

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Eighth Session
March 3, 2015**

The Committee on Legislative Operations and Elections was called to order by Chair Lynn D. Stewart at 4 p.m. on Tuesday, March 3, 2015, in Room 3142 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 www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Lynn D. Stewart, Chair
Assemblywoman Shelly M. Shelton, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Michele Fiore
Assemblyman John Moore
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Daniel Stewart, Policy Analyst, Assembly Leadership Office
Carol M. Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Patricia Hartman, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Jacob Hafter, Attorney, Las Vegas, Nevada
Jacob Reynolds, Attorney, Las Vegas, Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Lisa Mayo-DeRiso, Member, Citizen Task Force for Voter Rights,
Las Vegas, Nevada
Chris Hisgen, Private Citizen, Las Vegas, Nevada
Tom Jones, Private Citizen, Las Vegas, Nevada
Jim Sallee, Private Citizen, Las Vegas, Nevada
Vernon Brooks, Private Citizen, Las Vegas, Nevada
Mark E. Rowley, Private Citizen, Las Vegas, Nevada
Juanita Clark, Private Citizen, Las Vegas, Nevada
Clayton Kelly Hurst, Private Citizen, Las Vegas, Nevada
Megan Bedera, Private Citizen, Reno, Nevada
Janine Hansen, President, Nevada Families for Freedom
John Wagner, State Chairman, Independent American Party
Joseph P. Gloria, Registrar of Voters, Clark County
Maria Aguirre, Secretary/Treasurer, City of Henderson
Susan Merriwether, Clerk/Recorder, Carson City
Kelly Martinez, Government Affairs Officer, City of Las Vegas

Chair Stewart:

[Roll was taken.] We are considering Assembly Bill 177 today. This bill will be presented by two of our Committee members, Assemblywoman Seaman and Assemblywoman Shelton.

Assembly Bill 177: Revises provisions governing elections. (BDR 24-627)

Assemblywoman Victoria Seaman, Assembly District No. 34:

I am here today to present a bill that is both personal and necessary. With me is Assemblywoman Shelton, Vice Chair of this Committee. Both of us have personal experience with some of the wrongs this bill seeks to right, so we thought it would be appropriate to be together. Assembly Bill 177 has four chief goals. First, it ensures that no candidate for this Legislature is above

the law. Second, it removes the partisanship that has distorted the law. Third, it makes sure that only eligible candidates who actually receive votes in their district become members of the Legislature. Fourth, it promotes the spirit behind representative democracy in that an elected representative should be a member of the community he or she is elected to represent.

Perhaps most important of all, A.B. 177 makes it clear that no legislative candidate is above the law. Every legislative session, we members of the Legislature craft, revise, and create laws that we expect our fellow Nevadans to follow. We should not allow ourselves to ignore the laws we pass when it is politically convenient. Both the *Nevada Constitution* and state statute require an elected official to be a qualified elector in the district he or she represents. The problem with current law, however, is not necessarily its lack of appropriate restrictions, but the apparent lack of any remedy when the law is violated.

In the last two election cycles, three different candidates were declared ineligible for office by a district court judge. The fact that these candidates were ineligible by law this Legislature created does not seem to have concerned this Legislature. One of the candidates was seated anyway, and the other two candidates may have been seated had they won on Election Day. One of these candidates was my opponent in 2014. She was not eligible to represent Assembly District No. 34. Her declaration of candidacy contained false statements. Had I not won on Election Day, despite the time and expense of having a judge rule that she was ineligible for office, she could have ended up representing Assembly District No. 34 anyway. That would have been an injustice.

The same thing occurred in Assemblywoman Shelton's race. Allowing ineligible candidates to serve is wrong and sends the wrong message. When we ignore the laws that apply to us, we tell our fellow Nevadans that we are above the very laws we help write. This bill will prevent that injustice and will ensure that our laws apply to all Nevadans without exception.

Goal two is the partisan problem. One of the problems with current law is that it puts the fox in charge of the hen house. How the laws apply depends on the partisan makeup of this body. If Democrats are in charge, they will vote to seat Democrats, even if the Democrat at issue was declared ineligible. I have no reason to think that Republicans would not do the same when faced with similar options. Should A.B. 177 become law, a candidate's eligibility to run for office will no longer be treated as a political football. The law will not change depending on the political affiliation of the candidate or the party in the majority. What it will do is close the loophole of partisanship.

Goal three is that only eligible candidates win. This bill will make sure that only the eligible candidate who received the most votes in the election will win. Members of the district will be assured that their representative is not only eligible for the office but was also the eligible candidate who received the most votes. Rather than turn the process over to the county commission to appoint someone who was never vetted during the campaign, the law will award actual eligible candidates who received votes.

Goal four is better representation. Assembly Bill 177 will also promote better representation. The *Nevada Constitution* requires representatives to come from the districts they represent. Such a requirement recognizes the value in having a representative who shares the concerns of his or her constituents. A representative who comes from the community he or she lives in has a better understanding of the needs of the district. No one knows the people in the neighborhood of a district better than someone who lives there. This is one of the reasons I also want to increase the residency requirements for candidates running for office. Asking candidates in Nevada to spend two years and six months in their districts before they run is not only sensible, it is well within the range of such requirements throughout the 50 states. That is in the amendment we are putting forth ([Exhibit C](#)). In fact, even with these added demands, Nevada will still have some of the lowest residency requirements in the nation.

At this time, Assemblywoman Shelton will present the bill, and then Daniel Stewart will go over changes in the bill.

Chair Stewart:

We will wait to ask questions until the others testify. Assemblywoman Shelton, please proceed.

Assemblywoman Shelly M. Shelton, Assembly District No. 10:

As Assemblywoman Seaman mentioned, I, too, encountered this same scenario where my opponent did not live in the district. I want to let you know this is not being brought forward because of us. I had many constituents in my neighborhood who brought this to my attention, and Assemblywoman Seaman's bill hits on a lot of things that were problems prior to this bill.

Daniel Stewart, Policy Analyst, Assembly Leadership Office:

Assemblywoman Seaman asked me to go through an overview of some of the sections in this bill. When you are handed the bill, it looks thick, but if you leaf through it, you will find that a lot of the changes are relatively minor changes that are made over and over. Anytime we make a change to the state election laws in *Nevada Revised Statutes* (NRS) Chapter 293, we have to make

a change to the city elections portion as well. It is the same law; it just mimics it. Other than one example, everything I will talk about will be in both halves of the bill. We do not have to go through both halves unless you have specific questions about city elections that may be different.

In crafting any of these election statutes, especially this one, there are three constitutional provisions that need to be kept in mind. All of them are in Article 4 of the *Nevada Constitution*. The first is in Article 4, Section 3, stating that members of the Assembly must be chosen by the qualified electors of their own districts on the next Tuesday after the first Monday in November.

The second provision is in Article 4, Section 5, stating that the members shall be duly qualified electors in the respective counties and districts they represent.

The third provision is in Article 4, Section 6, on which I anticipate questions. It gives each house, in this case the Assembly, the power to actively judge the qualifications, elections, and returns of its own members. This comes into play once somebody is elected. I bring this up because I think there will be a difference between when somebody is determined to be a member, when the Legislature takes constitutional responsibility over their qualifications, and the election process of someone becoming a member. It has been our practice in Nevada that elections have been governed by statute regarding the time, the manner, early voting, whether or not you are required to show identification, and so forth. Those are all in statute, with the Office of the Secretary of State setting appropriate regulations in enforcing elections.

Additionally, this bill places itself in a significant body of law. The election statutes are already quite long, and sometimes understanding where it fits can put it in a broader context.

For clarification to this Committee, anytime I say "candidate," I assume it is someone who just filed a declaration of candidacy. Section 2 of the bill declares that once a person becomes a candidate, if the person dies, is adjudicated to be insane or mentally incompetent, or found by a district court or court of competent jurisdiction to be ineligible, the person's name must not appear on the ballot. This is essentially rectifying the situation before the ballots are printed. The fourth Friday in July is the deadline for printing ballots. If one of those three things happens before that time, the person's name comes off the ballot.

The second and more common occurrence is that we do not get the ruling until after the ballots are printed. The remedy for what Assemblywoman Seaman mentioned comes in two phases. First, similar to what we have but broader is

the need for signs to be posted at all voting locations indicating the candidate has been declared ineligible. In addition, the vote for that candidate will not be counted. Second, the same disclaimer needs to be placed on the electronic voting machine, and stickers with the disclaimer need to be placed on any absentee or paper ballots that are sent out. This is with the assumption the ballots have not already been sent out. That is the preventative portion of this bill. Where the real remedy comes is in sections 13 through 16, stating that if a candidate dies, is adjudicated mentally incompetent or insane, or declared ineligible by a court, that candidate's votes will not be counted. There is a conceptual amendment ([Exhibit C](#)) that prohibits the issuance of any certificates of election to that individual. That is the meat of the bill.

Section 3 of the bill statutorily changes the term "reason" for a vacancy in a nomination to include death, adjudication as insane or mentally incompetent, or being found ineligible by a court. If it is easier for this panel, I am going to refer to all three of those as ineligible candidates. If I say ineligible candidates, we are going to be speaking about those three incidents where a vacancy in a nomination will not be filled.

I want to be careful because this brings in another constitutional issue. Referring to Article 4, Section 12, of the *Nevada Constitution*, a vacancy refers to actual members of the Legislature as opposed to a vacancy in a nomination process or a candidacy for election. We are not interfering with the constitutional provisions on filling a vacancy, just the vacancy provisions on elections.

Section 5 lays out the provisions we just discussed. Section 6 does the same. You will see throughout the amendment ([Exhibit C](#)) where a candidate is required to file a declaration of candidacy or a declaration of residency, the misdemeanor is increased to a category E felony. If a candidate knowingly or willfully—which is a criminal standard set by criminal law—makes a misstatement on his or her declaration of candidacy or declaration of residency or anything similar to that, it will be a category E felony.

Chair Stewart:

Remind us what the punishment could be for a category D felony.

Assemblywoman Seaman:

We have changed that in the proposed amendment from a category D to a category E felony.

Daniel Stewart:

I do not actually know.

Chair Stewart:

Mr. Powers, do you know?

Kevin Powers, Committee Counsel:

Not offhand, but I could look it up. Category E felony is the lowest level of a felony. Generally, under a category E felony, the district court is required to impose probation for the violation unless certain conditions exist. Generally, probation is the sentence for a category E felony.

Chair Stewart:

Thank you.

Assemblyman Ohrenschall:

I just looked it up, and pursuant to NRS 193.130, subsection 2, paragraph (e), a category E felony is a felony with a minimum term of not less than one year and a maximum term of not more than four years. It is probationable, with a fine of not more than \$5,000.

Daniel Stewart:

Representatives from Clark County and the City of Las Vegas spoke to Assemblywoman Seaman about section 7. As it is laid out, it may appear to increase the duties of a filing clerk or anyone receiving a declaration of candidacy. We are happy to work with them to get some language on this. All they are going to be asked to do is to verify the identification of the bills that the candidate brings in to show where he or she lives. We are not asking them to conduct any independent investigation on the matter. We are prepared to work with the cities and counties to get language they would like on that issue so they feel comfortable they are not being asked to do investigations.

Subsection 6 of section 7 discusses actual investigations if there is credible evidence that the candidate does not live in his or her district or does not meet the qualifications. It is the Office of the Secretary of State or the Office of the Attorney General that will have the duty or authority to investigate, not the county clerks trying to get subpoena powers. We will be working with those offices to get that cleaned up so there will not be any investigative authorities or duties in that regard.

Regarding section 6, Assemblywoman Seaman mentioned that we initially had one year as a residency requirement in the district. That is currently quite low in the 50 states, but she has agreed to a six-month requirement as opposed to one year ([Exhibit C](#)). In the original bill, the requirement for living in the state was five years, and in the proposed amendment it is two years. The only residential requirement we have in the *Nevada Constitution* is a two-year

requirement for the Governor, but even that is low. For example, two states on the opposite political spectrum, New York and Texas, require five years.

There is not much of a change in section 9 other than allowing the court to award attorney fees to the prevailing party. One of the things the two Assemblywomen found during their campaigns was that it is hard to fund these legal fights. To the extent that you can find campaign contribution—and as an attorney, I am sad to admit this—you can burn through \$10,000 fairly quickly even with in-kind donations. Finding law firms or someone who is willing to fund these legal fights can make these challenges prohibitive. This allows the court to "may order" the prevailing party to recover their fees. That is not mandatory; it is currently discretionary.

Section 11 adds to the voter's bill of rights—ineligible candidates cannot be elected to office, and any votes cast on their behalf will not be counted.

The big provisions are in sections 13, 14, and 15. Section 13 prohibits the counting of votes for an ineligible candidate during early voting. I need to be clear because this is something I discussed with the county clerk. Counting can be a term of art when you are discussing election law issues. There will be a tabulation so that the number of votes that the ineligible candidate received will not be secret from anyone, but they will not be counted in terms of determining the winner. We had a situation last June in the Democratic gubernatorial primary where "None of These Candidates" finished first with the most votes, but the second-place person moved forward in the ballot. The number will still be the same and the counties will still see the tabulation for that person, but they will not be counted the same. When talking about counting, it is counting in terms of victory.

Section 14 makes it clear that if you vote for one ineligible candidate, it does not invalidate the rest of your ballot in any way.

Section 15 applies to all of the other types of counting: Election Day and absentee ballots if they are counted on Election Day. The remainder of the clarification on A.B. 177 concerns city elections, which is duplicative except for the investigatory section indicating the Secretary of State's Office and the Attorney General's Office have the power to carry out these investigations.

There are proposed amendments which have been posted ([Exhibit C](#)) and others I have already discussed which will amend section 2, subsection 2, requiring the county clerk to remove the name from any electronic ballots if the county clerk has already printed the ballots. My understanding is we will use the deadline that is already set by statute, which is the fourth Friday in July.

In addition, section 3, subsection 1 makes it clear that if a vacancy occurs, no party may nominate a replacement to fill the vacancy.

The other item was the category E felony. We talked about the two residency requirements that have been lowered. There is a mistake in section 29 which does not include the "knowingly or willfully" language in it. We ensured it was put in there.

We talked about making sure it is the Secretary of State's Office and the Attorney General's Office that have the investigative authority. If this bill passes, we will need to get rid of NRS 293.166, which is a special provision for filling vacancies for a party nomination when there are multicounty districts. We would like to add a definition of an ineligible candidate because that word is used throughout; that includes the three categories we mentioned.

Any postings of the election results will include a disclaimer stating an ineligible candidate cannot win and also explicitly state that an ineligible candidate cannot receive a certificate of election.

Assemblywoman Shelton:

I wanted to give you my viewpoint and experiences as far as what happened during the election. I think Assemblywoman Seaman's bill is so important because it hits on a lot of overlooked aspects throughout the years. In our case, we were able to go back, find case law, and see that these situations have happened before.

Assemblywoman Seaman's bill addresses everything, but I want to clarify a few things. Section 1, subsection 2, paragraph (a), subparagraph (2), talks about placing notices on each mechanical recording device informing a voter who uses the device. I want you to know how important it is for the voter to be aware of this. In both of our cases, the signs were put up, but people are busy and not paying attention to them or even noticing them. I did not realize how important it was until we were able to talk to some of the people who were going in to vote. They had no idea the signs were there, even though the signs were publicized in the newspaper.

A finding by a court of competent jurisdiction regarding vacancy has been added in section 3. That was not in there before, so we ran into the situation that if there is a vacancy, who would be able to fill that vacancy. Is it going to be the county commissioners, or is it something the Assembly does? There was some confusion, and this clarifies that issue.

I felt that officials' hands were tied, not only in the Clark County Department of Elections but also in the Secretary of State's Office. They kept telling me you have to go to court or a judge has to decide. I think this allows them to have the ability to pursue this in a more efficient manner.

As referenced in section 9, in both of our cases in our elections, if there is not time to remove the candidate's name, no vote cast for the candidate may be counted. I cannot tell you how much it infuriates the voters when they have voted for someone and then find out the candidate was ineligible. This is important because the voters spoke this time and were informed of the ineligible candidates before the election. I think their votes spoke loudly, as Assemblywoman Seaman and I have attested.

Assemblywoman Seaman:

Mr. Chair, can I ask that my two attorneys in Las Vegas speak and join us for questions? They have a lot of knowledge about this bill and why it has come about.

Chair Stewart:

Certainly, Assemblywoman Seaman.

Assemblyman Elliot T. Anderson:

Mr. Stewart, in your professional opinion, when does an election start?

Daniel Stewart:

I never have had that question asked before. You fall within the rubric of the election laws as soon as you file a declaration of candidacy. As soon as the filing period opens up, the election starts. A simpler definition would be an election starts and finishes in the period in which people are able to cast votes for the office in question.

Assemblyman Elliot T. Anderson:

When do absentee ballots have to be sent out, because that is when you cannot take them back, is that correct? My question is in the legislative power section of the *Nevada Constitution* under Article 4, Section 6, where the Legislature has the power to judge qualifications, elections, and returns of members. My confusion is regarding why judges were making a finding that someone was ineligible, because the *Nevada Constitution* not only says you have to live in your district, but also clearly says the Legislature has those powers. Should this be a constitutional amendment rather than a change in statute? It feels as if the judges have been taking liberties under the *Nevada Constitution* already, and this would give the court even more power over the judging of elections.

It does not seem to be what is contemplated in the *Nevada Constitution*. I was hoping you could expound on these constitutional issues.

Kevin Powers:

It is true that Article 4, Section 6, provides that the Legislature has the power to judge the qualifications in elections of its members. Courts and other jurisdictions have dealt with the very issue that Assemblyman Elliot Anderson has raised. They have found that the dividing line is generally the general election. Prior to the general election, courts have a role in determining the qualifications of candidates for office because they have not become members of the Legislature. Once the general election occurs and a person receives enough votes to win the election, generally the courts view that person now as a member-elect of the Legislature, and the Legislature's constitutional power kicks in. There is that dividing line between a candidate during the election process and a member-elect after the general election. Courts do have the constitutional power to judge the qualifications of candidates prior to the general election.

Daniel Stewart:

That is my understanding as well. These election laws were written by the Legislature, and the courts have the duty to enforce the law.

Chair Stewart:

Assemblywoman Seaman, please feel free to ask your two attorneys to come up and speak.

Assemblyman Elliot T. Anderson:

Once the ballots are sent out overseas, we cannot take them back at that point, is that correct? That election is now ongoing and is a messy situation for courts to then intervene constitutionally. Once an election is ongoing, the ballots are already printed and the general election is occurring. Is that correct?

Kevin Powers:

Even though the election is occurring, the Legislature still has the power to prescribe by statutes the consequences of the votes that are cast during that election. I am going to get into some common law. With regard to how votes are counted at an election, there is the English common law rule that if a person votes for a disqualified candidate, those votes are considered wasted and tossed away. That is what this bill does; it statutorily codifies the English common law rule. Most jurisdictions in America, including Nevada, now follow the American common law rule, where the votes are cast for all candidates, and if a disqualified candidate receives the most number of votes at the election, the courts consider that candidate disqualified, and then there is a vacancy in that

office which is filled under the statutory procedures. This bill treats votes under the English common law rule and considers them not valid, and therefore, the person receiving the next highest number of votes would win the election.

Assemblyman Elliot T. Anderson:

You say the Legislature requires statutes, and the *Nevada Constitution* says it is the power of each house. The Legislature cannot decide for the Assembly to delegate the Assembly's power, is that correct?

Kevin Powers:

Each house's power does not kick in until after the general election. The Legislature, by prescribing how votes are cast at the general election, is still within the power to prescribe by statutes and control an election. It is only after the determination is made of who won the election that the Legislature's power to determine the qualifications of its members kicks in.

Assemblyman Elliot T. Anderson:

Could we ignore what is in statute, constitutionally, at that point?

Kevin Powers:

What the Legislature would be doing at that point is judging who won the election if there was a contest of the election. If someone challenged the results of the election, then the Legislature would judge that contest of election. I cannot conclude without specific facts and circumstances how a particular contest would be determined by the Legislature, and I will leave that for another day, when it may or may not arise.

Assemblyman Ohrenschall:

My question is on sections 3 and 4 regarding prohibiting the filling of a vacancy. If someone has been dishonest in the filing of their papers, it cuts both ways, whether it is a Republican candidate, a Democratic candidate, or a Green candidate. Not only is the dishonest candidate penalized, but so are the voters who are members of that candidate's party. They may not have known how long the candidate lived in their district or his bona fides, but they liked the candidate's platform and voted for that person. What are your thoughts on that issue? Under our current law, if time allowed and ballots had not yet been printed, the party could nominate a replacement under NRS 293.165. My concern is that the voters of that candidate's party will be paying for the sins of that candidate.

Assemblywoman Seaman:

The constituents in my district were more concerned about not wanting to vote for an ineligible candidate. It was not about the party but the fact that there

was an ineligible candidate who they felt had lied to them. I understand your concern, but the experience I had, and I presume Assemblywoman Shelton also had, was that the constituents were much more upset about being lied to about someone who did not live in the district and was trying to come into the district and represent them. I found it a bigger issue than your concern.

Assemblywoman Shelton:

I agree with Assemblywoman Seaman, because I found the same thing in my district talking to the constituents; they were more upset there was an ineligible candidate who was still on the ballot. I think where you are coming from might lead back to the primary election because it was awhile before I found out about my opposition candidate. There was a primary election prior to that, with the two other candidates in the primary, plus the people who voted felt disenfranchised in regard to the votes they had cast.

Assemblyman Ohrenschall:

My concern is that I meet many people who say they may like a candidate very much but they always vote Democrat or Republican. For those people, the fact they will no longer have a choice from their party really kicks them out of the process. Obviously, we need to deal with candidates who are not truthful, and it can happen on both sides of the aisle, but that is my concern with sections 3 and 4.

Assemblywoman Seaman:

I understand your concern, but I found the voters were more concerned about a candidate who lied and was ineligible than about their party affiliation. I believe that the witnesses in Las Vegas might be able to answer some of the questions.

Assemblyman Trowbridge:

In reading A.B. 177, which I call the "carpetbagger law," and the amendment ([Exhibit C](#)), I noticed in section 6, regarding how long a candidate must reside in the district, you suggested backing off to six months. I have since moved, but at one time I lived in the same house for 25 years and was in three different Assembly districts due to redistricting. The boundaries moved more quickly than I did. I wonder if six months would address that when you talk about municipal elections, county commission elections, or school district elections where they have some control over the boundaries. I hate to admit it, but I saw one case where they gerrymandered a candidate out with malice aforethought.

Daniel Stewart:

That is a very good question, Assemblyman Trowbridge. We dealt with this in the 2011 redistricting cycle, in which a few people here were involved. The

Secretary of State's Office can put out special recommendations. For instance, one of the issues is if you get drawn into a new district, are you technically allowed to use the term "reelect," and the answer is yes. They are able to regulatorily solve those issues; as long as you live in the residence in the district you are running in for more than six months, then you would meet the residence requirements.

Assemblyman Trowbridge:

I would hope that an answer to some of the questions that have been made about the threat of a category E felony would flush out some of the people. I spot a couple of other places in the language that a category D felony needs to be changed to a category E felony.

Daniel Stewart:

The intent was that the vacancy and the nomination process represented a valid concern that the party itself may be punished for the bad actions of its individual candidates. The intention was if the party is going to be punished, the party has the incentive to vet the candidates. Part of the issue was that there really is no vetting until someone decides to file a judicial challenge.

Chair Stewart:

Assemblywoman Seaman, if your attorneys in Las Vegas will please come forward and testify.

Jacob Hafter, Attorney, Las Vegas, Nevada:

While the party may have adverse repercussions because of the fact that a vacancy cannot be filled, that was not the entire goal; it was to ensure that the parties are vetting the candidates they are putting forward in the general election. That is consistent within the State of Nevada's electoral system in that we have closed primary elections, where the parties are solely voting for a candidate and their nominee for a party they are registered with. We have already said that Republicans need to put forth Republican candidates, Democrats can put forth Democrat candidates, and so on. The point is, what is the purpose of putting forward a candidate unless you have vetted him or her as being an appropriate, legitimate candidate for your party?

The other point I want to highlight in sections 9 and 21 of A.B. 177 is the need to eliminate the deadline for filing a written challenge for a person's candidacy. That was really important in some of the cases where there was a question as to whether or not the court had a stand based on when the challenge was filed. To ensure that a qualified candidate gets elected, especially when you have candidates who purposely altered their documents or ran when they should not

have been running, and they knew it, a court should have the power to declare such a person ineligible at any time before the actual general election.

Jacob Reynolds, Attorney, Las Vegas, Nevada:

I worked with Jacob Hafter and was the primary legal counsel at the district court level for Assemblywoman Seaman in her case. I would like to compliment the Clark County Registrar of Voters, who I believe is here. I do not know if he is planning to testify or be a witness, but he was extremely helpful and very professional during the whole process by providing dates, as well as being open and honest with us. Once we received the judgment, he was helpful in posting a notice of the results of the judgment.

One point I want to clarify, and also agree on with Jacob Hafter, is that the fourth Friday in July is not the deadline for printing the ballots. It is an artificial deadline imposed by the Assembly to do the challenging or to get someone off of the ballot. We found that the ballots were not going to be printed for several weeks or months thereafter, and we could have removed an ineligible candidate from the ballot if the court had read the statute differently.

Another concern we have that should be addressed in A.B. 177 is that the issue of vacancy was not adequately defined. Our issue was that there was no vacancy created by an ineligible candidate because the vacancy at that point was left to a person who was mentally incompetent or had passed away. This was not the case; we were finding that someone was ineligible. I believe, along with what Daniel Stewart said in defining ineligibility, the provision that defines a vacancy needs to be more robust.

Also, to clarify, "knowingly and willfully" is not a criminal standard when you put that in the statute. I want to clarify any confusion on this point. Simply getting the judgment, as we did in Ms. Seaman's case, that Meghan Smith had knowingly and willfully filed a false claim in her application, would not be transferrable to a criminal court. There is a different criminal standard, beyond a reasonable doubt, in the criminal system that a prosecutor, attorney general, or a district attorney would have to follow to push that person into a category E felony. If there is any kind of concern that we could take the judgment from one court and push it into another, that is not the case, even though we also had to show knowingly and willfully that the affidavit was filed with false intentions.

Regarding attorney fees, we took Ms. Seaman's case but did not get all our attorney fees, because these challenges are cost-prohibitive. Currently in the state, there is an ability for the defendant who is being challenged to get his or her attorney fees and costs awarded, but for the person who brings the

challenge, there is no provision to the fees and costs being awarded, even in a victory. We brought a motion in our case to get our attorney fees and costs awarded, but it was denied.

There has been prior discussion about public policy and alienating the voters in a district. The Nevada Supreme Court's stance on public policy is not to protect an individual's right to run but to protect the members of the district. Specifically that protection is articulated by the Nevada Supreme Court in *Williams v. Clark County Dist. Atty.*, 118 Nev. 473, 50 P.3d 536 (2002), requiring a candidate to be someone who is familiar with the people and the concerns of a particular district, whether they are Republican or Democrat. That is currently the articulation of the concern that is measured by the Nevada Supreme Court. When talking about alienating people if their candidate gets removed from the ballot, we are trying to protect the viewpoints of a district and someone who has the district's concerns at heart because they are connected with the district rather than a carpetbagger candidate, as Assemblyman Trowbridge said.

Assemblyman Thompson:

In section 2, subsection 2, it states, "If the county clerk..." and continues to make references to the county clerk. Is it supposed to say county clerk or the county registrar of voters?

Kevin Powers:

As defined in NRS Chapter 293, "county clerk" means the county clerk or the county registrar of voters in those counties that have a county registrar of voters. In Nevada, the only two counties that have registrar of voters are Washoe and Clark Counties.

Assemblyman Thompson:

Is it synonymous? The voters in Washoe and Clark Counties know this is not the county clerk; it is the county registrar. Is that correct?

Kevin Powers:

Correct. In those counties where the registrar performs the functions of the county clerk for voting, the registrar will take care of those duties.

Assemblyman Thompson:

My question is addressed to either Assemblywoman Seaman or Assemblywoman Shelton. Have either of you worked with the county clerk or county registrar of voters on this, because there are specific mandates to change things on mechanical recording devices and so forth? I know from some of the bills we have had, even a few weeks prior to the election, things are very

difficult to change. Have you had any communication or planning with the registrar or county clerk in these efforts?

Assemblywoman Seaman:

We met before this hearing and have a plan to meet with them to go over some of the changes that they might need to be more efficient.

Assemblywoman Fiore:

My biggest concern is if a candidate is not qualified to run, then all of the votes received should be disqualified. If their party is not represented, I feel the candidate should have been vetted. I want the law we implement to make sure that if a candidate runs for election and is found ineligible and wins, the votes are disqualified, and the vote goes to the qualified candidate.

Assemblywoman Seaman:

We agree. First of all, as my attorneys have stressed, this is about vetting. You need to vet your candidates because the concern is about the constituents, not an individual party. Our first and foremost concern is to keep the constituents engaged in the process rather than have them disenchanted because of ineligible candidates.

Chair Stewart:

We have a number of people in Las Vegas who are waiting to testify. All those in favor of A.B. 177, please come forward.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I am speaking as a former candidate. Last year I ran in the Democratic primary election in Assembly District No. 10 in Las Vegas. I have lived there continuously for over 12 years. I had two primary challengers, one of whom was Jessie Holder. What was he doing running for a seat in Assembly District No. 10? He had no lease on the theoretical apartment where he was renting a room from a friend, and he was simply a carpetbagger. He disenfranchised me. I lost in the primary, and he disenfranchised all of the voters in that district. I found out some information about his residency and brought it to Joe Gloria, the Clark County Registrar of Voters, who said I am sorry, you are too late. I ended up losing the primary to Mr. Holder, who was later declared ineligible. Fortunately, Ms. Shelton won the general election. She has lived in Assembly District No. 10 for many years, whereas Mr. Holder lived there, if in fact he did live there, for days. I applaud this bill. It is very much needed.

Chair Stewart:

We are going to limit the testifiers to three minutes. We have a lot of people who want to testify, so please be as brief as possible.

**Lisa Mayo-DeRiso, Member, Citizen Task Force for Voter Rights,
Las Vegas, Nevada:**

We are a nonpartisan organization formed in 2014, working to bring trustworthiness and transparency to the Nevada election process and the citizens it is supposed to serve. I am in support of A.B. 177. Voting is a precious right of each citizen. People have the right to know that the candidates on the ballot have met all of the requirements for candidacy and signed the declaration of candidacy in a truthful and honest manner. Nevada has had, in past elections, candidates who have ignored the residency laws. In one case, the candidate who won the race and was not a resident was seated. We had an election system that did not have the legislation in place to correct the willingness of some to ignore the laws. Assembly Bill 177 corrects the flaws that have existed in election statutes, such as the declaration of candidacy laws and the investigation of candidates who do not comply with the law. It also increases the consequences for breaking these laws.

When we talk about consequences, I urge Assemblywoman Seaman and the Committee to keep the wording in section 6, subsection 2, as a category D felony. The amendment would change it from a category D to a category E, which is a lesser felony. I think one way to deter potential candidates of any party from breaking the law or coming forward as a carpetbagger is to make sure there is a strict penalty for doing so. I urge you to keep it as a category D felony and to pass A.B. 177.

Assemblyman Ohrenschall:

In your experience in politics and campaigns, you have met voters whom we would call "yellow dog Republicans" or "yellow dog Democrats" and who are very loyal to their party. Is that correct?

Lisa Mayo-DeRiso:

I think so. I believe the voters run the gambit.

Assemblyman Ohrenschall:

My concern is a situation where a candidate is found not to be qualified and no provision is allowed to fill the vacancy. There are folks who are very loyal to their party and want to vote for a qualified Democrat, Republican, Independent American, or Green candidate. Are you concerned this disenfranchises those voters who are loyal to their party, and the values of their party, when they are not going to be able to have a replacement candidate who is a member of their community and would be qualified to run?

Lisa Mayo-DeRiso:

I agree with you that many people do vote for their party, but I think it is a bigger crime to disenfranchise a voter. The party can send a clear message that if you violate these laws, this is what is going to happen. The message is to make sure you read the statute, live and run in the same district, and come into the candidacy with all the truthfulness and honesty the voters deserve.

Assemblywoman Fiore:

My colleague suggested that Democrats want a Democrat to be elected and Republicans want Republicans elected. Would you suggest the parties vet their candidates to make sure they are qualified? Would you put the responsibility on either of the parties to make sure they are qualified? If they are not, then they have done their "yellow dog" voters a big disservice. If our party does not vet a candidate and he does not live in the district and loses his seat, that is our fault. Would you agree that it is up to our parties to vet their candidates and be responsible for them?

Lisa Mayo-DeRiso:

Yes, parties have a duty to police their candidates.

Assemblyman Elliot T. Anderson:

This is just a comment. I think this has gotten too personal with individual cases, but I will say that Mr. Holder and Ms. Smith were not supported by the Assembly Democratic Caucus in their primaries. To say that this is a failure of a vetting job is inaccurate. The reality is that parties are ill-equipped to mind every person. This is not a party convention system where we directly nominate candidates. If people are going to lie, we cannot stop them. As Assemblyman Ohrenschall said, the only people who are being punished are the voters who want to express their will at an election. To have no replacement in a situation like this is bad public policy. I am not saying it is good public policy that these candidates are running in the wrong districts. We do not disagree on concept over this bill; it is how we get there. I feel the parties are being unfairly attacked.

Chris Hisgen, Private Citizen, Las Vegas, Nevada:

I am a resident of Assembly District No. 10 and have lived in Las Vegas since 2007. I am more concerned about the party than voter rights and elections. The major parties in Nevada law have a special place. They do not have to have their candidates canvass the neighborhood to be on the ballot. If a person nominates himself to run for a particular party, the person is automatically either in the primary or in the general election if he or she is the only candidate. That means the parties have a special duty to police their activities. They cannot claim special privilege in the election law and at the same time wash their hands

over recalcitrant or, for want of a better word, *parachute-ista*-type candidates. Mr. Holder never intended to live in Assembly District No. 10, and this is manifested in his online postings and in the *Las Vegas Review-Journal* articles that described his candidacy. I find this idea nonsense that the parties do not have a duty to vet their candidates or police them. The *Nevada Constitution* says members of the Assembly will be chosen every two years by qualified electors in their district. A strict reading of that phrase would imply that you also have to be a resident of that district for two years and a resident of the state for two years.

Tom Jones, Private Citizen, Las Vegas, Nevada:

I have been a resident of Nevada for 20 years and have lived at my residence for about 13 years. I fully support this bill because I think it will protect the voters in Nevada. The problem I have is with the requirement of a candidate to reside in Nevada for two years. According to the bill, it says the candidate has to be a resident of Nevada for two years preceding their election or appointment. This means it actually would last more than two years if you had to wait until after they moved here. For instance in June of this year, they would not be eligible for the 2016 election to run for state office, and I think that is too long to punish someone just because they wanted to move to Nevada. I think they should be able to participate by running for office in less than three and a half years.

Jim Sallee, Private Citizen, Las Vegas, Nevada:

I live at 1808 Battle Born Drive in Las Vegas in Assembly District No. 34, and have lived there for 20 years. I support this bill completely. As previously stated by Assemblywoman Shelton, this has been going on in past years. I think it is high time that we get legislation that puts some teeth into this issue and that we do not have to rely on the Secretary of State and what party she belongs to as to whether the bills and laws are enforced.

Chair Stewart:

Are there others in Las Vegas in favor of this bill?

Vernon Brooks, Private Citizen, Las Vegas, Nevada:

I am here in support of A.B. 177 and want to thank Assemblywoman Seaman for bringing it forward. I am a resident of Assembly District No. 34 and was a spectator of the events that happened this last election. The most important thing we should take with us from the presentation of this bill is that we are upholding the integrity of the election process. Without that, it undermines the public's faith in that process.

I think it is important that this bill prevents the cherry-picking described before, where a candidate looks at an easy district to move into temporarily. That is not who I want to represent my district. I want someone who has lived in my neighborhood for a while and understands exactly what affects his and my neighborhood.

Based on earlier testimony and questions, you would get the impression this was a partisan bill. I cannot possibly see how this could be a partisan bill; in fact, this bill cuts both ways. If someone representing my party commits these crimes, I do not want them representing me either. When the opponent in Assembly District No. 34 was found ineligible, within a day or two we saw new signage in favor of that candidate everywhere in the district. This has not been addressed in the bill or in today's conversation. That person was still campaigning, receiving money, and spending money as if the person was an eligible candidate. That is an absolute breakdown of the election process. I cannot imagine being opposed to basic requirements of residency being enforced and deterred by this bill.

Mark E. Rowley, Private Citizen, Las Vegas, Nevada:

I am a 36-year resident of our great state of Nevada and a 15-year resident of Assembly District No. 34. I do not want to be repetitive regarding the many positive comments we have heard about Assemblywoman Seaman's bill, but I want to reiterate Mr. Brooks' comment. We have to realize that even after this case went to court, there was fresh money pouring into our Assembly district to potentially put an ineligible candidate into a seat. Thank you for listening and supporting this bill.

Juanita Clark, Private Citizen, Las Vegas, Nevada:

I am a spokesperson for Charleston Neighborhood Preservation. There was mention made about the six-month requirement and the two-year requirement, which seem reasonable. We do not want this bill to be an incumbent protection law. I felt that the felony classification was changed to a nonviolent E felony because it could be lowered to a gross misdemeanor without the person losing the right to vote and keep and bear arms. We are in support of A.B. 177.

I was one of the walkers for Assemblywoman Seaman. I am grateful things worked out for her, but this last election process was not good, and hopefully this bill will improve that process. I also saw the signs were still there and was astounded. I do not know if they were bought later or if the money was still coming in, but the signs were there long after the election.

Chair Stewart:

This is the last call for anyone else in Las Vegas in support of A.B. 177.

Clayton Kelly Hurst, Private Citizen, Las Vegas, Nevada:

I am probably one of the unluckiest persons to have this directly affect me. In 2012, I ran against Andrew Martin for Assembly District No. 9, and the day before the election, a district court judge ruled him ineligible after reviewing the evidence I provided. It was over 30 days of visual evidence of him living at a house in Assembly District No. 2. The decision came the night before the election, and no signs were posted. Andrew Martin had signs that said Andrew Martin is on the ballot, specifically to deter people from not voting for him. I think this bill solves a lot of the issues at hand, and I urge this Committee to vote for it. I hope we can have some sanity with regard to this problem. It has been going on for some time, and I am glad Assemblywoman Seaman and Assemblywoman Shelton were both victorious on Election Day. To see this man who did not meet anyone, or live in the district, representing not only myself but everyone I met, be elected was an outrage. I received many letters and emails from people from all parties who were outraged that this person was not only seated in the Assembly but allowed to vote on laws that they had to abide by. It was very disheartening, and I hope this Committee will take that into consideration.

Chair Stewart:

I assume there is no one else in Las Vegas who is in favor of this bill, correct? [There was no one]. Is there anyone in Carson City in favor of A.B. 177?

Megan Bedera, Private Citizen, Reno, Nevada:

I am speaking today on behalf of myself. I was one of Ms. Seaman's advisors and helped her manage her campaign. As someone who is in the political industry for most of the year, either as a lobbyist or providing advice to candidates, the one message I would impart to this Committee is clarity. As candidates, think back to the first time your name was on the ballot and how the rules seemed to slightly change based on who you were talking with and the particular year. This may not be a perfect piece of legislation. I think there is a lot of opportunity for dialogue, but I do think it begins to provide some clarity to candidates who are unsure specifically of residency requirements, because this is not a one-time or one-year occurrence. This has happened over multiple elections with similar circumstances of feeling that we are abiding by the law and a court deciding differently. I ask this Committee to think about those first-time candidates and provide them clarity through the process.

Assemblyman Elliot T. Anderson:

This has become a very personal endeavor, and I can understand where everyone who has been in this situation would take it that way. I cannot say I would feel any differently, but when talking about public policy, we are talking about policies going forward for everyone. For instance, section 9 eliminates

the deadline to challenge a person's candidacy so you could have it happen right up to the end and be ruled ineligible. The person would not have time to appeal, and the votes could not be counted.

I can understand where Assemblywoman Seaman, Assemblywoman Shelton, and Clayton Kelly Hurst are coming from, but what it comes down to is this is going to affect Republicans and Democrats equally. No one is going to have certainty that their candidate will remain on the ballot until the end if there is not a deadline. That is why we have statutes and limitations to say that after a certain time you cannot perform a crime anymore because you must have limits. Is it your feeling this would hurt some of the other candidates if they never know the election is over, and they are going to have time to appeal, because they have due process rights?

Megan Bedera:

I think there is a happy medium between right now and what is currently the end of June, leaving 17 days from the time you emerged from the primary to reassess the new playing field and to do the research on your opponent. While leaving it open-ended essentially to the day before the election may not be the right answer either. I think we need more than 17 days if the onus is being put on the candidates to do the research to make sure the rules are being followed. This is essentially how we are acting and how it is being done currently, which goes along with the comments made today that we are looking at the parties to enforce those rules, when in reality we are looking to the court system.

Assemblywoman Fiore:

My question relates to the previous remarks about whether there should be a statute of limitations. Assemblywoman Seaman's constituents have testified that when her opponent was found ineligible, money poured into the race with posters and so forth. Is there a time frame for a party to put up billboards knowing their candidate is ineligible? Is it their responsibility to say, oops, this candidate is not eligible and we do not support her?

Megan Bedera:

I think there are two questions. One is in terms of a statute of limitations or a timeline. I believe Ms. Seaman's case was filed in August. It was after the deadline but it was not in October when the ruling came down. As Assemblyman Anderson said, there was time for the judicial process and the opportunity for both sides to say their piece.

The second part of your question—at what point do we enforce the rules—comes down to this Committee, this Legislature in general, and even the court system. What is the rule? Are we allowing judges to rule candidates ineligible,

and if that is the case, then the Legislature needs to say that the money or the campaign stops now, or we need to acknowledge that those campaigns will go into the future because there is a precedent that has been set that if you win, regardless of the judicial ruling, you could potentially be seated in Carson City.

Assemblyman Trowbridge:

I do not see this as a partisan issue at all. I think we all have vested interest in seeing that only qualified candidates make it onto the ballot. If I remember correctly, I have a dear friend who currently serves in the Senate who had a rather ugly primary against someone who was put up to run against him and who simply had the identical name. It can happen on either side, and a vetting responsibility lies somewhere. I support the idea of moving the felony charge from a category E to a category C.

Chair Stewart:

Are there any others in favor of A.B. 177 in Carson City? [There was no one.] Is there anyone who wants to testify in opposition to the bill in Carson City?

Janine Hansen, President, Nevada Families for Freedom:

I also serve as the Executive Director for the Independent American Party. I want to tell Assemblywoman Seaman and Assemblywoman Shelton how much I appreciate them talking with me in advance of this bill, so that many of my difficulties could be resolved. Many of them were resolved with regard to the amendments brought forth. We were concerned about the five-year residency requirement and felt it was extraordinary. We are in a state that has many new people moving in, and we are happy to see that the residency requirement was reduced to two years before the candidate was elected, and we support that amendment.

In addition, we were concerned about the candidate being a resident one year in advance of filing, so that would make it not just one year, but 20 months. We did come to an agreement that it should be six months, which is far more reasonable. I think it takes care of her concerns with regard to people establishing residency for six months and should clear up many of the issues brought forward to this Committee today without hindering those who want to run.

In 2005, I moved to Elko, and in 2006, I ran for office. Under the bill as it is now written, although I am a native Nevadan, I would have been ineligible to run for office. These changes are far more reasonable than the original bill, and we support those amendments.

We have had discussions about the D felony classification, and I want to address that issue. I am concerned about it, and I think it is better to move it down to an E felony because it can then be pled down to a gross misdemeanor. I say this because we do not need people in jail for felonies who have not committed violent felonies. We do not want people losing their right to keep and bear arms, and their right to vote, because they have committed a nonviolent felony. This is just extreme. We appreciate the amendments brought forward and the concepts and expectations of A.B. 177, but I signed up to oppose it because we had those serious concerns, which mostly, although not entirely, have been addressed by the amendments.

John Wagner, State Chairman, Independent American Party:

When everyone was venting about party names, I did not hear our party, the Independent American Party, mentioned by anyone. Assembly Bill 177 is better now with the amendments, but we still disagree with sections 3 and 4. In 2006, we had a candidate who was running for Attorney General and he died before the election. It was about a week before the time we could have had someone else take his place. We did not fill this position, and it was taken off the ballot.

Everyone is concerned about people who are ineligible running for office. Has no one heard of Google? Chuck Muth, the political commentator, says that if you Google yourself to see what the opponents can see on you, you Google your opponent. You would be surprised how much information can be found about a person on Google. You can almost find out what they eat for breakfast. If I was running in a primary, I would have checked on my opponent in advance. The other party might know that someone in their party is ineligible, but there would be no reason for them to say anything until after the primary. The person they know who is ineligible might be defeated in the primary, so there would be no reason for them to get involved in someone's primary. After the general election, it does not take long, from June to November, to file your complaint. There is plenty of time to file a complaint.

Chair Stewart:

Is there anyone else in opposition to A.B. 177 in Carson City? [There was no one.]

Assemblyman Thompson:

Mr. Wagner, I want to hear more about your thoughts on the scenario of the candidate who died before the election. Are you in agreement that all those votes from the constituents should be voided? That is what I am hearing.

John Wagner:

Our party does not have a primary. We nominate by convention. In our case, we could have filled the vacancy if we had an interested candidate. Since there was no one interested in running for the office, we did not put up a candidate. In the case of a Republican or Democrat, I think you should have the right as a party to be able to put in someone else. That would be determined the same way if there is a vacancy during office. You set up a central committee from different counties, or if it is only county, such as Clark County, the Democratic or Republican central committee should say, okay, this is our candidate and put him on the ballot. This is what I believe should be done. That way no one is disenfranchised. If Republicans do not want to do that, they can always vote for our candidate.

Assemblyman Thompson:

Using the scenario of a person dying a week prior to the election, what if the person won. Are you saying that the party of the deceased candidate should be able to decide who replaces that candidate?

John Wagner:

Yes.

Assemblyman Ohrenschall:

Mr. Wagner, how many years have you been involved in the Independent American Party?

John Wagner:

I have been involved in the party since 2008. When that vacancy happened, I was not a member of the party.

Assemblyman Ohrenschall:

You know the members of the Independent American Party very well, is that correct?

John Wagner:

I do.

Assemblyman Ohrenschall:

Are they committed to the values of the party?

John Wagner:

I hope so, yes.

Assemblyman Ohrenschall:

Sections 3 and 4 of this bill state that should a candidate pass away or be found ineligible by law, it would preclude the American Independent Party from nominating a replacement candidate. Do you believe that members of your party would want to be able to vote for a qualified replacement candidate of the Independent American Party, or only have to select from the Democrat, Republican, Green, or Libertarian groups?

John Wagner:

We believe we should be able to put someone else in to run for the office. We would call an emergency executive board meeting.

Assemblyman Ohrenschall:

That answered my question. This bill would not allow you to do that.

John Wagner:

It did under the old bill.

Assemblyman Ohrenschall:

Right, but this would not.

Assemblywoman Fiore:

If someone dies, I could understand replacing them a week before the election, but if someone is fraudulently running, I could not see replacing them. Would you agree?

John Wagner:

If he is fraudulently removed, I think the party should still have a right to put somebody else in there. It is not the party's fault that he was removed. Even though we vet our candidates, we could be wrong too. That is why I jokingly say my pencils have erasers on them.

Chair Stewart:

Is there anyone in Las Vegas in opposition to A.B. 177?

Joseph P. Gloria, Registrar of Voters, Clark County:

I am not testifying in opposition of the bill. We had a conversation with the sponsor of the bill, who is willing to work with us on some amendments. At this point, we are neutral with concerns and hope we can still make some amendments to the bill. We are strictly looking at the bill administratively. It is a despicable situation when a candidate files knowing he or she does not reside in the jurisdiction.

We feel it is important that we keep some deadlines in place. However, I think we can find some middle ground on eliminating the deadline for filing a written challenge of a candidate we foresee as problematic. The deadlines we follow in order to meet the federal guidelines for sending our ballots to the overseas voters are absolutely critical. The end of candidate filing is the second Friday in March, and we have the withdrawal period that follows, as well as the written challenge period after that. Once we get to that point, we are ready to move forward with producing the hundreds of styles we have to verify, in not only the electronic ballot type, but the sample ballot, and the mail. It all starts with the electronic image and builds from there. Those deadlines are in place, giving us assurance that we will be able to meet the deadlines and properly prepare for an election. All of the other prior issues I think we will be able to address.

I have a few other items that I would like to quickly mention. There has been discussion about court costs and having the individual who files to pay for court costs to the elector. In some of these cases, the district attorney or the Attorney General is prosecuting, and those people should be responsible for reimbursing those costs, not just to the elector, if we carry the litigation forward.

We have concerns about signage in the polling places in connection with the incidents that occurred in the 2014 election. I want to caution you that when you put a requirement on us to put signage in the voting machines, you are looking at a small amount of real estate in front of that computer. What you see is a touch screen to make your selections. To the right is a privacy panel with a long set of instructions that we are required to provide shown in multiple languages. To the left is the voter-verified paper trail the voters use to confirm their selection. There is not a lot of space for us to put anything inside the machine, and it would come at an additional cost. We did put the signage out at all of the polling places, and we also put it in at the sign-in rosters. That meant that any voter who came in would see the sign, and they would also see where they signed in to vote. In addition, we could provide instructions to our clerks to make a brief note related to the issue.

Daniel Stewart was talking about not counting the voting results. We do not have a means of suppressing the vote total that appears on our reports. Unless it is provided through the software we utilize to remove them, those numbers would still appear.

Chair Stewart:

Mr. Gloria, are you in the neutral position on this bill?

Joe Gloria:

That is correct. I feel that based on the discussion we had prior to this meeting, there is room for negotiations.

Chair Stewart:

Is there anyone in Las Vegas who is opposed to this bill?

Maria Aguirre, Secretary/Treasurer, City of Henderson:

I am representing the Nevada Municipal Clerk's Association (NMCA). We are in opposition to one section of A.B. 177. The rest of it we are in the neutral position on, as is Mr. Gloria. We concur with everything he said, but in particular, NMCA opposes section 21 of the bill. Previous discussions today have dealt with section 9, which mentions the county, state, and the federal elections, but no one has discussed the municipal elections. The dates and time frames are much different with the municipal election. By eliminating that deadline, it eliminates any practical function of hosting the election itself. Depending on how close to Election Day a challenge is filed, if it moves forward and the challenge is removed, it could result in a special election. This would require the reprinting and mailing of ballots or, as outlined in section 2, would require extensive notifications. All of these likely outcomes are very costly, particularly to a municipality.

In addition, NMCA is requesting clarification and the intent on the proposed change in section 21. We are wondering if a challenge can be filed up until Election Day or if the intention is until a candidate is sworn in or even possibly postelection.

Chair Stewart:

Is there anyone else in Las Vegas either in opposition to or neutral on the bill?
[There was no one.]

Assemblyman Ohrenschall:

Mr. Gloria, in section 7, on page 6, lines 28 through 31, the suggested language is that a filing officer has verified the accuracy of all information contained in the candidate's declaration of candidacy. Do you feel equipped to be able to handle this issue?

Joe Gloria:

We did have issues with this, but it has been communicated to us that what they are asking us to do is what we are now doing. We are verifying that the driver license is valid, and if not, we get a utility bill or some other type of documentation for verification.

Assemblyman Ohrenschall:

Do you contemplate going out to investigate or verify the bona fides of any candidate?

Joe Gloria:

In conversations I had with the sponsor of the bill prior to the meeting, and in Daniel Stewart's testimony, that is not the intention. The language currently in the bill is not what they are proposing we do, and it would have been a major concern for us. It would take an army of investigators. I had a conversation with a Las Vegas Metropolitan Police Department officer who was involved with investigating only two cases last year. It took them nearly a month to wrap up the investigations. We had 347 people file in the 2014 election, so it would have been a concern for us, but I have been assured that is not what they are asking us to do.

Chair Stewart:

You do not have the resources to knock on doors to make sure the candidate is living there. Is that correct?

Joe Gloria:

No, sir, we do not have the resources here in Clark County.

Assemblyman Elliot T. Anderson:

I am asking the clerks who are here testifying, as well as Mr. Gloria, to send us an email or document advising us of their concerns.

Chair Stewart:

Thank you, Assemblyman Anderson, that is an excellent suggestion. Mr. Gloria, as well as Ms. Aguirre, please send members of this Committee an email addressing your concerns.

Is there anyone else in Las Vegas who is either neutral or opposed to this bill? [There was no one.] Is there anyone in Carson City in the neutral position on this bill?

Susan Merriwether, Clerk/Recorder, Carson City:

When I first arrived, I was going to oppose A.B. 177. After talking with Mr. Gloria and finding out that Assemblywoman Seaman was willing to work with us, I decided to support the bill. I understand that the Legislature has concerns with the qualifications of the filings. I want to assure you that when candidates come into Carson City, we make photocopies of their ID to verify that their residences are correct.

Chair Stewart:

Are you referring to their driver licenses?

Susan Merriwether:

Yes, that is correct. If they do not have the proper identification on their driver licenses, we require them to have a utility bill or some other type of document for verification.

My other concern with the bill has to do with suppressing the votes. Prior to early voting, every voting machine goes through testing. I have been told by my vendor that once that is done, you cannot manipulate or change any of the databases on the voting equipment. If there is someone whose name is not to appear on the ballot, and it is too late in the time frame, we cannot take that person off the ballot or suppress those votes. They will appear on our election results.

Chair Stewart:

They are counted even though they are not counted, is that right?

Susan Merriwether:

Correct. It is just like now; if we have a deceased person, we publicize it.

Chair Stewart:

You cannot keep the machines from counting them although they are not valid. Is that right?

Susan Merriwether:

That is correct.

Kevin Powers:

I understand the concerns of the clerk, but as used in section 2, the word "counted" has more than one meaning. There is physical counting, and then there is attributing or using the votes for determining the winner. This does not stop the physical counting. You actually use the tabulations and come to a result. What this stops is the use of the votes to determine the winner. You still count them to come up with a number; you just do not use them for determining the winner.

Assemblyman Elliot T. Anderson:

Mr. Powers, when you followed up during our earlier colloquy, you said after the general election is over, it is not the Legislature's prerogative to judge. If we cannot physically stop them from counting the votes, which are ultimately

counted once the election is over, is it the Legislature's constitutional prerogative to judge?

Kevin Powers:

The Legislature's constitutional prerogative kicks in when there is a member-elect, and you cannot have a member-elect until you use the vote results to determine who is the winner. Until you use the vote results to determine the winner, you do not have a member-elect, and then the exclusive power of the Legislature does not kick in until after you have that member-elect.

Assemblywoman Fiore:

This bill basically makes everyone adhere to the legal process. I do not understand some of my peers' questions because it seems like we need this bill, and it is a constant fight for us to keep someone elected if they are not eligible. Would this bill solve that problem?

Kevin Powers:

That is outside of the purview of this nonpartisan office.

Chair Stewart:

Ms. Merriwether, would you send us an email of the issues you have with this bill?

Susan Merriwether:

Would that be before we work with Assemblywoman Seaman?

Chair Stewart:

You and Assemblywoman Seaman can make that decision.

Kelly Martinez, Government Affairs Officer, City of Las Vegas:

We have similar concerns and worked with the bill's sponsor for clarification of those concerns, of which we are thankful. We will be working with other jurisdictions to clarify some of the language.

Chair Stewart:

Thank you, ladies, I appreciate your input. Assemblywoman Seaman, please come forward and summarize your presentation on A.B. 177. Mr. Stewart, we have all had a chance to look at the amendment, but remind us of the changes in the amendment.

There is also a letter on the Nevada Electronic Legislative Information System (NELIS) from Andrew Martin for your review ([Exhibit D](#)). Aside from the amendment, this letter is the only other exhibit on NELIS.

Assemblywoman Seaman:

I have heard a lot today about parties, but this bill is truly intended for voters to be engaged in the process because I am a person who experienced running against an ineligible candidate. I experienced that the voters became disenfranchised because they were confused. I am hearing a lot from my colleagues about worrying about parties, but this bill is intended for the constituents and the voters. I believe the voters care about who represents them, and that is why I brought this bill forward—because it is a major concern for the constituents in my district. They did not feel there was honesty and integrity in serving ineligible candidates and allowing them to serve if they had won. We have a growing nonpartisan group in this state, and I think it is because we have forgotten we are serving the constituents, not a party. I hope you will support this bill. I thought long and hard in putting it together with different people, and I will work hard with them to make it a clearer, cost-effective bill.

Chair Stewart:

I am sure you will work with the registrars on the technical issues to make sure we are not imposing something on them they cannot do.

Assemblywoman Seaman:

Absolutely, and I appreciate all of them being here to let me know their issues.

Daniel Stewart:

Currently, we do not have words drafted to address all of the concerns, but we want to continue the dialogue. Some specific concerns have been resolved. We have agreed to amendments on the length of residency, to be two years in one instance and six in the other. The category D felony was reduced to a category E felony. In section 29, unknowingly or willfully was included.

There may need to be further discussion regarding the deadlines and when they can make a ballot change, which is currently in statute as the fourth Friday in June before the general election. There was some testimony about changing that to when the ballots are actually printed, giving a longer period of time to make changes. Responding to concerns of the clerks, we understand there are deadlines for printing ballots. The purpose of this law is not to interfere with those deadlines. Those deadlines will stay the same whatever they are. It simply means that if the ballots have already been printed and are out, (1) to the extent there is a possibility to include additional information about ineligibility on those ballots, but (2) the result of what happens on Election Day would be different because the ineligible candidates would not receive votes countable for the election.

One other clarification; Mr. Powers hit it on the head about the two kinds of counting. In the 2014 Democratic gubernatorial primary, everybody could see that "None of These Candidates" won because the number was printed, but in Nevada we do not recognize "None of These Candidates" as an actual ballot choice, so those votes were disregarded, and it went to the person in second place. That is how it would operate in this case. We also would include a definition of an ineligible candidate as an amendment to include those three specific instances, because the way it was originally drafted, an ineligible candidate could refer to someone who is declared disqualified, as opposed to the other reasons for ineligibility.

To Mr. Gloria's concern, we want to make it clear that not only do the clerks not have the duty to investigate, but I do not even think they will have the authority under this bill. In section 7, we are going to change "filing officer" to Secretary of State's Office. Finally, we will be making it explicit that an ineligible candidate cannot receive a certificate of election.

Chair Stewart:

Thanks to everyone for your testimony today. Is there any public comment in Las Vegas? [There was none.] Is there any public comment in Carson City? [There was none.] The hearing on A.B. 177 is closed. This meeting is adjourned [at 6 p.m.].

RESPECTFULLY SUBMITTED:

Patricia Hartman
Committee Secretary

APPROVED BY:

Assemblyman Lynn D. Stewart, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: March 3, 2015

Time of Meeting: 4 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 177	C	Assemblywoman Victoria Seaman	Proposed Amendment
A.B. 177	D	Andrew Martin	Neutral testimony