you arrested if you do not allow them to continue with what they intend to do. This was also at the Summerlin Hospital in September 2006. I support this bill, and I hope this persuades you a little in that regard.

Chairman Frierson:
I want to make it clear that you are testifying on your own behalf today. Am I correct?

Robert Conway:
I am testifying on my behalf and as a representative for Ironworkers Local 433. I am sure there are many parents in my association who feel just as I do.

Chairman Frierson:
I want to be sure to delineate whether you are representing a position of Ironworkers or not.

Robert Conway:
I am representing a position of the Ironworkers, but I wanted to point out that I also had a personal experience almost identical to what the presenter of the bill experienced.

Ruth Parker, Private Citizen, Las Vegas, Nevada:
I am here as a parent. I believe that parents have a fundamental right to choose the upbringing, education, and care of their children. I feel like their rights are being abused in other places, and I would love to have it on our laws in Nevada so that abuse of parents' rights will not be happening here like it is elsewhere. I appreciate our state Senate who passed this bill unanimously, and I ask this

Committee to also pass this bill so it can be presented to the whole body and become law in Nevada.

Chairman Frierson:
Is there anyone else in Las Vegas offering testimony in support? [There was no one.] Is there any testimony in opposition in Carson City?

John T. Jones, representing Nevada District Attorneys Association; Clark County Department of Family Services; and Clark County Department of Juvenile Justice Services:
This bill attempts to codify the Unites States Supreme Court case law regarding the fundamental rights of parents. I do not think you will hear anyone in this room or anyone who is knowledgeable of this situation say that parents do not have the fundamental right to raise their children; they do. In fact, the *Troxel* decision has been discussed at length today, and I want to point out that the decision said that parents have had fundamental rights since the '20s, which was when the Supreme Court first started stating statutes fact.

This bill does not just codify that parents have fundamental rights; it goes beyond that. Right now, the Supreme Court says that because parents have fundamental rights, when looking at a parent's rights case, they apply what is called the strict scrutiny test. That test means that the government action must be necessary to achieve a compelling state interest, and that interest must be narrowly tailored to achieve the intended result. When the Supreme Court gets a case involving parental rights, that is the standard it is going to apply.

This bill goes beyond that and says, "a compelling governmental interest that as applied to the child involved, is of the highest order." If I am an attorney and want to sue, I am going to argue something to the effect that the United States Supreme Court sets the floor; in other words, compelling state interest narrowly tailored to achieve the intended result. The Nevada Legislature is free to change that standard to anything higher than that. Our position is that by adopting S.B. 314, you are raising a standard that is higher than what the Supreme Court has set.

I want to talk specifically about the Department of Juvenile Justice Services. We had 11,000 unique youths flow through the Department of Juvenile Justice Services last year. Does that mean for those 11,000 cases, every time we are going to have to prove our actions are of the highest order as applied to the child? Lack of clarity and unknowns in law are what drive litigation. It is our position that "of the highest order" is not a legally defined term. There may be instances in which the Supreme Court has used that term, but it does not mean it has any real basis in law. Just because the Supreme Court uses that

nomenclature, it does not mean it is some sort of legal doctrine that a judge is going to know how to apply. For example, probable cause is a standard in almost every courtroom in the United States a judge is going to know how to apply; beyond a reasonable doubt, same thing; clear and convincing evidence, same thing; of the highest order, no idea.

Our concern is that this will increase litigation, increase litigation costs, and hinder our ability to provide for both the safety and welfare of children in the Child Welfare Division and the juvenile justice system. If Committee members have any questions, I will be happy to answer them.

Assemblywoman Cohen:
Were there appeals from the United States Supreme Court to the case mentioned earlier in Nebraska?

John Jones:
I am not familiar with the Nebraska case so I cannot comment on it. I would be happy to review it and get back to you.

Assemblyman Wheeler:
You said that you have a problem with the language "of the highest order." You then referred to probable cause, clear and convincing evidence, and reasonable doubt as terms the court understands. When the original Congress put those phrases into law for the first time, do you think someone said that they do not know what they are?

John Jones:
I understand your point. I will say that many of these doctrines have been developed over centuries; some of them were brought over from England. Many of them predate even our country.

Assemblyman Wheeler:
You are saying they did start somewhere, even centuries ago. Am I right?

John Jones:
Point taken, Assemblyman Wheeler. The issue is we do not want hundreds of years of litigation surrounding these cases in order to get commonly accepted meanings for those terms.

Chairman Frierson:
Mr. Jones, are you familiar with the amendment that has been submitted?

John Jones:
We have seen the amendment put forward by the Division of Child and Family Services, Department of Health and Human Services. The only change would be four lines into paragraph 1; we would recommend everything after governmental interest be deleted. That is, "applied to the child involved is of the highest order." That would be our recommendation. Other than that, we are supportive of the amendment.

Chairman Frierson:
Are there any other questions for Mr. Jones? [There were none.]

Kevin Schiller, Director, Department of Social Services, Washoe County:
From a fundamental rights perspective in parental engagement, in terms of our practice, both in statewide and statutory perspective, we are consistently engaging parents. I have heard discussions around education and medical, but what I would emphasize to you with the 700-plus children we have in custody, every decision we make, whether that child is on a psychotropic medication, changing schools, or changing foster parents, those are all part of our inherent practices as we continue to work with parents towards reunification. The one thing that I would highlight when you get into discussing termination of parental rights, from a percentage standpoint, we reunify over 90 percent of the cases we inherit. The difficulty we face in an agency is one day we may be removing a child based on abuse and neglect, and then on day two we are talking about how we get the child home.

I think it is hard to communicate to the Committee in terms of what that daily practice looks like, how we case plan, how we talk to parents, and how we receive information. There is a whole layer of court oversight. I have heard a lot of discussion around medical procedures, blood transfusions, and those types of issues. I can tell you from a practice standpoint in a child welfare agency, if we remove a child, we go to court. We have a standard and time frames we have to meet.

Child welfare practice has grown. If you go back from the '70s to current, it used to be in our practice we would remove children, and then we would work on the alternatives. We have seen a shift from that perspective to what the alternatives are before we ever remove the child. How do we do essentially deferred status? How do we keep the children in their home? In terms of where we head with this, and in the terms of termination of parental rights, it is equated to the death penalty. When we approach these cases in terms of how the decisions are made, often if we have a disagreement with a parent, that moves forward into a court process.

The Committee Chairman highlighted the best interest discussion. I think that is the inherent issue. We have a public defender as a check and balance that may be representing the parent, we have a children's attorney that may be representing the child, and then you have the agency. You have a delicate balance among those three.

I want it on record that we support the fundamental right of a parent. We do not have a choice. We are regulated to do so, but I can tell you from a success standpoint if we did not, we would not be able to reunify over 90 percent of our cases. I give you that not so much in a persuasive manner, but to give you an educational background in terms of what we do as an agency as you evaluate this bill. I will put on record that I support the amendment put forward by the Division of Child and Family Services as it is written.

Chairman Frierson:
Are there any questions? [There were none.] We are getting to the point where I ask if folks can agree on the record and we can get as many names in as we can.

Jennifer Batchelder, representing the Nevada Women's Lobby:
We understand the intent of the bill, but we feel that placing parental rights in statute is unnecessary and could have various unintended consequences that would be far reaching. We feel the language of the bill could be potentially interpreted as overbroad, and without specific definitions for terms such as parent, upbringing, and care, enough room could be left open for the interpretation by some to protect some forms of child abuse or neglect, and question the rights of someone other than the biological parent who could be raising a child.

We also have various concerns the Committee members mentioned regarding the hierarchy of parental rights in cases of divorce and custody. We feel that the bill could call into question Nevada's safe haven statutes and have serious implications for minors seeking emergency medical services.

We support the fundamental rights of parents; we just do not feel it needs to be codified.

Stacey Shinn, representing the Progressive Leadership Alliance of Nevada:
We are here in opposition to S.B. 314. Maybe I can get some bonus points by saying, me too.

Chairman Frierson:
Is there anyone else wishing to testify here in Carson City? [There was no one.]

In Las Vegas, is there anyone there wishing to testify in opposition?

Allen Lichtenstein, representing American Civil Liberties Union of Nevada:
We are in opposition to this bill as written (Exhibit J). The idea that parental rights are fundamental rights as written and reiterated by the United States Supreme Court and the Nevada Supreme Court, simply said that there would probably be a terminative hearing.

This hearing began with the sponsor talking about all of the things that were not intended that people saw in this bill. That is one of the problems. The intention may be different from the actual language. The actual language does cover all those areas.

In speaking of a fundamental right, the right of a child to be protected is a similar fundamental right. Sometimes in law, different rights are in conflict. This particular bill, particularly with the language "of the highest order," gives the impression of that and states that parental rights are paramount even to the rights of the child. We have heard numerous anecdotal cases which are horror stories of times where rights such as due process were violated. We are told now the situation is not a problem because parental fundamental rights do exist. This is supposed to be some prophylactic measure to avoid problems. Obviously, problems will still exist.

It is also very important to understand the state does have responsibility to protect those who cannot protect themselves—children. Unfortunately, there are situations where parents believing in their own parental rights end up violating the rights of their children who are defenseless. We can tell many horror stories about children who did not get the medication they needed and became seriously ill or died. To make the argument that somehow or other parental rights should trump the rights of the children and the state should stay out of it except in the most dire circumstance, which that language essentially says, many children who are in bad situations and need protection, but it is not the most dire circumstance, would be left out. A statement that parental rights are fundamental would not cause any problem. The American Civil Liberties Union (ACLU) has fought for that but, in particular circumstances, those rights have to be balanced with the rights of the children and the responsibility of the state to protect those rights.

Assemblywoman Cohen:
Do you know the answer to the questions about the appeals in Nebraska? Was there an appeal to the Supreme Court from the Nebraska case?

Alan Lichtenstein:
I am not familiar with the Nebraska case. Since I am not familiar with it, hearing a particular phrase taken out of context out of a case does not mean very much. I would have to read the entire case to see the context. *Troxel*, which was the Supreme Court case and is the supreme law of the land, has mentioned fundamental rights. No state can overturn a principle of the United States Supreme Court. I would be very curious to see exactly what that case said.

Chairman Frierson:
Are there any other questions? [There were none.]

Jill Marano, Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services:
As has been discussed, we did put forward an amendment (Exhibit K). While we support the basic premise of this bill, we do have concerns that the language is too vague and that it would impede the child welfare agency's ability to perform their duties to protect children. We have heard a lot of testimony to say that is not the intent. We would be more comfortable if we could include it in the law so it is not just on the legislative record.

Chairman Frierson:
Were you able to provide your amendment to the sponsor of the bill?

Jill Marano:
We did provide the same amendment when it was in the Senate, but the sponsor did not accept it at that time.

Chairman Frierson:
Are there any questions for Ms. Marano? [There were none.] Is there anyone else wishing to offer testimony in opposition? [There was no one.] Is there anyone wishing to offer testimony in a neutral position, either here or in Las Vegas? [There was no one.]

I invite Senator Denis back up for any closing remarks. I am curious whether the proposed amendment serves the purpose of clarifying the bill and restating parenting is a fundamental right.

Senator Denis:
This is the first I have seen this.

Chairman Frierson:
This was not provided in the hearing in the Senate?

Senator Denis:
We did not have this in the hearing in the Senate that I am aware of, or else we would have looked at it.

I am asking the Legislature to make a statement about parental rights. I am a father and a grandfather. There is not anything in any of this where I am saying I do not want children protected; as a parent, it is my number one duty to protect my children. I am asking the Legislature to make a statement. I am not a lawyer, and I do not know of a simpler way to make that statement. I know cases have been talked about and what the future might or might not hold and whether we should do something based on something that could happen. We do that all the time in this body. We want to make a statement about the issue and that we think parents are important.

I started out earlier about getting involved in education as a parent. In my advocacy and research over the last 23 years when my daughter started kindergarten, I found that parents are the number one success factor in education. If a parent is not part of that, then we have to make up all of that with everything else. In many cases, you go into a school, and they do not want the parents there. Yet they want it to be the parent's responsibility to do things with the child, but when the parent wants to come in and be a part of that, sometimes they will not allow it. Many schools do; I will not say that it is all of them.

That is the genesis from where some of this came. I want to make sure that the rights for parents are protected and the children are protected. I appreciate and understand that valid situations and public entities need to intervene in the interest of the greatest good. I think, however, just as the rights of parents are fundamental, the duty we have as lawmakers to protect liberties of parents and families are equally fundamental. As I mentioned, if there are some things we could work out, I would be happy to do that.

We looked at bills that are sometimes only one sentence or two paragraphs. Sometimes they take a minute to hear and sometimes they take a long time, like today. You never know. If it were not important enough for me to do this, I would not do this as I have plenty of other things to do during the Legislature and during the session. If we can work something out here, I would be glad to do that.

Chairman Frierson:
I ask that you look at that amendment. You and I spoke yesterday or the day before, and I provided you with some thoughts. If you could let me know

where you are on that, and if there are some areas of common ground, I think that will help us on getting directions on where to go.

Assemblywoman Fiore:
Thank you, Senator Denis, for bringing the bill forth. I really do like the bill, and I want to support it as it protects the children. I think it would be a great bill.

[Exhibits submitted but not mentioned earlier include (Exhibit L), (Exhibit M), (Exhibit N), (Exhibit O), and (Exhibit P).]

Chairman Frierson:
I will close the hearing on S.B. 314. We will now proceed with our work session. We have eight measures on the work session.

Senate Bill 60 (1st Reprint): Revises various provisions relating to businesses. (BDR 7-380)

Dave Ziegler, Committee Policy Analyst:
The first bill on the work session is Senate Bill 60 (1st Reprint), sponsored by the Senate Committee on Judiciary on behalf of the Secretary of State. It was heard in this Committee on May 6, 2013. The bill relates to state business licenses, registered agents, and various types of business associations, including private and nonprofit corporations, limited liability companies, partnerships, business trusts, and others. [Continued to read from (Exhibit Q).] There are no amendments.

Chairman Frierson:
Is there any discussion on the bill?

Assemblywoman Fiore:
Mr. Ziegler, can you clarify what type of penalty the "not less than $1,000 and not more than $10,000" is?

Chairman Frierson:
Could you point out the section?

Assemblywoman Fiore:
It was in Mr. Ziegler's statement.

Chairman Frierson:
I am looking at section 50, on page 55, and section 2 as well. I see that Ms. Lamboley is here. We ordinarily do not allow testimony during work session, but could you provide some insight?

Nicole Lamboley, Chief Deputy, Office of the Secretary of State:
This provision in the law relates to if someone is determined to have willfully refused to obtain a state business license after it was proven they were in error and given the opportunity to correct that error. There is a due process. This would be consistent with other provisions in Title 7 and was left out when NRS Chapter 76 was instituted into Title 7 a few years ago.

Chairman Frierson:
In section 50, that same language is already in statute on page 55. The genesis of this bill was to deal with Nevada's reputation for being easy to circumvent the rules, and our wanting to tighten those rules.

Nicole Lamboley:
That is correct, Mr. Chairman.

Assemblywoman Spiegel:
I want the Committee to know that I sent some questions to the Secretary of State's Office, and I have not received a reply yet. I will vote yes, but I want to reserve my right to change my mind.

Assemblyman Carrillo:
Ditto to Assemblywoman Spiegel's comment.

Chairman Frierson:
I believe Mr. Wheeler, Ms. Fiore, and Mr. Duncan share the same sentiment. For the record, you all reserve the right to change your vote. I ask that you let me know. Are there any questions or comments? [There were none.] I will seek a motion to do pass.

> ASSEMBLYWOMAN DIAZ MOVED TO DO PASS SENATE BILL 60 (1ST REPRINT).
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Ohrenschall will do the floor statement. Next on the work session is Senate Bill 105.

Senate Bill 105: Enacts the Uniform Electronic Legal Material Act. (BDR 59-168)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 105 was sponsored by the Senate Committee on Judiciary and was heard in this Committee on May 1, 2013. Senate Bill 105 enacts the Uniform Electronic Legal Material Act to provide for the authentication, preservation, and security of an electronic record of legal materials. The measure defines legal materials as the *Nevada Constitution*; the *Statutes of Nevada*; the *Nevada Revised Statutes*; and the *Nevada Administrative Code*. The measure defines the official publisher of these documents as the Legislative Counsel Bureau (Exhibit R). There were no amendments.

Chairman Frierson:
I will seek a motion to do pass.

> ASSEMBLYMAN WHEELER MOVED TO DO PASS SENATE BILL 105.
>
> ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Wheeler will handle the floor statement. Next on our work session is Senate Bill 110.

Senate Bill 110: Revises provisions relating to the Uniform Commercial Code. (BDR 8-873)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 110 was sponsored by Senators Kihuen and Segerblom and was heard in this Committee on April 26, 2013. It has to do with the Uniform Commercial Code (UCC). This bill enacts an amendment to Article 4A of the Uniform Commercial Code, promulgated by the Uniform Law Commission and the American Law Institute. [Continued to read from (Exhibit S).]

The testimony on this may have been a little dense and hard to follow. My understanding is that Article 4A of the Uniform Commercial Code, which is a state law, concerns mainly transfers of payments between commercial parties, whereas the federal law, the Electronic Fund Transfer Act (EFTA), is mainly concerned with consumer transfers, including transfers by foreign workers to their families in their home countries. This bill tries to create a line in between the state UCC and the federal EFTA. There were no amendments.

Chairman Frierson:
Are there any questions or discussion on the bill? [There were none.] I will seek a motion to do pass.

> ASSEMBLYMAN CARRILLO MOVED TO DO PASS SENATE BILL 110.
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Spiegel will handle the floor statement. Next on the work session is Senate Bill 140 (1st Reprint).

Senate Bill 140 (1st Reprint): Revises provisions relating to a lien for attorney's fees. (BDR 2-558)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 140 (1st Reprint) was sponsored by Senator Segerblom and was heard in this Committee on May 3, 2013. This bill provides for the creation, perfection, and attachment of a "retaining lien" for attorney's fees, and provides that a court may adjudicate the rights under such a lien at the request of the attorney having the lien or any party who has been served with notice of the lien. [Continued to read from (Exhibit T).]

Chairman Frierson:
Is there any discussion on this bill? I will seek a motion to do pass.

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 140 (1ST REPRINT).
>
> ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Dondero Loop will handle the floor statement. Next we have Senate Bill 189.

Senate Bill 189: Revises provisions governing assault and battery. (BDR 15-917)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 189 was sponsored by Senator Jones and was heard in this Committee on April 16, 2013. This bill expands the definition of a "provider of health care" to include a medical student, dental student, dental hygienist student, and pharmacy student for purposes of enhanced penalties for the crimes of assault and battery against such a person (Exhibit U). There were no amendments.

Chairman Frierson:
Is there any discussion on this bill? [There was none.] Is there a motion to do pass?

> ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 189.
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Assemblyman Duncan will handle the floor statement. Next we have Senate Bill 237 (1st Reprint).

Senate Bill 237 (1st Reprint): Revises provisions governing certain graffiti offenses. (BDR 15-71)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 237 (1st Reprint) was sponsored by the Senate Committee on Judiciary and heard in this Committee on April 25, 2013. Senate Bill 237 (R1) relates to the crime of placing graffiti or otherwise defacing public or private property. The bill revises the definition of a "protected site" to include any site, building, structure, object, or district listed in: [Continued to read from (Exhibit V).]

Chairman Frierson:
Are there any questions or discussion about this bill? I will seek a motion to do pass.

> ASSEMBLYMAN THOMPSON MOVED TO DO PASS SENATE BILL 237 (1ST REPRINT).
>
> ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

Assemblywoman Cohen:
I am going to vote for this bill, but I am going to reserve my right to change my vote. While I love protected sites and do not want to see them harmed, I am concerned about the person who is not realizing they are tagging something that is special to our communities.

Chairman Frierson:
Is there any other discussion?

Assemblyman Ohrenschall:
I am going to join Ms. Cohen and reserve my right as well.

Chairman Frierson:
I am always hesitant when we are dealing with discretion, but there is some. That gives some solace, but I understand the concerns. Is there any other discussion on the motion?

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Thompson will handle the floor statement. Next on our work session is Senate Bill 420 (1st Reprint).

Senate Bill 420 (1st Reprint): Revises provisions relating to the issuance of subpoenas. (BDR 14-1108)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 420 (1st Reprint) was sponsored by the Senate Committee on Judiciary and heard in this Committee on May 3, 2013. This bill relates to criminal procedure. The bill authorizes a prosecuting attorney or defense attorney to issue subpoenas for witnesses to appear before a court for a preliminary hearing. [Continued to read from (Exhibit W).]

Chairman Frierson:
As I recall, this was the language put together by the stakeholders and was deemed acceptable to further their intentions in the bill. Are there any other questions or comments on the bill itself? Seeing none, I will seek a motion to do pass.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS SENATE BILL 420 (1ST REPRINT).

ASSEMBLYMAN DUNCAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Fiore will handle the floor statement. Our last bill on the work session is Senate Bill 441 (1st Reprint).

Senate Bill 441 (1st Reprint): Makes various changes to provisions governing business entities. (BDR 7-166)

Dave Ziegler:
Senate Bill 441 (1st Reprint) was sponsored by the Senate Committee on Judiciary and heard in this Committee on May 6, 2013. This bill makes various changes governing business entities, including private corporations, foreign corporations, nonprofit corporations, limited liability companies, and partnerships. [Continued to read from (Exhibit X).]

Chairman Frierson:
Is there any discussion on the bill? Seeing none, I will seek a motion to do pass.

ASSEMBLYMAN CARRILLO MOVED TO DO PASS SENATE BILL 441 (1ST REPRINT).

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Martin will handle the floor statement.

Thank you for your patience and the Committee's hard work getting through 17 bills this week. I will open it up briefly for public comment.

Chairman Frierson:
Today's Committee on Judiciary is now adjourned [at 12:18 p.m.].

RESPECTFULLY SUBMITTED:

_____
Dianne Harvey
Committee Secretary

APPROVED BY:

_____
Assemblyman Jason Frierson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2013 **Time of Meeting: 8:13 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 346 (R1)	C	A.G. Burnett, Chair, State Gaming Control Board	Proposed Amendment
S.B. 425 (R1)	D	Senator Tick Segerblom, Clark County Senatorial District No. 3	Presentation Slide
S.B. 425 (R1)	E	Alfredo Alonso, representing the Nevada Pari-Mutuel Association	Proposed Amendment
S.B. 418 (R1)	F	Senator Tick Segerblom, Clark County Senatorial District No. 3	Presentation Slide
S.B 314	G	Frank Schnorbus, Private Citizen, Minden, Nevada	Written Testimony
S.B. 314	H	Frank Schnorbus, Private Citizen, Minden, Nevada	Letter
S.B. 314	I	Scott Woodruff, representing Parentalrights.org	Written Testimony
S.B. 314	J	Allen Lichtenstein, representing ACLU of Nevada	ACLU Opposition Testimony
S.B 314	K	Jill Marano, Deputy Administrator, Family Programs, Division of Child and Family Services	Proposed Amendment
S.B. 314	L	Submitted but not discussed	Letter of Support from Frank Schnorbus
S.B. 314	M	Submitted but not discussed	Letter of Support from Cecilia Rogers
S.B. 314	N	Submitted but not discussed	Letter of Support from David A. Kallman
S.B. 314	O	Submitted but not discussed	Parental Rights Law Pamphlet

S.B. 314	P	Submitted but not discussed	Letter from William Duncan
S.B. 60 (R1)	Q	Dave Ziegler	Work Session Document
S.B. 105	R	Dave Ziegler	Work Session Document
S.B. 110	S	Dave Ziegler	Work Session Document
S.B. 140 (R1)	T	Dave Ziegler	Work Session Document
S.B. 189	U	Dave Ziegler	Work Session Document
S.B. 237 (R1)	V	Dave Ziegler	Work Session Document
S.B. 420 (R1)	W	Dave Ziegler	Work Session Document
S.B. 441 (R1)	X	Dave Ziegler	Work Session Document