

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 18, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Thursday, March 18, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Senator Pat Spearman (Senatorial District No. 1)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Gina LaCascia, Committee Secretary

OTHERS PRESENT:

Kyle George, First Assistant Attorney General, Attorney General's Office
Laura Chapman
Brenda Bertsch
Peter Aldous, Legal Aid Center of Southern Nevada
Phil Chapman
Gillian Block, Nevada Coalition of Legal Service Providers
Benjamin Challinor, Faith in Action Nevada
Tess Opferman, Nevada Women's Lobby
Evelynn Pacheco
Angela Rock, Olympia Management Services

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Sherrie Royster, National Association for the Advancement of Colored People
Leonard B. Jackson, Executive Director, Faith Organizing Alliance, Las Vegas
Christine Saunders, Progressive Leadership Alliance of Nevada
Jackie Beer
Jo Cato, Make it Work Nevada
Mary Janet Ramos, Culinary Workers Union, Local 226
Quentin Savvoir, Make it Work Nevada
Amber Falgout, Battle Born Progress
Cameron Clark, Nevada Association Services
Carolyn Glaser, Red Rock Country Club HOA
Mark Coolman
Mark Leon, Mountain's Edge Master Association
Lori Burger, Eugene Burger Management Corporation of Nevada
Garrett Gordon, CAI Nevada
Gayle Kern
Lyle McKenzie, Eldorado Neighborhood Second HOA
Cyrus Hojjaty
Sharath Chandra, Administrator, Real Estate Division
Alexander Avila
Chris Hardin

CHAIR SCHEIBLE:

Today, we have a work session and a hearing on one bill. The work session has four different bills. The first work session bill is Senate Bill (S.B.) 41 proposed by the Attorney General (AG).

SENATE BILL 41: Revises provisions relating to orders authorizing the use of a pen register or trap and trace device. (BDR 14-412)

PATRICK GUINAN (Policy Analyst):

The Committee first heard S.B. 41 on February 17, and it is noted in the work session document (Exhibit B). This bill revises the provisions related to an order issued by a district court for use by a peace officer of a pen register or trap and trace device. The bill includes certain federal prison definitions of peace officers when acting as members of a task force for the State or local enforcement agencies. It authorizes a court to accept a facsimile electronic copy of the signature on an application for such an order. It authorizes the use of secured electronic transmission for the application and issuance of such an order. It also

makes minor technical revisions to the statute for consistency across the *Nevada Revised Statutes* (NRS).

There is an amendment to S.B. 41 offered by the AG attached to [Exhibit B](#). The AG's Office has pointed out that the amendment reflects the consent of the various stakeholders to this bill which include law enforcement agencies and the defense bar. The amendment adds language clarifying that, except as provided under federal law, no person shall install or use a pen register or trap and trace device without a proper court order. The amendment adds the term "peace officer" to the list of persons to whom a court may issue an order authorizing the use of one of these devices and clarifies the definition. It also deletes language previously contained in the list of officers to whom such an order can be issued. It adds a person's signature to the elements of an electronic submission that can be authenticated as part of a secure electronic transmission. Finally, it adds language to defining pen register and trap and trace device as defined in federal law.

SENATOR HANSEN:

I compliment the AG on this bill but the bill is not going far enough. The more I study the advances in technology and the ability of law enforcement to use certain new technologies to spy on people not accused of any crimes is frightening. While I consider myself a strong law and order proponent, I consider myself even more of a constitutional proponent. The American people through the Fourth Amendment are guaranteed to not be subject to unreasonable search and seizure. These advances and the technologies in S.B. 41 are a tip of the iceberg.

We, as Legislators, do all we can to protect our own people from unreasonable searches—in particular, with all the incredible advances in those types of technologies. I thank the AG for bringing this bill.

SENATOR OHRENSCHALL:

I echo Senator Hansen's comments and appreciate the AG's Office reaching out to people who are concerned about civil liberties and to the defense bar for working on the amendment of S.B. 41.

SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED S.B. 41.

SENATOR HANSEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:

I will close the work session on S.B. 41 and open the work session on S.B. 42.

SENATE BILL 42: Revises provisions relating to certain court rules and decisions. (BDR 1-389)

MR. GUINAN:

Senate Bill 42 was brought on by the Nevada Supreme Court, and the Committee first heard the bill on February 16, which is noted in the work session document ([Exhibit C](#)). This bill removes the requirement that the rules of the Supreme Court and district courts be included in the NRS and requires instead that the Supreme Court print and distribute these documents in either pamphlets or electronic format according to statutory requirements. The bill also transfers the responsibility for printing and distributing the Advance Opinions of the Court and Nevada Reports from the State Printing Office to the Supreme Court. Funds generated by the sales of these documents to those who are not entitled to receive free copies are to be deposited in the State General Fund for the exclusive use of the Supreme Court. The bill also eliminates the statutory requirement that the Supreme Court is to train district court judges on complex medical malpractice issues.

There are no amendments to S.B. 42.

SENATOR SETTELMAYER MOVED TO DO PASS S.B. 42.

SENATOR PICKARD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:

The work session on S.B. 42 is now closed. I will now open the work session on S.B. 50.

SENATE BILL 50: Revises provisions relating to warrants. (BDR 14-405)

MR. GUINAN:

Senate Bill 50 was presented by the AG's Office, and the Committee first heard the bill on February 17, which is noted in the work session document ([Exhibit D](#)). This bill prohibits the issuance of a no-knock arrest warrant or a no-knock search warrant unless a sworn affidavit or affidavits are shown before the magistrate that such a warrant is necessary based on specific facts and circumstances to protect the safety of the peace officer executing the warrant or of any other person, or to prevent the destruction of evidence.

I will note, Chair Scheible, a fairly lengthy amendment has been offered by the AG's Office in consultation with a rather large group of stakeholders. The documents pertaining to the amendment are attached to [Exhibit D](#). If the Committee would like me to continue, I have summarized the amendment. We do have Kyle George from the AG's Office here who is prepared to go through the amendment for the Committee.

CHAIR SCHEIBLE:

I would be appreciative if Mr. George could walk us through the amendment. It is important that the Committee understands exactly what the amendment does.

KYLE GEORGE (First Assistant Attorney General, Attorney General's Office):

The AG's Office had the opportunity to meet with a large group of stakeholders and obtained feedback on S.B. 50 as initially proposed and subsequently amended by the AG's Office. Based on these meetings, we have further amended the bill.

Section 1, subsection 1 of the amendment is a simple revision. Under statute, a prosecutor seeking a warrant for arrest could ask a court for a summons instead of an arrest warrant. In the version of this bill presented to this Committee a few weeks ago, an amendment provided a magistrate could sua sponte, issue a summons instead of a warrant. Based on subsequent conversations with the

Nevada District Attorneys Association (NDAA), we recognized problems with this language and further revised it into the form presented today.

Section 1, subsection 2 focuses on, and is consistent with, the primary objective that no-knock warrants be used as sparingly as possible. For this reason, we have bifurcated complaints and citations issued pursuant to NRS 484A, NRS 488 or NRS 501, which pertain to traffic infractions, watercraft or white lights. These are minor offenses for which a no-knock warrant is not appropriate. A magistrate can still sua sponte, issue a summons instead of an arrest warrant. However, if it is for a significant felony, we revert back to statute where the NDAA may make a request for a summons, but the court may not sua sponte do so.

Section 1, subsection 3 makes it explicit that a no-knock arrest warrant should only be used when the underlying crime is a felony that involves a significant and imminent threat to public safety, and the act of giving notice via a no-knock and announce would create an imminent threat either to the lives of officers serving the warrant or to other persons. This is a two-point approach, and both points must be satisfied before it is appropriate to use a no-knock arrest warrant.

Section 1, subsection 4 sets forth the criteria which a court must consider before a no-knock arrest warrant can be issued. Specifically, the applicant must describe the probable cause that establishes a crime for which the warrant is sought. This crime must be a felony as indicated previously, which involves a significant or imminent threat to public safety. The applicant must also explain why a no-knock warrant is necessary and why no other option is available to law enforcement executing this warrant. If the warrant is to be executed outside of daylight hours, the applicant must explain with particularity why it must be done at night. This is an existing provision under law for all warrants.

The on-scene officer supervising the execution of the no-knock warrant must be appropriately trained in the execution of warrants. This is a specialized skill, and not every officer is trained to this level. I need to highlight that the language formulated in this amendment was specifically chosen to address the needs of rural law enforcement officers where the officers trained might be more limited compared to a larger police department such as Clark County, Las Vegas Metropolitan Police Department, Washoe County or Reno Police Department.

Section 1, subsection 5 describes how the no-knock warrant must be executed. The first step applies that although officers do not need to identify themselves as law enforcement officers prior to entering premises, they must do so immediately after entry or as soon as is practicable. Without such a requirement, there is no way a homeowner would know that the persons entering the premises are law enforcement officers. Officers must wear insignia that prominently identify them as law enforcement when executing a no-knock warrant.

Officers shall only use force which is reasonable and necessary to enter the premises. The minimum force necessary will be fact-specific and vary widely from scenario to scenario.

This amendment to S.B. 50 also requires officers who are executing a warrant under this section to wear body cameras pursuant to NRS 289.830.

Upon arrival of the premises to be searched and before effecting a no-knock entry, officers must determine if any change in circumstances has obviated the need for a no-knock entry and therefore has made the need either unnecessary or unsafe to execute. This is to ensure the interests of safety for both the public and the officers.

When S.B. 50 was initially presented to this Committee, some concern about language included directly spoke to the exclusionary rule which provided for the suppression of evidence obtained in execution of a warrant that had certain constitutional defects. Based on consultation with all the stakeholders at last week's meeting, we have revised the language and now provide that it is a violation of this act if, and only if, the peace officer deliberately misrepresents a material fact or omits material information from an affidavit in support of an application for a no-knock warrant. When the misrepresented material is excluded or the omitted information is included, the affidavit fails to meet the criteria described above.

This language and formulation was chosen consistent with the United States Supreme Court case, *Franks v. Delaware*, 438 U.S. 154 (1978). This case specifies that if there is such a misrepresentation or material omission, then the affidavit does not meet the criteria set forth in section 1, subsection 4, making the warrant invalid.

Section 2 of S.B. 50 replicates what is presented in section 1 with the only difference being that section 2 pertains to search warrants and section 1 pertains to arrest warrants.

SENATOR HANSEN:

Thank you for taking the time to speak with me yesterday regarding S.B. 50. The AG assured me that with the amendment, all the law enforcement people are now on board. Just checking with you to make sure this is still the case. Is any significant opposition left or is everyone in agreement on the bill?

MR. GEORGE:

At the time we floated this version of the bill, there was no opposition from law enforcement. However, right before this hearing began, I did receive a text message from a member of a law enforcement union expressing concerns about section 1, subsection 6 with the statements regarding deliberate misrepresentation of material facts or deliberate omissions. Based on the exchange with the union member and the District Attorneys Association, I believe we are okay. I have not had the opportunity to have a conversation with the member to find out if he is satisfied at this point. I do know that the NDAA is satisfied with this language.

SENATOR HANSEN:

Sounds like the member of the union may be too late. You may want to give another attempt at the conversation.

SENATOR PICKARD:

Mr. George, are you representing that law enforcement agencies are okay with losing previous abilities listed in section 1, subsection 2? The changes to paragraphs (a) and (b), deleting the conditions where a no-knock warrant would be applied, including where and when the defendant has previously attempted to escape and to prevent destruction of evidence, are important to law enforcement which I understood from my conversations with them.

MR. GEORGE:

Yes. At the meeting we had last week, there were several representatives from police agencies, including Las Vegas Metropolitan Police Department, Washoe County Sheriff's Office, Reno Police Department and the Regional Human Exploitation and Trafficking Unit in northern Nevada. In amending this bill, I have learned how infrequently no-knock warrants are used in modern policing. The

preferred practice is to wait until the subject of the arrest warrant has actually left the premises and effect the arrest on the streets where it is safer for officers and for the public. The one department still using this on a limited basis specifically indicated that it utilizes the warrant consistent with the language we have in the amendment and does not believe this amendment affects its ability to effect these warrants in any way whatsoever.

SENATOR PICKARD:

Of course, we would not want a deliberate misrepresentation. This will be an issue of fact. I would be interested to see what the police department's hesitation is on this part. It shifts the burden to proving a deliberate misrepresentation. This would be much harder than the mirror representation. I am okay with your representation that law enforcement is okay with the amendment. I agree that it sounds like this is an infrequent situation used.

SENATOR CANNIZZARO:

Senator Hansen brought up a point worth discussing further regarding the section which indicates a deliberate misrepresentation or a deliberate omission of material information such that it may change the affidavit or whether there is sufficient probable cause or could potentially change the outcome of whether a warrant was actually issued by a court. Is that the intent of it—not to unduly put law enforcement in a bad position but rather to ensure that the information given to the court when requesting such a warrant is in fact the full truth, not allowing for them to base a warrant on just certain facts?

MR. GEORGE:

That is correct. The way this analysis would take place is consistent with *Franks v. Delaware*. In practice, if a reviewing court becomes aware of a misrepresentation or omission that is deliberate, the reviewing court would then reanalyze the affidavit and application to verify evidence of omitting a deliberately misrepresented fact or including a deliberately misrepresented omission, and then make a determination if the outcome would in fact be different under such analysis—under an ex post facto inclusion or omission. That goes to what is material and the practice in which the court is commonly engaged. It would not be a new process for the court to undertake.

SENATOR CANNIZZARO:

If it is material and either misrepresented or omitted, it could change the veracity of the finding of probable cause and the affidavit potentially being a

result of exclusion of the evidence. I want to make sure we have a record of this.

SENATOR CANNIZZARO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 50.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHEIBLE:

I will close the work session on S.B. 50 and open the work session on S.B. 148.

SENATE BILL 148: Establishes provisions regarding the reporting of hate crimes.
(BDR 15-715)

MR. GUINAN:

Senate Bill 148 was sponsored by Senator Harris who is a member of this Committee. We heard the bill on March 3, which is noted in the work session document ([Exhibit E](#)). This bill requires State and local law enforcement agencies in Nevada to maintain a record of all crimes that manifest evidence of prejudice based on criteria established in law commonly referred to as hate crimes and to submit that information to the Central Repository for Nevada Records of Criminal History and to the office of the AG on a quarterly basis. The AG is required to adopt guidelines for the submission of the records, ensure the records are provided to the FBI for inclusion in its annual *Hate Crime Statistics* report and issue a detailed annual report regarding the crimes.

Any data acquired under the provisions of this bill may be used only for research or statistical purposes and must not contain any of the victims' identifying information. It also requires the Director of the Department of Public Safety to adopt guidelines regarding the manner in which this data is to be reported to the Central Repository.

Senator Harris has proposed an amendment to S.B. 148 which is attached to [Exhibit E](#). Briefly, the amendment changes the word "maintain" to "submit" in

regard to law enforcement agencies providing records of hate crimes to the Central Repository. The amendment also revises the timeframe for submittal of this information from quarterly to monthly. It removes references to the AG and instead requires the Central Repository to make all data required in relation to this bill publically available and to ensure it is reported to the FBI for inclusion in its annual *Hate Crimes Statistics* report.

SENATOR HANSEN:

I provided my statements on the record during the hearing on S.B. 148. It is a mistake to single out one type of human emotion, giving the victims of those crimes basically a higher level of importance than other people who are assaulted in the same fashion but not in one of these categories. I will be a strong no on this. We should never essentially punish people in America for thoughts—even if we find those types of thoughts repugnant.

SENATOR CANNIZZARO:

I will be voting in favor of the bill and thank Senator Harris for bringing the bill. I have some experience in what happens when people commit crimes and some of the motivations that go into those crimes, and I absolutely believe we should be requiring this information on hate crimes. I respectfully disagree with my colleague in that this is not mere punishment of thought—this is when something prompts someone to act and gives them that motive, and we should not stand for hate. We certainly should not stand for hate in the context of allowing or excusing criminal behavior of any kind. It is exceedingly important for us to get this data. I am grateful for the bill, and I am a strong yes.

SENATOR OHRENSCHALL MOVED TO AMEND AND DO PASS AS AMENDED S.B. 148.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HANSEN VOTED NO.)

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CHAIR SCHEIBLE:

I will now close the work session on S.B. 41, S.B. 42, S.B. 50 and S.B. 148. I now open the hearing on S.B. 144. We are joined today by Senator Spearman who will now present the bill.

SENATE BILL 144: Revises provisions relating to common-interest communities.
(BDR 10-565)

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

SENATOR PAT SPEARMAN (Senatorial District No. 1):

This vitally important piece of legislation will help keep some of our most vulnerable fellow Nevadans from losing their homes through extreme circumstances beyond their control. By "most vulnerable," I mean Black, Indigenous and People of Color (BIPOC)—those Nevadans.

Homeowners' associations (HOAs) will still be required to obtain a lien for nonpayment of HOA assessments. The only thing S.B. 144 changes is enforcing the foreclosure process from nonjudicial to judicial.

Last summer, the Legislature was called in for the Thirty-second Special Session to address two disasters: the havoc spreading across the Country in the wake of the Covid-19 pandemic and the systemic racism the pandemic brought so quickly and painfully to light, as it impacted communities of color everywhere. In response to the sadness, anger and pain I saw around me, I suggested a resolution that became S.C.R. No. 1 of the 32nd Special Session. The resolution begins with the words of Maya Angelou, "Prejudice is a burden that confuses the past, threatens the future and renders the present inaccessible." I ask this Committee to keep those words in mind as we discuss S.B. 144. In the words of S.C.R. No. 1 of the 32nd Special Session, "racism is a public health crisis."

Does anyone here know why common-interest communities, better known as HOAs, began in this Country? I will admit that the history of HOAs was new to me as well. In his book titled *The Color of Law: A Forgotten History of how Our Government Segregated America*, Richard Rothstein points out that these associations began in the early 1900s as a means to exclude undesirable elements from certain communities. Of course, that meant excluding nonwhites and, in some cases, the Irish people. Fortunately, we have progressed beyond the blatant impressions of racism these growing associations are about, and this Legislature has passed laws to, hopefully, ensure that such discriminatory

practices no longer take place in Nevada. It is important, however, to recognize and acknowledge this history if we are to understand present times.

Today, HOAs are intended to maintain a certain quality of life and standards of care within their communities. It ensures members of the HOA follow the rules and pay their fair share so everyone within the community can enjoy the common facilities and maintain the value of their homes. For those who are financially secure and do not fear losing their jobs or paying unexpected medical bills, this is a good arrangement. But what if you are one of the people who Vice President Kamala Harris repeatedly spoke about during her campaign? What if you are someone who is living so financially tight that an unexpected \$400 medical bill will upend your life? What if your membership in an HOA is an expense you are incredibly proud of because it signifies you have purchased a home, but you are also terrified because you know if a waterline breaks, a tree dies or blows over during a bad windstorm, you may be assessed HOA fines that you cannot pay? You know this because you signed an HOA contract that indicates if you cannot pay fines or assessments, more and more will pile up until, ultimately—as you sit in your home, maybe searching for a new job because you have been laid off—you find out the HOA has the legal right to file a lien on your home, begin the process of foreclosure and sell your home right under you.

Statute gives former homeowners 60 days right of redemption, which means people have 60 days to repurchase their homes—remember, these were their homes first. What if they cannot come up with the money or a way to purchase the homes back? What happens on Day 61? I spoke with someone representing an HOA who said that after the 60-day period, the home could be sold to a third party. My question then was, who is the third party? What group makes up this third party? I was told one group could be investors.

I have nothing against people or groups who have the money to invest and purchase items they will later either resell or bargain off. It is ironic that a person who probably made less than \$70,000 a year has lost the home, and it now can be sold to someone who has a nine-figure net worth. The irony of this scenario rises to the level of dramatic Shakespearian proportions—like Hamlet, MacBeth or contemporary writers like Kyle Perry, Virginia King or Shonda Rhimes.

Let me be clear because I do not want anyone taking my words out of context. I did not say HOA representatives are racist. I said the process feeds into the systemic structure of racism. For example, I have figures of HOA foreclosures released by the Nevada Association of Realtors (NAR) based on research and analysis conducted by a professional survey company and the Lied Center for Real Estate at University of Nevada, Las Vegas. The data contains Clark County and shows the rate of HOA foreclosures by zip code to include 89030 and 89106. It should be noted that in both zip codes, HOA foreclosures made up more than 10 percent of the total foreclosures in Clark County. I have figures for Washoe County as well. Zip codes that stand out by the highest rates of HOA foreclosures in Washoe County are 89502, 89506 and 89512. It should also be noted that zip code 89502 foreclosures made up more than 10 percent of the foreclosures in Washoe County.

Undercurrents of systemic racism appear benign but are necessary if the perpetuation of this public health crisis is to exist. The evilness of covert actions continue to normalize and calcify this scourge on our Country and even around the world. I am talking about racism as a public health crisis. Senate Concurrent Resolution No. 1 of the 32nd Special Session passed unanimously in both Houses, so we must conclude the entire Legislature agreed that racism is a public health crisis. We must ask ourselves if those were just pretty words.

The previous homeowner's future is now threatened—threatened by prejudice against those of lesser means, lower pay and less secure jobs. Although it is no longer written in the contract, it remains a systemic prejudice that affects Black and Brown people far more and far more often than other communities that may not have a high degree of BIPOC.

With regard to the figures I shared with the Committee earlier from the Lied Center, I also have statistics from the Clark County Recorder's Office. Information from the HOA column delineates numbers by month: February 2020, 284 foreclosures; March 2020, 217 foreclosures; April 2020, 150 foreclosures; June 2020, 165 foreclosures; July 2020, 172 foreclosures; August 2020, 141 foreclosures and September 2020, 248 foreclosures. These numbers are for either a foreclosure, a notice of default or a notice of sale.

The wealth gap in this Country has been growing quickly; it was growing quickly before the pandemic, but it is becoming an unbridgeable chasm. Wealth in equity is now at a level not seen since the era of the robber barons. Some

have mightily profited during the last year. According to the U.S. Census Bureau, as of March 15, approximately one-third of Nevada residents expect to lose household income in the next four to six weeks; 35 percent to 45 percent of Nevadans expect to experience eviction or foreclosure in the next four to six weeks; and 7 percent to 10 percent of Nevadans do not even know if they and their families will have a house to go home to.

The ability to purchase a home is the foundation upon which we build personal wealth in this Country. Indeed, there is a direct correlation with the widening wealth gap and the lack of home ownership in BIPOC communities. This is how we provide safety and security for our children so they can strive and achieve more. Purchasing a home in a BIPOC community, particularly in a Black community, is the way we have to create generational wealth. To lose a home is not just affecting the current homeowner, but you can say by extinction, it is reaching to generations ahead of us. A home is what we most hope to pass on to our loved ones. A home is the embodiment of our success and our ability to take part in this society and make it better for the next generation. Imagine taking away access to present success and stability from someone who had to choose whether to pay a medical bill, get a prescription filled or fix a car; and someone who was laid off from work during the pandemic, was called back to work only to get laid off again and filed for unemployment but never received the benefits. Whatever monies come in are subject to Maslow's hierarchy of needs—you must have food, shelter and you have to make sure you are safe. All the events I just described are circumstances beyond a person's control. If we expect these people to pay HOA dues before paying a medical bill or getting a prescription filled, then we are doing something terribly wrong.

Most of you will remember or know that banks and credit unions or other mortgage services instituted forbearance. My insurance company sent me an email asking if I needed help in postponing something. Can you make your payment, what do you need? Everyone who I encountered was understanding. They understood that the pandemic had created a financial abyss that most of our citizens would be unable to climb out of immediately or ever.

This is why S.B. 144 moves from a nonjudicial to a judicial process. It does not change the superpriority lien, it does not change the fact that given the right circumstances, the HOA can file a lien and ultimately foreclose on a home. Senate Bill 144 inserts another layer for due process for the homeowner. It is

what the HOA says you owe. Who are you going to call? Senate Bill 144 is meant to assist homeowners with tracking the status of any HOA-related issues involved with their own property and resolving them quickly.

Senate Bill 144 requires an HOA to create a website, and I have spoken with representatives who indicate this can be done better through an online portal. I will work on an amendment to make sure homeowners have something they can go to 24/7 to review their HOA account and track all information about their property. If there is a notice from the HOA, they can handle it immediately if need be. It requires the website to include the community manager's name as well as the names of any affiliates of the community management. The affiliates include the HOA's collection agencies. It requires that new homeowners be provided a form to fill out at the same time they are given the declaration of covenants, conditions and restrictions (CC&Rs) that will enable the association to create an account for each homeowner. It also requires the association to update the information on the website as quickly as possible. It requires an association generally to deliver any communications or notices to homeowners by email unless an owner has not designated an email address or desires to receive this information by regular mail. We recognized last year that with the slowdown of the U.S. mail, a number of important mailpieces were not getting to the intended destinations on time.

Section 10 of S.B. 144 authorizes any training provided by the Office of the Ombudsman for owners in Common-Interest Communities and Condominium Hotels to give homeowners or executive board members the option to conduct their training either in person or online. For us to know how to address the problem, we first need to gather the data required to understand the problem.

The zip code data I read earlier did not have information regarding race, ethnic or gender identification. Zip codes that had the most HOA foreclosures and zip code 89030 are right up against my District No. 1. Zip code 89031 is there too; 89084 is also in my District. An orange coloring on the list of zip codes means a high level of foreclosures and includes every zip code in my District with the exception of one. As I reviewed the zip codes, I noticed this one zip code is where most of our service members and veterans live.

The bill requires a community manager to report to the Nevada Real Estate Division (NRED) for each association under its management: the total number of past due obligations referred to a collection agency for the past year, the

amount of each account, and—if information is made available to the manager voluntarily—the race, ethnicity, gender identity or expression of sexual orientation of each person with one of those past due obligations.

As I mentioned earlier, this bill does not remove the HOA's ability to enforce the nonpayment of HOA dues or assessments. This bill simply changes the process. If people say this bill will change everything about what HOAs can do to protect the association's interests and to enforce the process, they are incorrect. They can send me an email, and I will correct them.

Sections 5 and 17 of the bill eliminate the authority of an association to foreclose on a lien without the participation of a court of law. The bill that these changes to the foreclosure process do not apply to any foreclosure initiated before October 1.

The remaining sections of this bill make conforming changes to other portions of the statute to effectuate the changes by S.B. 144. I have submitted a proposed conceptual amendment ([Exhibit F](#)).

A few people will be presenting with me today. One unable to be here submitted his written testimony ([Exhibit G](#)). Tim O'Callaghan's testimony shares firsthand knowledge of his own HOA's nitpicking and unscrupulous treatment to members in his community.

Let me be clear, every HOA does not participate in this type of activity. The realization it is still being done and these HOAs have not been reined in is further proof that we need a higher level of scrutiny with another layer of protection for the homeowner that comes with the judicial process.

Two other people presenting with me are Laura Chapman and Brenda Bertsch.

LAURA CHAPMAN:

I am a local realtor, and I deal with associations and management companies daily. Senate Bill 144 is not only needed for transparency and getting homeowners some judicial relief before an association can foreclose on their home, it also opens the door for people to start looking at HOAs and their management companies to see what they are doing to homeowners in general.

For the last three years, I have been ordering HOA documents for my clients which I purchase in advance and then try to get reimbursed. *Nevada Administrative Code* 116.465 provides that homeowners are not to be charged more than \$160 for a resale certificate. So far, I have run into only one HOA that actually follows this law. I have hundreds of emails and dozens of signed receipt requests telling management companies they are overcharging. In response, they hire lawyers to send three-page letters telling me I am right.

Eventually, I get partial refunds from my clients after spending between \$6 and \$15 to get a \$25 refund. The problem is that I get the refund from my clients, but these management companies and associations continue to charge the homeowners \$190, \$210 and \$225 for one piece of paper that takes two minutes to write and press send on a computer keyboard. They already overcharge, and a piece of paper that takes two minutes to send is not worth charging \$160.

This is another way management companies tell HOAs how this is done and how much it costs—the HOAs do not know any better. The homeowners do not know any better as well.

The Ombudsman's Office told me that once I receive a refund from my client, its hands are tied—the Office cannot do anything but send a letter to the management company stating this needs to be fixed, and then it is over. Six months will go by, and I will need to order HOA documents for a new client; without a doubt, the same HOA is still overcharging. The management companies and the HOAs clearly know they are overcharging—at least based on what I have sent in payments. They do not care because nobody follows through and makes sure they are doing the right thing and not overcharging. No one seems to care—this is the problem. When these management companies and HOAs continue to overcharge, they are basically saying, "What are you going to do about it?"

If Senator Spearman can get the website portion of her bill passed and make an amendment to have the HOAs and management companies be transparent about what the homeowners are being charged, maybe this can be fixed. The HOAs and management companies should be required to list the governing statutes on their websites for homeowners to see what is being requested and charged, so HOAs and management companies will no longer get away with this.

There needs to be more oversight and follow-through for consumers.

BRENDA BERTSCH:

We are all colored with a brush, all of us, whether you are rich or poor, disabled or have cancer. If you own a house, you can leave something for your children. You can do something with your life, or you are unable to do something. Homeless people cannot have big aspirations except to find a home.

In 2013, I was in an accident which caused me to be disabled. In 2016, I was diagnosed with cancer. I have survived seven surgeries in the last four years. I also purchased my condominium by myself using the entirety of my settlement money. I have had 33 major surgeries in the last 6 years. It is a good thing my condo is paid for because I cannot fight for the rent—I fight for other things these days.

I purchased my condo in June 2018. In September 2018, while recovering from back surgery where part of my spine was amputated and with staples in my back, I was lying in bed when I heard a noise coming from my hallway that sounded like a waterfall. As I started walking toward the noise, my feet were getting wet; as I approached the living room with the tile floor, I slipped, falling into muddy water which was pouring over my kitchen sink. I later found out this muddy water was Category 3 sewage. I am lucky I did not get an infection. This sewage problem happened three more times over the next couple of days. The estimates added up to thousands of dollars of damage.

In trying to get an estimate to fix the problem, I was outside to meet a plumber who was having a discussion with another plumber. During this discussion, I found out there are eight condo units in my building and, apparently, for years, this Category 3 raw sewage from all eight units has been backing up through my kitchen sink. My neighbor next door advised she has lived in her unit for six years as a renter, and this plumbing problem happens all the time.

Since purchasing my condo, I have never received anything from the HOA. I have never received an invitation to an HOA meeting. I have never received the CC&Rs or the Rules and Regulations. Now, the HOA wants something from me, it wants me to pay my HOA fees.

One of my neighbors told me about an HOA meeting scheduled within the community, so I showed up and presented a letter of demand for the HOA to fix

the plumbing. The plumbing outside of my unit is the HOA's responsibility, and the plumbing inside my unit is my responsibility. The letter of demand included a \$1,400 backflow trap. This trap stops sewage from seeping into the units, particularly my unit. This raw sewage now contains Covid-19—a live active bacteria that causes black mold.

I did not pay my HOA fees because the HOA was not performing its duty. I then received a letter from the HOA's attorney saying I owed the HOA a sum of money—an attorney who I later find out has pled guilty several times on several counts before the State Bar of Nevada. I told this attorney I did not owe the HOA any money. This conversation went back and forth while I was in and out of the hospital, having more surgeries and trying to survive cancer. I asked my caretakers to put the letters from the attorney and the HOA in boxes—never really getting a chance to go through all of them. I have nine banker boxes on my desk, and this is a small amount of all the letters nice people will help me go through. This goes on and on, and I go on—I survive—I did my job. The HOA still has not fixed the plumbing problem that transpired in September 2018.

Sometime later, someone from the HOA advised me that I signed a settlement agreement in which I was not performing; therefore, my condo would be sold. I responded by saying, please produce said settlement agreement. This so-called settlement agreement never showed up. I did receive text messages from board members whose words were not nice. Meanwhile, I am afraid to go outside because of shame, knowing that my community now knows about this problem. Out of this shame and thinking maybe, just maybe I was wrong, I sent the HOA \$3,000. I make \$750 a month from my social security. The HOA's attorney took most of the \$3,000, and the balance was applied to the arrearages with the HOA, which was a small amount.

On March 4, my personal care assistant helped me get to my recliner in my living room, helped me get settled in with my heating pad, my blanket and my coffee. Someone knocked at my front door and yelled my name. A foreclosure notice was posted on my door for date of sale of March 24. My place is paid off. I wonder what they do when people have mortgages.

Instead of sending \$3,000 to the HOA, I should have just paid the plumber the \$1,400 and let the insurance company fix my condo. My condo is important to me because I need a place to recover; we all like our own place. The more surgeries I go through, the more I think about the end of my life.

I had to file bankruptcy. If I had had the opportunity for the HOA to file a civil law suit against me, maybe the judge would have said, "Hey lawyers, you do not get to steal that money, it should go to her arrearages. Brenda, the HOA owes you, you do not owe them. They are wrong, they breached the contract first." Maybe I would not be forced into bankruptcy or have the nightmares that I do. Maybe with new compassionate and caring Nevada laws, these big corporations will not have the right to take away our homes, or it will just get worse out there—more and more people will lose their homes.

SENATOR SPEARMAN:

Chair Scheible, thank you for your indulgence—it was important to get a perspective from Ms. Bertsch.

SENATOR OHRENSCHALL:

Thank you, Ms. Bertsch, for sharing your personal story and what you have been through.

Peter Aldous is also with us today. Mr. Aldous, since you are with Legal Aid Center of Southern Nevada, is Ms. Bertsch's story common, are you seeing this a lot among the people you represent? You are trying to help people stay in their homes. Can you share with the Committee what you have seen and what is going on in these types of situations?

PETER ALDOUS (Legal Aid Center of Southern Nevada):

I do specialize in foreclosure and assisting people in trying to stay in their homes. Unfortunately, Ms. Bertsch's situation is very common. We have people who are confused, do not know how much they owe and have fallen behind for any number of reasons. When these people try to get back on track with their HOA payments, they cannot figure out how much they owe because frequently these types of debts are assigned to a collection agency and sometimes two different collection agencies, one for fines and one for assessments. Plus, collection costs are being added to the accounts every time a homeowner calls the collection company to request information. By the time homeowners gather the money to make a payment, they find out that the balance has increased. This is unfortunately all too common.

This is one opportunity wherein Senator Spearman's requirement of a website or portal would be helpful because homeowners will see exactly what they owe.

They will not need to call the collection agency or the HOA to request information and be charged again.

SENATOR OHRENSCHALL:

Mr. Aldous, I was surprised when Ms. Bertsch told the Committee she tried to make a lump sum payment to get caught up on her past HOA dues, but the foreclosure moved forward anyway. Can you explain to the Committee what happens in this type of situation—what amount of money goes to the arrearages and what amount of money goes to the attorneys and collection agencies?

MR. ALDOUS:

Unfortunately, collection costs can be included in liens and as the basis for a foreclosure as long as assessment fees are due in the same lien. It can be frustrating for homeowners paying assessments when they have fallen behind or in dealing with any fines because the collection costs increase rapidly. There are limits in the law as to how much collection costs can be, but I have never seen any HOA or collection agency charge anything less than the statutory maximum. Collection costs increase quite rapidly when a homeowner starts to fall behind.

MS. CHAPMAN:

I agree with Mr. Aldous. Instead of charging the actual cost, collection agencies charge the maximum allowed. Sometimes, they do not know what that is, so they charge what they want because they can. There is no one to tell them otherwise.

SENATOR PICKARD:

Senator Spearman, when you and I spoke about S.B. 144 prior to your presentation, I raised the fact that a number of smaller associations have 5 or 10, sometimes 15, homes with no formal association or manager. Have you accommodated for those smaller associations in your bill?

SENATOR SPEARMAN:

I covered that in the conceptual amendment. The bill is only for HOAs with over 100 homes in their communities. Smaller associations are not covered in this bill.

SENATOR PICKARD:

As you know, I have set up a couple of HOAs over the years and have been on some HOA boards. The Ombudsman's Office was set up for the purpose of addressing these types of problems with the HOAs. When we talk about the biographical data, many of the homeowners are mixed races, one race with another race living in the home. When we count households, we do not count people. How do we account for this?

SENATOR SPEARMAN:

I challenge you to ask anyone who lives in Clark County what the preponderance of race and ethnicity is of people who live in the zip code areas I provided earlier. If homeowners are a mixed race, this makes them not White. I can look at the zip codes in my District and tell exactly who lives there. Absent the data by race, anybody in their right mind can look at this, and know.

SENATOR PICKARD:

Maybe I did not ask my question clearly. In your bill, the HOAs and managers are to report the race of the homeowners. I am talking about interracial families, not necessarily a mixed race.

CHAIR SCHEIBLE:

Senator Pickard, can you tell us what part of the bill you are talking about?

SENATOR PICKARD:

I need to look through my notes.

SENATOR SPEARMAN:

Let me answer your question while you are looking through your notes. When people volunteer to fill out a form asking for race and ethnicity, they describe themselves. If they are of mixed race and are part Hispanic, they may identify as Hispanic. Some people may identify as Black; some may say they are Black and Hispanic. It is not a mandatory thing, it is just like when you purchase a home, a car or any big ticket item, a form is given to the purchaser—it is optional. The form asks for race and gender. If someone does not want to fill it out, they do not fill it out—it is optional and voluntary.

We still have amendments being worked on for this bill, but there will be more amendments.

SENATOR PICKARD:

The language in S.B. 144, section 12, subsection 1, paragraph (c) requires a community manager to report the "race, ethnicity, gender identity or expression and sexual orientation of each person whose past due obligation was referred to a collection agency, if such information is voluntarily made available to the community manager."

My concern is about the integrity of data reporting. We are asking about the person, and it is usually a family because we look at data by household. The assessment goes to the household, not to the person. I want some clarity, but if this is covered in an amendment, that can wait.

When we move to a judicial action from a nonjudicial foreclosure, presumably we will be adding the costs of such judicial action. How would we balance the costs of these actions?

SENATOR SPEARMAN:

Usually, in a civil action, whomever does not prevail is the one who pays. Some HOA representatives told me that most HOA budgets have a category for unforeseen legal expenses. The opposite inference is if you go to a judicial process, homeowners might be intimidated in figuring out all the necessary legal documents and paperwork required. However, I believe that requiring a judicial process will significantly decrease HOA foreclosures, and people like Ms. Bertsch will not be forced into bankruptcy.

In the process homeowners are forced to go through now, the HOA is the judge, the jury, God or God's kinsman. The HOA is everybody. I reject the notion that we cannot go to a judicial process because it will burden the homeowner.

SENATOR HARRIS:

Can someone tell us how much the HOA receives once a home is sold to a third party through this foreclosure process?

CHAIR SCHEIBLE:

I invite any of the presenters to answer the question.

MR. ALDOUS:

When a home is sold at foreclosure, provisions in NRS 116 set out what is to be done with the proceeds of the sale. First to be paid is the cost of collections, which also answers an earlier question from the Committee about the cost of judicial foreclosure. Second, the HOA has a nine-month superpriority lien paid before any junior lien holders. That means nine months of HOA assessments plus collection costs are paid. Junior lien holders are paid after that, and any balance in the proceeds goes to the former homeowner.

SENATOR SETTELMAYER:

Will there be a small threshold for smaller HOAs that do not have websites?

SENATOR SPEARMAN:

It is my understanding from representatives of HOAs that many of them have websites. My answer to Senator Pickard on this subject is that my amendment has a floor. Those HOAs with 100 homes or less are exempt from this requirement.

SENATOR SETTELMAYER:

What if there is no mortgage? If you impound HOA fees as a concept and you own the home, how will you ever get those fees?

SENATOR SPEARMAN:

I will refer to Ms. Bertsch's story. She said that in essence, she had to file bankruptcy so she did not lose her home. Her home was paid for. The HOA charges fees whether the home is paid for or not. Her declination to respond to those charges was connected to a matter of plumbing she paid for without reimbursement. The plumbing problem was not even her problem. It was a problem with the HOA's plumbing outside of Ms. Bertsch's condo that connected to the plumbing going into her condo.

SENATOR SETTELMAYER:

I will need to research this and take a look at the amendment as well.

CHAIR SCHEIBLE:

We will now move to testimony. My clock reflects 2:37 p.m., which means that 4 members of this Committee need to be in another meeting within the next 53 minutes. For this reason, I will limit testimony to 20 minutes total in each position and every individual calling in to testify to 2 minutes. I encourage

anyone not able to testify today due to these time constraints, or any other reason, to submit in written testimony to SenJUD@sen.state.nv.us.

PHIL CHAPMAN:

I generally speak in favor of S.B. 144, but items need to be added to the bill.

The major problem is the legislation on the Ombudsman's Office says that when appropriate, it is to investigate disputes involving the provisions of this chapter of the law or the governing documents of an association. However, in practice, and under NRS 116.745, the Ombudsman does not have the authority to do anything with the governing documents. If you have ever filed a complaint with the Ombudsman that involves governing documents, the response will be that the Office does not have the authority to interpret governing documents. The forms the Ombudsman provides, the Intervention Affidavit, Form 530, and the Statement of Fact Against a Community Manager, Form 514a, both indicate to provide governing documents as evidence alleging violations. But the Ombudsman does not actually address or resolve disputes regarding governing documents because he or she does not have the authority. This section of the legislation should be amended to take out the mention of governing documents or give the Ombudsman the authority and duty to interpret governing documents of these HOAs and resolve disputes, which is what the Ombudsman Office was established for in the first place.

With regard to HOAs overcharging for documents, the appropriate section is NRS 116.4109, subsection 4, paragraph (b) and includes providing the certificate of resale, which says that the fee must be based on the actual cost the HOA incurs to fulfill the requirement. The legislative intent here is that the HOA is not to make a profit on the resale certificate. However, the way it is working in practice, the actual cost to the association is what the management companies are charging which is always the maximum \$160 but sometimes \$185. In almost every case I have seen, they are charging over the maximum amount allowed by law. I suggest this section be amended to read, such a fee must be based on the actual cost the association or the management company incurs to fulfill the requirements of providing the resale certificate. This should make it clear that the management companies are not to make a profit as well.

CHAIR SCHEIBLE:

I am revising my earlier statement and will extend testimony to 30 minutes total. We will start with Ms. Block. You will have two minutes.

GILLIAN BLOCK (Nevada Coalition of Legal Service Providers):

We are in support of S.B. 144, and I want to echo much of what has already been said today. Given the current Covid-19 crisis, this legislation is greatly needed.

The bill being considered today will protect homeowners and will help prevent foreclosure. Many people do not realize that an HOA can take their home if they fall behind on assessments. Having access via a website or portal to view critical information for the homeowners will help in preventing foreclosure.

We also support eliminating nonjudicial foreclosure and requiring judicial oversight. This will protect homeowners by placing a critical check on the powers the HOAs have and encourage mediation to help parties find a solution. This legislation will help people keep their homes.

BENJAMIN CHALLINOR (Faith in Action Nevada):

We are in support of S.B. 144. There is an imbalance in power between tenants and landlords, especially because BIPOC communities make up to two-thirds of the population. A systemic barrier has kept these people from building a generation of wealth in homeownership. This bill plans to amend some of these problems to make sure that once BIPOC communities are able to purchase homes, they are not forced to abandon them. The zip codes in Clark County and Washoe County mentioned during the presentation are predominately Black, African-American and Mexican families. This bill looks for clarity, which is another avenue to keep homeowners in their homes.

TESS OPFERMAN (Nevada Women's Lobby):

One of the top priorities of the Nevada Women's Lobby is helping with security. We work hard to get legislation that ensures women and families are able to make their way to affordable and stable housing where they feel secure. We thank Senator Spearman for bringing this issue forward so we can look at the HOA policies and address the inequity when it comes to fines and assessments that lead to HOA foreclosures.

It can be difficult for homeowners to figure out what they owe to the HOA. The website or portal is drastically needed, especially in times of recession when budgets are tight and homeowners are struggling. Ultimately, we need to help keep these homeowners in their homes. Senate Bill 144 does not limit the fines

or assessments—it merely adds a needed layer of due process to protect vulnerable homeowners.

We urge the Committee to pass S.B. 144.

EVELYNN PACHECO:

I support S.B. 144. I reside in zip code 89108 and have been dealing with the Tanglewood HOA since 2016. I am a Black veteran woman and the first Black woman to receive a plumbing license in this State. I have had to deal with racial slurs in my community. These racial slurs came from a board member's husband. At one point, my grandbaby, who was five years old at the time, heard this man saying these racial slurs. The worse part about this is, I had to explain to my grandbaby what the "N" word meant. I have continued to be harassed by board members and the HOA management itself. I have had to call the police and file police reports; nothing has been done. I have asked for the board member to be removed from the board and was told it was not going to happen.

To date, I have over \$18,000 in fines because I would not change the color of my house. The HOA does not have a written color scheme for our community. My house is painted an earth tone along with other houses in my community. However, the HOA keeps insisting that I paint my house. Some houses in my community are painted pink, orange, red and even maroon. I have been told that the other homes are not my problem or any of my business. The HOA's lawyer advised me that I could not get a civil lawyer to go after the HOA and the racial slurs—that I needed to look past the insults, pay the fines and paint my house.

It is wrong that HOAs have so much power. Now, I am in collections and there is a lien on my house. This is ridiculous and must stop. The Ombudsman does nothing to help homeowners. When you call the Ombudsman's Office, they tell you to go through alternative dispute resolution, which does not work out because the HOA has more power—the Ombudsman does not do squat! They do not care. They do not have any power over the HOAs.

ANGELA ROCK (Olympia Management Services):

I have had conversations with Senator Spearman working toward changing our website requirements to an online portal access. Many software programs and databases allow for such access without requiring standalone websites, which can be expensive and difficult to manage, particularly for smaller associations.

I have also spoken with Senator Spearman regarding judicial versus nonjudicial foreclosure, and there may be an opportunity for a middle ground to potentially achieve another layer of scrutiny without judicial foreclosure. A judicial foreclosure would place a huge burden on the court system and can be intimidating for some homeowners. I believe there is a way to achieve independent oversight and hope we can work further with the Senator on this section of the bill.

We need to get homeowners what they need, particularly those who have been taken advantage of, whether it is an independent oversight and sign-off prior to any actions such as a commission hearing at NRED or possibly utilizing the referee program at NRED.

I offer my assistance if needed.

SHERRIE ROYSTER (National Association for the Advancement of Colored People):
I want to add to all testimony previously given and what was so clearly and candidly stated by Senator Spearman. Communities are impacted and will continue to be impacted if action is not taken.

In Nevada, there are nearly 3,000 HOAs, and the majority are located in Las Vegas. Las Vegas is the most diverse city in this State. Studies have shown a great economic, educational and cultural growth in diverse cities. Such diversity has an impact and aspects such as innovation, entrepreneurship and technological advancement. All Nevadans should have a vested interest in making sure this State continues to thrive. Ensuring continued homeownership is one way we can assist in this endeavor.

People come in and out of Nevada all the time, but having someone leave who has made the conscious decision to call Nevada home or purchase real estate could have long-term detrimental effects.

Homelessness has been an important topic in Nevada as well, particularly in the past year. I have and continue to participate in discussions on how to assist the homeless. Of many reasons why someone may find themselves homeless, one I constantly hear has been a loss of a home. Placing safeguards such as S.B. 144 will ensure we do all we can to make foreclosure the last resort—not "the" resort. By doing this, we are contributing to a solution to help ease the need for additional public resources by this State, resources already being stretched.

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By not adding to the numbers, we also play a role in helping those who are homeless utilize the resources available and so desperately needed. This is not something we can overlook anymore. It is imperative that we act.

The National Association for the Advancement of Colored People (NAACP) has submitted a letter in support of S.B. 144 ([Exhibit H](#)). The NAACP supports S.B. 144.

LEONARD B. JACKSON (Executive Director, Faith Organizing Alliance, Las Vegas):
I stand in favor of S.B. 144.

Being a retired Viet Nam veteran, I placed my life on the line for our Country. Now that I am more mature, I place my life on the line for our immediate community. This is our obligation. We have the obligation to stand up for our community so the next generation can look back and say, "That was the generation that stood for something important." I will leave this thought with the Committee because we are obligated to take care of our communities so they have a brighter future.

We must make sure there is no more interference from organizations within our communities taking advantage of situations. Senate Bill 144 is attempting to assist those who cannot pay rent or their mortgages during this pandemic, let alone just trying to put food on the table for their families.

This is my challenge to the Committee today—stand up for our communities, make a difference.

CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
We are in support of S.B. 144. Homeownership is the principal way most families build wealth in Nevada and the entire United States. Since communities of color have primarily been disproportionately impacted by foreclosure practices, it has the potential to perpetuate racial inequality for decades.

Senate Bill 144 makes commonsense provisions for homeowners to have access to HOA website portals to manage their accounts online which will help balance the power between homeowners and HOAs. We urge your support.

JACKIE BEER:

I live in a gated community and am speaking regarding the provision of a memorandum on any increase in HOA assessments. Our community did an assessment; dues were raised plus a \$500 assessment. The budget ratification meeting was December 16, 2020, and the community had a petition with 76 names. This petition requested the budget ratification be done by mail. The HOA insisted it be done in person by all 76 homeowners. That was not possible on that date as the Governor had restricted any unnecessary gathering.

The HOA raised the dues by \$20 a month in addition to the special assessment, which was \$500 per homeowner and began in January. This must be paid no later than the end of June.

I am an ex-board member for my HOA and have lived in my community for 27 years. I have stood up against the new board. I have been attacked by attorneys. I turned to the Ombudsman's Office for assistance, which was totally useless. Prior to the Covid-19 pandemic, I tried to get an appointment and received a phone appointment four months in the future. I was on the board at my HOA when I tried to get this appointment. Now that I am no longer on the board, I am being harassed with fines for speaking to anyone in the community. If I say hello to a landscaper, I have a \$100 fine.

JO CATO (Make it Work Nevada):

I support S.B. 144. The loss of a home is a systemic barrier in itself. This piece of legislation is necessary as too often families are displaced by the actions of an HOA.

I can speak to the disruption caused by rogue HOAs. I reside in zip code 89031 and had a former neighbor who lost her home over a \$17,000 unpaid HOA assessment bill. Her home was auctioned and sold for \$376,000 in North Las Vegas. My neighbor was vulnerable; when she lost her home, it sent her in a downward spiral. That same property has increased in value over the years. Actions like this must stop. This piece of legislation will assist families, especially now that we are in the middle of a pandemic. When moratoriums in place expire, they will be protected. We need families to keep their homes.

MARY JANET RAMOS (Culinary Workers Union, Local 226):

This pandemic has hit culinary union members and their families incredibly hard. While workers are slowly returning to work, thousands of workers are still

unemployed and struggling with housing and security. Since last March, the culinary union has worked with a housing fund and other organizations to keep workers in their homes. Unfortunately, too many Nevadans have lost their homes during this time. It is shameful that during this pandemic, some Nevadans have either had their homes foreclosed or are in danger of losing their homes because of unpaid HOA dues.

I would like to share a story from a culinary union member, and I quote:

I have been living in my home for 19 years and paying my mortgage every month. I only have \$900 and [am] afraid that they will come after me at any time. I do not know where my family and I will go if the HOA forecloses on us and put[s] us on the street. I ask Nevada politicians to please not allow my family to be foreclosed on during the middle of a pandemic.

The HOAs should not have the power to foreclose on homeowners, including conflict of interest and racial discrimination. Taking the power of foreclosure out of the hands of HOAs will create a fair and transparent process for homeowners to stay in their homes, and S.B. 144 will accomplish this.

The culinary union urges you to support and pass S.B. 144.

QUENTIN SAVVOIR (Make it Work Nevada):

We work alongside of Black women and Black families in the area of economic justice, racial justice and reproductive justice. We are all facing an unprecedented housing crisis in this State, a reality exacerbated by the ongoing Covid-19 global pandemic. This public health crisis deeply reveals how lopsided and troubling the power dynamics are for renters, homeowners and their landlords, property managers and HOAs.

The problem S.B. 144 reveals is one that rarely gains broad traction, let alone one that solicits legislative action. As learned in today's presentation, the void of this legislation is disproportionately impacting communities where Black families live. It is entirely ignored that HOAs possess the authority to remove someone from their home. One cannot help but conclude that our public policy infrastructure has enabled this discriminatory action taking place throughout our State and across our Country. Senate Bill 144 takes reasonable steps to create some balance and protection for homeowners. This is not unreasonable—at its

core, the legislation allows homeowners to have their right to due process. We all can agree, no matter the political affiliation, the right to due process is a bipartisan principle.

We proudly support S.B. 144 and deeply appreciate Senator Spearman's commitment to have legislation in alignment with ending systematic racism and recognizing it as a threat to the future of all Nevadans.

We urge bipartisan support for S.B. 144.

AMBER FALGOUT (Battle Born Progress):

We fully support S.B. 144 and are thankful that Senator Spearman has brought light to this incredibly important issue. Many Nevadans are barely able to make ends meet and do everything possible to pay their bills to keep a roof over their heads, especially during this global pandemic. Senate Bill 144 provides due process that is missing, leading to homeowners losing their homes to HOAs because they are behind on fees and assessments. The transparency in this bill will allow homeowners to work toward keeping their homes.

CAMERON CLARK (Nevada Association Services):

I appreciate the opportunity to express my opposition to S.B. 144. Judicial foreclosures are two to three times more costly than nonjudicial foreclosures.

Collection fees are capped at \$1,950 in Nevada. Judicial foreclosures in other states have seen costs ranging from \$4,600 to \$6,500 and higher. Typically, at the end of most nonjudicial foreclosures, the homeowners exit the collection process and can move on with their financial lives. However, this will not be the case with a judicial foreclosure. A nonjudicial foreclosure does not go against the homeowner but instead against the home. In a judicial foreclosure, the judgment will go against the homeowner and will remain with the homeowner even if he or she sells the home foreclosed upon. The judicial foreclosure process remains in the collection process foyer and can take away assets such as vehicles, wages, cash and other items.

The state of Texas has required a judicial review process, and 6,500 new cases resulted. This completely overwhelmed the state's judicial system. Nevada's judicial system could easily see anywhere between 3,000 to 10,000 cases per year from this process. If this bill passes, it will place a major burden upon our court system.

Many homeowners will be negatively impacted by this bill. The judicial foreclosure costs will increase the cost to homeowners and to the HOA. The consequence will be shared by all other homeowners, even the ones who are paying HOA assessments on time and are not facing foreclosure. In many ways, it will be a punitive measure on the homeowners who are paying their association dues.

If this bill passes, voters will bear the cost. It will implode the real estate market quickly and drive down the prices.

CAROLYN GLASER (Red Rock Country Club HOA):

During this pandemic, our HOA is working out payment plans with our delinquent homeowners because foreclosure is the last resort. I oppose S.B. 144 because judicial foreclosure will cause unnecessary increases in expenses for both the delinquent and nondelinquent homeowners. HOAs will need to pass on the costs to the homeowners, and no one needs this to happen.

I oppose S.B. 144 because judicial foreclosure will add undue expenses and not improve the foreclosure process. It does not improve or add protection to delinquent or nondelinquent homeowners.

MARK COOLMAN:

I am a homeowner in Las Vegas and a past member of my board. I sell insurance policies to HOAs and oppose S.B. 144. The bill will increase costs for the association.

When you install a website, you will also need cyber liability insurance. This insurance can cost an HOA anywhere from \$1,000 to \$3,000 a year. The insurance company will run security checks on firewalls and other security programs. If this bill passes, HOAs will need to upgrade their programs to meet the standards of the insurance company, and this will cost the HOA about \$2,000 to \$4,000 in additional programming fees. All HOAs will end up with \$2,000 to \$5,000 in initial website costs and then another few thousand every year thereafter. The fees will be passed on to all homeowners in an HOA community.

In all HOAs' professional insurance, which is also called directors and officers insurance, there is a wrongful foreclosure clause. If a nonjudicial foreclosure is

filed, the homeowner is entitled to file an action to reverse the nonjudicial foreclosure to a judicial process. Then the insurance companies get involved. Over the past five years, these insurance policies have gone up over 500 percent in costs due to these court actions. More judicial foreclosures will raise the cost of insurance and, therefore, raise the cost for the homeowners as well.

MARK LEON (Mountain's Edge Master Association):

I am opposed to S.B. 144. Homeowners who purchase a home within an HOA make a contractual promise to contribute financially to the shared goals of protecting home values and preserving quality of life in the HOA communities. For those who neglect this obligation, there is and must continue to be a mechanism to compel continued financial compliance. Senate Bill 144 removes this mechanism. If a homeowner routinely ignores correspondence from the HOA or skips payments of agreed-upon assessments, this bill rewards that homeowner. No board would opt to spend \$10,000 on a judicial foreclosure to pursue just a few thousand dollars in unpaid assessment revenue.

The HOA can lien the property and hope to get repaid if the home sells. But hope is not a strategy. The HOA's landscapers and water bill need to be paid. It has the fiduciary duty to ensure adequate income to cover the community's expenses. These expenses are the HOA's revenue paid by the homeowners who pay assessments as promised. These assessments will be raised to make up for the income of homeowners who do not pay.

Senate Bill 144 punishes responsible homeowners by rewarding irresponsible behavior. HOAs do not want to be in the collection business but focus on maintaining and beautifying their communities.

If this Committee is looking to improve the situation, find a way to incentivize banks to impound HOA assessments. It would not be difficult as banks already impound homeowners' insurance and property tax. This would solve all the issues that S.B. 144 makes worse.

LORI BURGER (Eugene Burger Management Corporation of Nevada):

I have served associations for 33 years, and I do care about homeowners. All of us at the Management Corporation take fair housing training regularly. We have a fiduciary responsibility to uphold the governing documents; we follow the law. We offer HOAs training, and we are not affiliated with a collection company.

We do not collect ethnicity or gender information. We do not try to get away with anything; we take great pride in our work. My company invoices over 19,000 association members in Reno and Las Vegas. Many of our HOAs, boards of directors and homeowners have already voiced opposition to S.B. 144.

Our association management systems and websites are highly developed as are many of our competitors. We provide websites at our cost to our associations, no matter what the size, 10 units or 4,500, they all have websites. We have provided these websites to the HOAs for transparency. The cost of our software is about \$15 per unit. If S.B. 144 passes, the costs associated with each HOA to establish a website will fall to the HOA. Bifurcating highly effective management and property management software systems will have a negative impact on the entire association industry. Senate Bill 144 will create duplicative systems and require others to be abandoned, increasing HOA and management expenses to unknown levels. This will be expensive for everyone involved.

GARRETT GORDON (CAI Nevada):

Today I am representing the CAI Nevada that speaks for its 1,300 members and over 3,000 Nevada community associations across the State. We have met with the sponsor of S.B. 144, and I appreciate Senator Spearman's time and look forward in continuing to work with her and hopefully come to a compromise on some sections of the bill.

I have represented HOAs at the Nevada Legislature for eight sessions, and I can confidently say there is no proliferation of HOA foreclosures. Some of the statistics heard today were not just the foreclosures. According to NRED, there were ten certificates of sale recorded and submitted last year. One certificate was from an investor, and all the others had numerous liens on the properties which usually means the homes were abandoned. To my knowledge, there are not any examples of a homeowner who wanted to stay in the home during this horrible pandemic or was removed from the home.

I also want to correct the record in regard to some letters filed in support of this proposal. One letter indicated a homeowner could lose the home within 60 days due to a foreclosure. You cannot foreclose for fines—you can only foreclose for assessments. The foreclosure process takes a year or more. It would be illegal for a foreclosure to take place within 60 days. Statutory

requirements provide numerous protections to homeowners, including a mandatory payment plan. I had the fortunate experience of working with Barbara Buckley and the Legal Aid Center on a mandatory payment plan offered to homeowners and accepted by HOAs any time assessments are in arrears. I have worked with Attorney General Ford on additional noticing requirements and the redemption period over the last few years. Additional protections have been added by former Senator Tick Segerblom and Senator Ohrenschall to help make this process work. We are always willing to work on reasonable compromises and common sense. I hope I can work with Senator Spearman moving forward on a proposal we have submitted to the Senator.

GAYLE KERN:

I am speaking today as a homeowner. I am also a former president of my HOA and a member of the CAI Legislative Action Committee. I am an attorney who has been practicing law in this State since 1984. My concern with S.B. 144 and why I am opposed to it is what homeowners will lose. There is a 9-to-12 month process when there is a delinquency. If we go to a judicial foreclosure, a complaint can be filed at any time there is a delinquency, and a homeowner would only have 20 days in which to answer such a complaint. With the nonjudicial process, the HOA cannot do anything for the first 60 days of a delinquency. A letter must be given to the homeowner, providing an opportunity to enter into a payment plan and/or having a hearing with the board, which Mr. Gordon spoke about earlier. Nothing can be done for another 30 days from that time.

If the account goes to collection or to an attorney for enforcement, a demand letter is sent to the homeowner, which takes another 30 days. Then, there is an intent or notice of delinquent assessment and claim of lien which has a 15-day waiting period. After the intent letter, a notice of delinquent assessment and claim of lien take another 30 days. An intent to file a notice of default and election to sell is then sent which has another 15-day waiting period. A notice of default follows in which there is a 90-day waiting period. An intent letter to go to a notice of sale will then be sent and has a 15-day waiting period. A notice of sale will take another three to four weeks. After this, there is 60 days for redemption. All of this time will be lost, and a homeowner will instead need to respond to a complaint with only a 20-day notice from service of the complaint when a delinquency occurs.

I urge the Committee to rethink how we place additional protections into law just like we did several years ago when we added the additional 60 days and the requirement of a payment plan.

LYLE MCKENZIE (Eldorado Neighborhood Second HOA):

I am president of the Eldorado Neighborhood Second HOA where we have approximately 1,600 homes within the community. We have not foreclosed in over four years. My main complaint in opposition to S.B. 144 is the requirement for a website with bill-paying capability for the homeowners. Our HOA offers a portal through a national system that has all the security protocols. Our HOA does not have the ability to upgrade our online system without a costly expense. Any expense would then be passed on to all homeowners within the community.

I urge the Committee to vote no on S.B. 144.

CYRUS HOJJATY:

I certainly like the idea of due process and giving homeowners extra time to pay assessments so they can stay in their homes. I do have some concerns and want to make sure S.B. 144 does not artificially keep prices up because we need prices of HOAs to come down. Maybe in the long term, this will deliver better bargains in the housing market because housing is artificially too high and one of the largest concerns we face unnecessarily. Prices of homes should not be high.

The other issue is the incentive for homeowners who pay their mortgage and rent. If S.B. 144 passes, why should I pay my rent? We talk about how certain people of race are disproportionately affected, then why are Asian people not disproportionately affected? Are they disproportionately affected? Why are other races being disproportionately affected? Is some type of oppression going on, or do they not know how to manage their finances? A lot of this is being viewed as a way to push more bills through and make this ordeal of one race against another race an issue. The real enemies are the rich fat cats on Wall Street; they are the long-term beneficiaries of all these moratoriums, evictions and everything else going on with the housing industry. What is being done to make sure this does not ultimately enrich the pockets of Wall Street?

I saw Senator Spearman at a campaign rally for Kamala Harris. How do we know she is working for us and not in the best interest of Wall Street?

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SHARATH CHANDRA (Administrator, Real Estate Division):
I am available if there are any questions.

ALEXANDER AVILA:

I am in support of S.B. 144. I can see this bill being something good for the people in Nevada. I live within the area of Clark County, zip code 89110. I have seen what it is like when the HOAs have caused homeowners to struggle.

A lot of people who live in and around Clark County work in the entertainment industry; since the start of Covid-19, many have been laid off and are struggling with getting food on the table. I have seen firsthand the fear that this causes. I hope S.B. 144 can help thousands of Nevadans stay in their homes. There are too many evictions going on in Nevada. People of color are affected the most, and I want to make sure my fellow Nevadans can have assurances that they too can have generational wealth.

I urge the Committee to approve this bill and continue forward with innovation in Nevada. We Nevadans need to know we are being looked out for, and we need to have confidence in our government.

CHAIR SCHEIBLE:

Let the record reflect that Alexander Avila called in support of S.B. 144 although the Committee was hearing testimony in opposition.

SENATOR SPEARMAN:

Several callers had technical questions that I do not have the expertise to answer. Laura Chapman can address these concerns.

MS. CHAPMAN:

With regard to passing on costs to homeowners and HOAs for the cost of the judicial process, this is not necessarily true. Most homes have equity and because there is a housing shortage, the values could increase. This has happened in the last 60 days from 12 percent to 17 percent in different areas. When the HOAs want to collect against homeowners, there is money in equity to pay those bills.

As far as HOA foreclosures go, there are more than just ten in the past year. Foreclosures are delayed time and time again, pushing out the actual date of foreclosure. Homeowners still owe the money, and they are still trying to

negotiate with the HOAs in keeping their homes. There are times when the HOAs will waive some costs.

Also, HOAs have a reserve in their budgets for potential legal costs.

SENATOR SPEARMAN:

I want to thank everyone who called in today. I am concerned the rumor that S.B. 144 will increase costs for homeowners has gained traction and that the process now in place, would be replaced. We can add an amendment to the bill which will keep the current process in place. The HOAs can continue with the present process. At the end of that process, it will go to judicial review.

When there is such fire against something, I always ask myself, "What are these people afraid of?" The only part changing is the judicial process, nothing else. We have heard from real people today.

Senate Bill 144 helps homeowners stay in their home. It is an extra layer of protection which allows for due process.

I have no idea why the judicial process has worked people up so much. Some callers have created a fear that this bill will raise costs that will be passed on to the homeowners. Ms. Chapman, who is a realtor, understands the foreclosure process as well as people buying the homes. She said the homes have equity and the foreclosure amount when the home is sold to a third party. The point is whatever the homeowner can take from the equity can be used to pay the arrearages.

I did not make any of these numbers up. A representative of an HOA said that on the sixty-first day, the home will be sold to a third party—and that third party could be an investor. The 60 days a homeowner has to reclaim the home are words directly from the HOA representative.

I want to be clear about this, S.B. 144 adds another level of security for the homeowner. When I started this process, several people asked, "Are you sure you want to do this, the HOAs are really powerful?" My response was if we do not do it for the homeowners who need this extra protection, who will? The people who testified in support today are not paid five or six figure salaries, and they do not have a fancy office. We are the ones entrusted by Nevadans to investigate what is working for the whole.

I do not know of a significant amount of foreclosures in Mountain's Edge Master Association or in Anthem. I do know foreclosures are happening in the zip codes in my District that are predominantly Black, Brown and BIPOC people. I want to do something about it because they are inordinately represented in this process. Systemic racism hides in cul-de-sacs we typically think are normal. They hide in the cul-de-sac of education; but we all know that funding education is not good for Black and Brown schools. They hide even in the criminal justice system. Many times for Black and Brown people it is not justice, it is injustice. The cul-de-sacs of racism hide in job performance, in people who would get promoted or not. I want to be diligent about deconstructing racism. It is important for us to remember what Sherrie Royster said in her testimony today. She is the legal representative for the NAACP, which has been around since 1909 and fighting this battle for a long time.

We are going to look at S.C.R. No. 1 of the 32nd Special Session and stop talking about it—we are going to be about it. Senate Bill 144 is one way to do this. It passed unanimously. The notion that it will cost more for the homeowner to go to a judicial process; everybody voted for it. Not one Senator or Assemblyperson voted against it. If racism is indeed a public health crisis, in the name in all that is good, let us do something about this cul-de-sac together.

CHAIR SCHEIBLE:

This now closes the hearing on S.B. 144.

CHRIS HARDIN:

I manage SFR Investments, and we own over 600 single family residential properties in Nevada. We purchased all these properties through or after HOA foreclosures. Through this process, I have become knowledgeable about the topic being discussed today and the ins and outs—the realities of it. However, I am merely speaking today as a homeowner.

First, I want to comment on fines and assessments which are different. Switching from nonjudicial to judicial foreclosure will not solve any racial problems. I do not see the difference, and it will not prevent any foreclosures. Whether we like it or not, HOAs are duty bound to foreclose on any home that falls behind on assessments. Please know that the time period between the issuance of the first nonjudicial foreclosure notice runs through the end of the redemption period, which is about a year and a half. The average HOA assessment is about \$70 a month. If a person cannot pay this amount for a year

and a half, an expensive judicial foreclosure will not save them. I see all the problems missed by this bill as basic pieces of law that are supposed to be reviewed and solved by the Ombudsman's Office. This Office was created recently, and the root of the problem is that the Ombudsman Office is failing in its basic duties. I know this from personal experience.

To the lady with cancer, why is the Ombudsman not helping you? That is his or her job.

I want to also point out that the Division of Financial Institutions (DFI) regulates collection companies, including HOA collection companies. I found that they are more effective and competent than the Ombudsman. Nevada needs to let homeowners know that they can also file a collection-related complaint with the DFI. Nevada does not need S.B. 144, current law is sufficient. What Nevada needs to do is reform the Ombudsman's Office and remind the homeowners that they can also seek recourse through other sources within the DFI.

MR. HOJJATY:

I hear a lot about racial justice and whether you are being oppressed. From my understanding of history for 2,500 years, there have been racial differences in outcomes and performance. These differences are not something we just did, it has been happening for hundreds of years. Many programs are supposed to reverse the trends of quotas and affirmative action. Performances have still not resulted in legal outcomes. Some people who are minorities claim that they are being oppressed. Why are they migrating into this Country? Why come here? If you believe some groups of people are oppressing others, then why not break up this Country? There would be no more so-called oppression. The people who are causing the problems would no longer have the power to push others around. We could break up the Country in a more diverse or monoculture, give people the choice.

The real issue with all this identity, politics, whole oppression justice and all that is it benefits the wealthy, elite Wall Street. The elite benefit while we have a divided society where we are fighting each other while the rich laugh their way to the bank. We know that large corporations, particularly casinos ...

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CHAIR SCHEIBLE:

That concludes today's meeting of the Senate Judiciary on March 18, and we are adjourned at 4:03 p.m.

RESPECTFULLY SUBMITTED:

Gina LaCascia,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 41	B	1	Patrick Guinan	Work session document
S.B. 42	C	1	Patrick Guinan	Work session document
S.B. 50	D	1	Patrick Guinan	Work session document
S.B. 148	E	1	Patrick Guinan	Work session document
S.B. 144	F	1	Senator Pat Spearman	Proposed Conceptual Amendment
S.B. 144	G	1	Tim O'Callaghan	Support Statement
S.B. 144	H	1	NAACP	Support Statement