Assembly

Election Committee Minutes
March 11, 1975

Tuesday, 8:00
Room 336

Members Present: Demers, Sena, Chaney, Heaney, Vergiels, Wagner, Young

Members Absent: None

Guests	Representing
George Hawes	American Association of Retired Persons
John Kimball	Member 16 City Comm. Adv. for Aging
Vaughn Smith	Carson City Clerk
Robert Benkovich	Assemblyman
Lou Paley	Nevada State A.F.L.C.I.O
Earnest Newton	Nevada Taxpayers Association
Nick Luchi	Greater Reno Chamber of Commerce
Stephen Coulter	Assemblyman
Nancy Sawyer	Citizens for Private Enterprise
Neil Blackburn	Citizens for Private Enterprise
Robert Warren	Nevada League of Cities
George Archer	American Ass'n of Retired Persons

The meeting was called to order at 8:10 by Chairman Demers. Mr. Demers announced the first order of business would be A. B. 169

George Hawes stated that this was one of the bills his association would like to see with a do pass. Older people should not be left out because of an absentee ballot. Some must come 5 or 6 miles while others do not drive. This bill should be voted on favorably as some people cannot get to the polls.

George Archer stated that a lot of times, older people just sometimes they don't feel like getting out and this law would cover them. Mr. Archer presented a newsletter called Added Years which states that the Senate passed a bill which makes it easier for senior citizens and others to register to vote because they can do so by mail became law (Ch. 30, P.L. 1974). A copy of this newsletter is attached.

John Kimball pointed out that there was a transportation factor, mobility and health of aged persons. He felt that this bill should unanimously pass.

Mr. Heaney inquired when the law had passed and Mr. Kimball answered 1974.

Vaughn Smith felt that this is the kind of legislation that takes up time and makes the legislature drag on. He felt a law such as this would cause a burden on the election process. Also you don't have to pre-register after you vote absentee. In Carson City, the senior citizens are the most interested people in voting there are. When these people don't feel well, we get the ballot to them. Also, the senior citizens have transportation available when they can't get to the polls. On the election board, over 50% of the people hired are senior citizens and they do a fine job. From Mr. Smith's point of view, he felt that the bill is unnecessary.

Mr. Heaney felt that we should recognize these senior citizens as this bill will cover them if, for any reason they feel they cannot make it to the polls. He felt we should recognize our senior citizens and make it as easy as possible for them to vote.

Mr. Smith pointed out that this ballot can be delivered to a senior citizen as late as 5:00 p.m. on voting day. He also stated that there is an emergency section which states that if somebody is called out of town, they can come in and vote and also, the county clerk's office takes absentee ballots to hospitals and homes for the aged.

Mr. Nash felt that there must be a problem in some areas for the aged or otherwise the bill would not have been introduced.

Mr. Heaney and Mr. Demers both felt that the bill would clarify any problem of voting if there is a problem.

Mr. Demers announced the next order of business would be A.J.R. 14.

Mr. Benkovich felt that A.J.R. 14 was unconstitutional without the amendment in Section 2. To substantiate his statements, he cited the Supreme Court case of Moore v. Ogilvie. He also cited the second paragraph on page 1495. This will be an attachment to the minutes along with a map of Nevada which shows 1970 population. It was asked how the 13 county rule got on the ballot in the first place. Mr. Benkovich stated that this law was enacted in 1958 when there was a union drive on, and people voted on a change of the right to work law. Also, this law seemed to be working until 1969. For the record, Mr. Benkovich presented two letters in favor of A.J.R. 14 which were written by Eleanore Bushnell and Juanita Tumbleson. These two letters will be attached to the minutes.

Lou Paley stated that he wished to thank someone for introducing this Resolution and he stated that he supported it. He explained that in order to get a petition, it is very costly; first, you

must have them printed. Also, the husband cannot sign it for his wife or vice versa. If the person's name is John and he signs it Johnny, it becomes invalid. Mr. Paley felt that most people use to think that petitions were for the little guy but petitions are not easy or cheap. He stated that his organization had spent thousands of dollars on petitions. He felt that a referendum was much easier, but unfortunately, you must always go back to the people to change it. If there is a petition, it must go through the Secretary of State and then it is sent on to the county clerk which all costs money. Mr. Paley felt the committee would be doing the taxpayer a favor by supporting this issue.

Mr. Earnest Newton began by stating that it would be easy to get the small counties such as Esmeralda to sign. Mr. Newton felt that Moore v. Ogilvie was for a presidential election and Illinois requires that they must have 200 signatures in each county. That is a substantial vote. Nevada is different because it says 10% of those who voted in the last election. In the case of Moore v. Ogilvie, the total required would be less than 10%. He felt that Nevadas proposition is fair since it is not unconstitutional; primarily, it is not hard to get petitions going or signatures. People don't pay much attention to what they are signing, and it doesn't cost that much as far as checking the signatures, for you can't compare signatures with a computer for the signatures cannot be compared. A. J. R. 14 solves a problem that doesn't exist.

Mr. Heaney stated that he would be more comfortable if the Attorney General would look at A.J.R. 14 to decide if it is constitutional or not.

Nick Luchi stated that he was opposed to this amendment. He stated that in Reno, that the citizens tried to place on the ballot a restriction of 3% growth rate for Reno. The problem was, how to enforce it. In other words, it passed as a law, but it was unenforceable.

Mr. Coulter stated he was against Mr. Newton's proposals but could understand Mr. Luchi's position. Overall, he felt that the resolution would give the people a voice..Mr. Coulter said he had talked to attorneys who felt that the law was unconstitutional.

Nancy Sawyer read a letter to the committee which will be added to the minutes. This was an open letter from Washoe Co. CPE.

Neil Blackburn felt that A.J.R. 14 would weaken the initiative petition and the constitutionality of the law. He stated that in Oregon, 250 issues appeared on the ballot to be voted on.

Bob Warren stated that he was opposed to A.J.R. 14.

The committee acted on A. B. 169. Mr. Sena made the motion to pass A.B. 169 and Mr. Vergiels seconded the motion. All members voted unanimously to pass A. B. 169 as amended.

Mr. Heaney moved that the committee get the Attorney General's opinion on A.J.R. 14. It was seconded by Mr. Vergiels. Mr. Young stated he would oppose the motion of Mr. Heaney. The members voted as follows concerning the Attorney General's opinion: Demers, no; Sena, no; Chaney, yes; Heaney, yes; Vergiels, yes; Wagner, yes; and Young, no.

Mr. Demers stated that the motion had passed and that he would ask the Attorney General for his opinion.

Mr. Young made the motion that the meeting be adjourned and the meeting was adjourned at 9:30 a.m.

Respectfully submitted,

Martha Laffel

Martha Laffel
Assembly Attache

Attachments:

Moore v. Ogilvie (5 pgs)	AJR14
Nev. population map(1 pg)	AJR14
Added Years Newsletter (2 pgs)	AB169
Ltr. , Ms. Tumbleson (1 pg)	AJR14
Ltr. , Ms. Bushnell (3 pgs)	AJR14
Ltr. fr. Washoe Co. CPE (2 pgs)	AJR14

ASSEMBLY

AGENDA FOR COMMITTEE ON ELECTIONS

Date March 11, 1975 Time 8:00 A.M. Room 336

Bills or Resolutions to be considered	Subject	Counsel requested*
A.B. 169	Entitles senior citizens to vote by absent ballot.	
A.B. 291	Provides that roster of absent ballot central counting board be used by county clerk in compiling list of registered voters.	
A.B. 336	Provides for voter's expression of nonconfidence in candidates for any elected office.	
A.J.R. 2	Memorializes Congress to propose Constitutional amendment to clarify law relating to apportionment of Representatives in Congress.	
A.J.R. 14	Proposes to amend Nevada Constitution to change manner of determining number of signatures needed to qualify initiative petition.	

ACTION TAKEN AT MARCH 4, 1975

A.B. 18	"Amend and do pass"
A.B. 32	"Amend and do pass"
A.B. 84	"Amend and do pass"

*Please do not ask for counsel unless necessary.

Added Years 70
Serving Seniors Since Sixty
NEWSLETTER OF THE NEW JERSEY STATE OFFICE ON AGING
JANUARY 1975 VOL. 16 NO. 7

1974 LEGISLATIVE ROUNDUP

As of the date of this writing, Governor Brendan Byrne has signed into law 10 "ABC" bills, records maintained by the Human Resources Office on Aging show.

"ABC" bills and resolutions are those that affect, benefit or concern older residents.

In all, 12 such bills have passed both the Senate and the General Assembly, leaving two for the Governor's action.

In addition, 25 bills and three resolutions have passed one house and await action by the other chamber.

Probably the most important bills enacted into law are five dealing with landlord-tenant relationships.

One (Chapter 151, Public Laws of 1974) permits a court to allow a reasonable attorney's fee in any case brought by a tenant to recover a rental security deposit.

Another (Ch. 47, P.L. 1974) is the "Fair Eviction Notice Act" requiring notice and restricting the time of eviction. A third (Ch. 48, P.L. 1974) requires that landlords inform tenants of the availability of crime insurance through the Federal Crime Insurance Program of Title VI of the Housing and Urban Development Act of 1970.

A fourth (Ch. 49, P.L. 1974) establishes grounds for evicting tenants. A fifth (Ch. 50, P.L. 1974) requires landlords to provide information regarding the identity of ownership of the rented premises, the managing agent and other staff, with names and addresses and, in certain cases, telephone numbers.

While the foregoing laws apply to all tenants, they are included on the Office on Aging records because so many elderly persons are renters. All five originated in the Assembly.

Also enacted into law was an Assembly bill which extends the Private Non-Vested Pension

Continued on Page 4

Social Security Examined

(Second of a three part series)

In our last issue we listed three major challenges raised by critics of the Social Security system.

1. The system is not really an insurance program, but an income transfer program.

2. The method of financing benefits is unsound because there is no fully funded cash reserve, and dependence on current contributions to pay benefits is a method that cannot fully sustain itself.

3. The public would be better off if citizens were free to invest their money in private insurance, stocks or savings where the rate of return is much higher than Social Security.

Let us examine the third point first because it is the simplest to respond to. No one will deny that there are individuals wise enough and lucky enough to manage the money they are now putting into Social Security to earn returns far greater than the normal benefit payments. This was true when the Social Security system was started. In simple fact, there are not that many individuals who are that fiscally astute.

Social Security does a lot more than provide benefits for retired persons. Most workers are covered against permanent disability during their working years and their families are assured benefits if the breadwinner should die.

We should remember that the designers of the Social Security System were well aware of the limitations of the individuals to provide for himself in times of diminished income. Our nation had just passed through a great period of economic expansion in the 1920's, and lot

Continued on Page 2

1974 LEGISLATIVE ROUNDUP

Continued from Page 1

Benefits Protection Tax Act beyond its expiration date of last July 1 (Ch. 66, P.L. 1974).

A long-sought measure which exempts from the State Sales and Use Tax municipal and nonprofit organizations that operate mobile meals for the homebound elderly and disabled (Ch. 170, P.L. 1974) also became law.

A Senate bill which makes it easier for senior citizens and others to register to vote because they can do so by mail became law (Ch. 30, P.L. 1974).

Another Senate bill permitting the Commissioner of the Department of Institutions and Agencies to participate with the Secretary of the Federal Department of Health, Education, and Welfare in waiving Medicaid eligibility requirements and to provide benefits to individuals or groups for whom Federal funds were not available (Ch. 140, P.L. 1974) was enacted.

Governor Byrne also signed into law the Senate bill which placed on the November ballot a referendum on a $90-million bond issue for construction and rehabilitation of housing for senior citizens and families in the low-income and moderate-income brackets (Ch. 117, P.L. 1974). However, the voters did not approve the bond issue.

In addition to the bills which have been signed, passed both houses, or passed one house, 13 Assembly bills and five Assembly resolutions were reported out of committee and brought up to second reading, the step previous to passage. The same applies to five Senate bills and 15 Senate resolutions. Several of the resolutions were connected with Governor Byrne's tax reform program and became at least temporarily inconsequential when the Senate did not approve the tax package.

Despite the time and attention that the legislation had to devote to the energy crisis and to attempting to comply with the Supreme Court's mandate for a method of supporting education which would not depend so heavily on property taxes, the members still exhibited deep concern for the elderly and other low-income residents. The "ABC" list contains 112 Assembly bills and 39 Assembly resolutions, and 92 Senate bills and 45 Senate resolutions.

Since this report covers only the first year of the two-year sessions, it is possible that others on the list will be acted upon during 1975.

(Note: Copies of those laws referred to by chapter number in this article may be obtained by writing to the Bureau of Law and Legislation, State Library, State House, Trenton, New Jersey 08625. They are not available from the Office on Aging.)

Free Courses at Rutgers

The Board of Governors of Rutgers — The State University has passed a resolution which allows any New Jersey resident over 64 to audit courses without fee on a space available basis. This privilege is operative at any of the Rutgers campuses.

For detailed information call John Cooney, Rutgers, New Brunswick, (201) 932-7823.

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For addressing purposes:

AJR14
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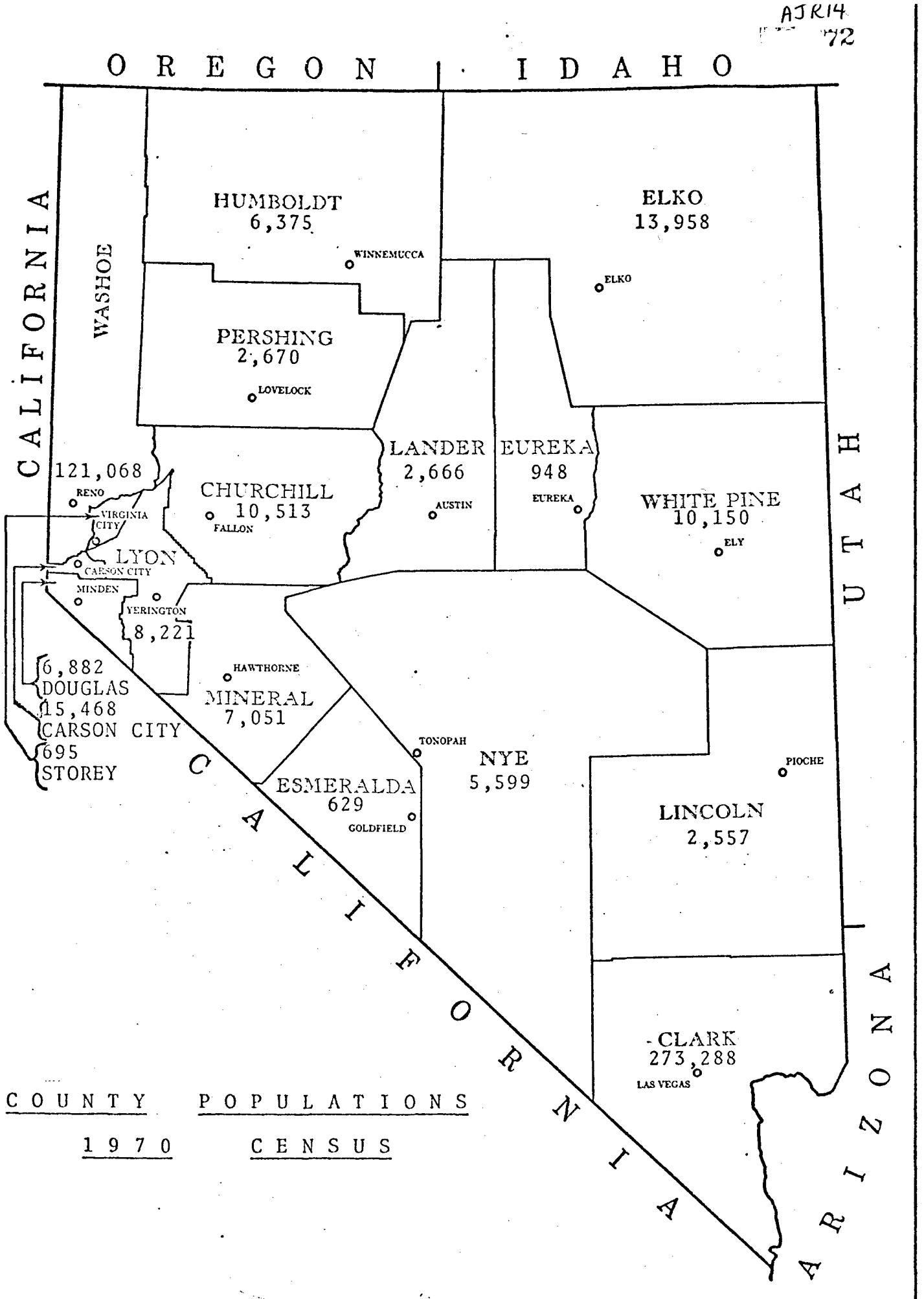
OREGON
IDAHO
CALIFORNIA
UTAH
ARIZONA
HUMBOLDT
6,375
WINNEMUCCA
ELKO
13,958
ELKO
WASHOE
121,068
RENO
VIRGINIA CITY
PERSHING
2,670
LOVELOCK
CHURCHILL
10,513
FALLON
LANDER
2,666
AUSTIN
EUREKA
948
EUREKA
WHITE PINE
10,150
ELY
LYON
CARSON CITY
MINDEN
YERINGTON
8,221
6,882
DOUGLAS
15,468
CARSON CITY
695
STOREY
HAWTHORNE
MINERAL
7,051
TONOPAH
NYE
5,599
PIOCHE
ESMERALDA
629
GOLDFIELD
LINCOLN
2,557
CLARK
273,288
LAS VEGAS
COUNTY POPULATIONS
1970 CENSUS

394 U.S. 814

James L. MOORE et al., Appellants,

v.

Richard B. OGILVIE, etc., et al.

No. 620.

Argued March 27, 1969.

Decided May 5, 1969.

Declaratory judgment action seeking determination that sections of Illinois election statute were unconstitutional. The three-judge United States District Court for the Northern District of Illinois dismissed the complaint, 293 F. Supp. 411, and appeal was taken. The Supreme Court, Mr. Justice Douglas, held that Illinois statute which required that petition to nominate candidates for general election for new political party be signed by at least 25,000 qualified voters, including 200 qualified voters from each of at least 50 counties, violated due process and equal protection clauses of Fourteenth Amendment where the electorate in 49 of the counties which contained 93.4% of registered voters would be unable to form a new political party and place its candidates on the ballot while 25,000 of remaining 6.6% of registered voters properly distributed among 53 remaining counties might form a new party to elect candidates to office.

Reversed.

Mr. Justice Stewart and Mr. Justice Harlan dissented.

1. Appeal and Error ⇐781(4)

Where Illinois statute which requires that petition to nominate candidates for general election for new political party be signed by at least 25,000 qualified voters, including 200 qualified voters from each of at least 50 counties would control future elections as long as Illinois maintained her present system, problem of placing new political party on ballot was capable of repetition and Supreme Court would hear appeal from dismissal of candidates' declaratory judgment suit, even though 1968 election for which candidate sought relief was over. 28 U.S.C.A. § 1253; U.S.C.A.Const. Amend. 14.

2. Declaratory Judgment ⇐124

When a state makes classifications of voters which favor residents of some counties over residents of other counties, a justiciable controversy under the equal protection clause is presented. U.S.C.A. Const. Amend. 14.

3. Elections ⇐141

Use of nominating petitions by independents to obtain place on Illinois ballot in integral part of Illinois elective system. S.H.A.Ill. ch. 46, §§ 7–14, 10–3.

4. Elections ⇐11

All procedures used by a state as integral part of the election process must pass muster against the charges of discrimination or of abridgement of right to vote. U.S.C.A.Const. Amend. 14.

5. Constitutional Law ⇐225(1)

Where Illinois statute requiring that petition to nominate candidates for general election for new political party be signed by at least 25,000 voters, including 200 qualified voters from each of at least 50 counties, applied rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to constitutional theme of equality among citizens in exercise of their political rights, equal protection clause was violated even though law was designed to require statewide support for launching a new political party rather than support from a few localities. S.H.A.Ill. ch. 46, § 10–3; U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⇐225(1)

Idea that one group can be granted greater voting strength than another is hostile to the one man-one vote basis of our representative government. U.S.C.A. Const. Amend. 14.

7. Constitutional Law ⇐225(1), 253
Elections ⇐21

Illinois statute which required that petition to nominate candidates for general election for new political party be signed by at least 25,000 qualified voters, including 200 qualified voters from each of at least 50 counties, violated due process and equal protection clauses of Fourteenth Amendment where the electorate in 49 of the counties which contained 93.4% of registered voters would be unable to form a new political party and place its candidates on the ballot while 25,000 of remaining 6.6% of registered voters properly distributed among 53 remaining counties might form a new party to elect candidates to office; overruling MacDougall v. Green, 335 U.S. 281, 69 S.Ct. 1. S.H.A.Ill. ch. 46, § 10–3; U.S. C.A. Const. Amend. 14.

Richard F. Watt, Chicago, Ill., for appellants.

John J. O'Toole and Richard E. Friedman, Chicago, Ill., for appellees.

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Opinion of the Court by Mr. Justice DOUGLAS, announced by Mr. Justice BRENNAN.

This is a suit for declaratory relief and for an injunction, 28 U.S.C. §§ 2201, 2202, brought by appellants who are independent candidates for the offices of electors of President and Vice President of the United States from Illinois. The defendants or appellees are members of the Illinois Electoral Board. Ill.Rev.Stat. c. 46, § 7–14. In 1968 appellants filed with appellees petitions containing the names of 26,500 qualified voters who desired that appellants be nominated. The appellees ruled that appellants could not be certified to the county clerks for the November 1968 election because of a proviso added in 1935 to an Illinois statute requiring that at least 25,000 electors sign a petition to nominate such candidates. The proviso reads:

"* * * that included in the aggregate total of 25,000 signatures are the signatures of 200 qualified voters from each of at least 50 counties." Ill.Rev.Stat., c. 46, § 10–3 (1967).

A three-judge District Court was convened, 28 U.S.C. §§ 2281, 2284, which, feeling bound by MacDougall v. Green, 335 U.S. 281, 69 S.Ct. 1, 93 L.Ed. 3, dismissed the complaint for failure to state a cause of action. 293 F.Supp. 411. The case is here on appeal. 28 U.S.C. § 1253.

On October 8, 1968, the same day the case was docketed, appellants filed a motion to advance and expedite the hearing and disposition of this cause. Appellees opposed the motion. On October 14, 1968, we entered the following order:

"Because of the representation of the State of Illinois that 'It would be a physical impossibility' for the State 'to effectuate the relief which the appellants seek,' the 'Motion to Advance and Expedite the

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Hearing and Disposition of this Cause' is denied. Mr. Justice Fortas would grant the motion." 393 U.S. 814, 89 S.Ct. 138, 21 L.Ed.2d 90.

[1] Appellees urged in a motion to dismiss that since the November 5, 1968, election has been held, there is no possibility of granting any relief to appellants and that the appeal should be dismissed. But while the 1968 election is over, the burden which MacDougall v. Green, *supra*, allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review," Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310. The need for its resolution thus reflects a continuing controversy in the federal-state area where our "one man, one vote" decisions have thrust. We turn then to the merits.

MacDougall v. Green is indistinguishable from the present controversy. The allegations in that case were that 52% of the State's registered voters were residents of Cook County alone, 87% were residents of the 49 most populous counties, and only 13% resided in the 53 least populous counties. The argument was that a nominating procedure so weighted violates the Equal Protection Clause.

Today, in contrast, 93.4% of the State's registered voters reside in the 49 most populous counties, and only 6.6% are resident in the remaining 53 counties. The constitutional argument, however, remains the same.

Five members of the Court held in *MacDougall* that a State has "the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting

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their political weight at the polls not available to the former." 335 U.S., at 284, 69 S.Ct. at 3. Three members of the Court dissented on the ground that the nominating procedure violated the Equal Protection Clause. One member of the Court voted not to exercise this Court's jurisdiction in equity to resolve the dispute.

[2] While the majority cited Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432, as their authority for denying relief and while a few who took part in *Colegrove* put this type of question in the "political" as distinguished from the "justiciable" category, 328 U.S., at 552, 66 S.Ct. at 1199 that matter was authoritatively resolved in Baker v. Carr, 369 U.S. 186, 202, 82 S.Ct. 691, 702, 7 L.Ed.2d 663. When a State makes classifications of voters which favor residents of some counties over residents of other counties, a justiciable controversy is presented. 369 U.S., at 198–204, 82 S.Ct. at 699–703.

When we struck down the Georgia county-unit system in statewide primary elections, we said:

> "How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment." Gray v. Sanders, 372 U.S. 368, 379, 83 S.Ct. 801, 808, 9 L.Ed.2d 821.

Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L.Ed.2d 506, held that a State in an apportionment of state representatives and senators among districts and counties could not deprive voters in

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the more populous counties of their proportionate share of representatives and senators.

> "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." 377 U.S., at 555, 84 S.Ct., at 1378.

[3, 4] We have said enough to indicate why MacDougall v. Green is out of line with our recent apportionment cases. The use of nominating petitions by independents to obtain a place on the Illinois ballot is an integral part of her elective system. See People ex rel. v. Board of Election Commissioners, 221 Ill. 9, 18, 77 N.E. 321, 323. All procedures

used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote. United States v. Classic, 313 U.S. 299, 314–318, 61 S.Ct. 1031, 1037–1039, 85 L.Ed. 1368; Smith v. Allwright, 321 U.S. 649, 664, 64 S.Ct. 757, 765, 88 L.Ed. 897.

Dusch v. Davis, 387 U.S. 112, 87 S.Ct. 1554, 18 L.Ed.2d 656, is not relevant to the problem of this case. There each councilman was required to be a resident of the borough from which he was elected. Like the residence requirement for state senators from a multi-district county (Fortson v. Dorsey, 379 U.S. 433, 85 S.Ct. 498, 13 L.Ed.2d 401), the place of residence did not mark the voting unit; for in *Dusch* all the electors in the city voted for each councilman.

[5, 6] It is no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional

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theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.

[7] Under this Illinois law the electorate in 49 of the counties which contain 93.4% of the registered voters may not form a new political party and place its candidates on the ballot. Yet 25,000 of the remaining 6.6% of registered voters properly distributed among the 53 remaining counties may form a new party to elect candidates to office. This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

MacDougall v. Green is overruled.

Reversed.

Mr. Justice STEWART, with whom Mr. Justice HARLAN joins, dissenting.

I cannot join in the Court's casual extension of the "one voter, one vote" slogan to a case that involves neither voters, votes, nor even an ongoing dispute.

First of all, the case is moot. The appellants brought this action merely as prospective "candidates for the offices of Electors of President and Vice-President of the United States from the State of Illinois to be voted on at the general election to be held on November 5, 1968." But the 1968 election is now history, and no relief relating to its outcome is sought. In the absence of any assertion that the appellants intend to participate as candidates in any future Illinois election, the Court's reference to cases involving "continuing controversies" between the parties is wide of the mark. Cf. Golden v. Zwickler, 394 U.S. 103, 89 S.Ct. 956, 22 L.Ed.2d 113. There simply remains no judicially cognizable dispute in this case. Since, however, the Court reaches a

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contrary conclusion, I shall indicate briefly the reasons for my disagreement with its holding on the merits.

The legislative apportionment cases, upon which the Court places its entire reliance, were decided on the theory that *voters* residing in "underrepresented" electoral districts were denied equal protection.

> "Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there." Reynolds v. Sims, 377 U.S. 533, 563, 84 S.Ct. 1362, 1382, 12 L.Ed. 2d 506.

In this case, by contrast, the appellants have sued merely as prospective candidates for office. They claim no impairment whatever of any interests they might have as voters; indeed, their com-

plaint contains no allegation that any of them is in fact a qualified Illinois voter. Undeterred by the appellants' failure to explain how or as against whom they themselves are denied equal protection, however, the Court reaches out to hold that this statute "discriminates against the residents of the populous counties of the State in favor of rural sections." But since no "residents of the populous counties of the State" have asserted any rights, the Court's decision represents at best an advisory vindication of interests not involved in this case.

Even if the interests of voters in Illinois' "populous counties" were actually represented here, the Court's conclusion would still be completely unjustified. Reynolds v. Sims, *supra*, and its offspring at least involved situations in which the "debasement" or "dilution" of voting power found by the Court was the "certain" result of population variations among electoral districts. Under the Illinois statute now before us, however, no injury whatever is suffered by voters in heavily populated areas so long as their favored candidates are able to secure places on the ballot. And there is absolutely no indication in the record that the appellants could not, if they had made

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the effort, have easily satisfied Illinois' 50-county, 200-signature requirement. Indeed, there is no suggestion that the counties from which the appellants drew their support were "populous" rather than "rural." The rationale of Reynolds v. Sims simply does not control this case.

Any reliance by the Court on Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24, would also be misplaced. That case involved an Ohio requirement that new political parties secure the support of over 433,000 persons—15% of the electorate—before their candidates could appear on the ballot. Here, the 25,000 signatures required by Illinois represent only about one-half of one percent of the total number of Illinois voters—a percentage requirement permissible, one would hope, under any view of the *Rhodes* case. Nor do the appellants make any showing that securing 200 signatures in less than half of the State's counties would be a burden at all comparable to that involved in Williams v. Rhodes.

The Court held in MacDougall v. Green, 335 U.S. 281, 69 S.Ct. 1, 93 L.Ed. 3 in sustaining the very statutory requirement here at issue,[1] that Illinois had pursued an "allowable State policy [of] requir[ing] that candidates for statewide office should have support not limited to a concentrated locality." Id., at 283, 69 S.Ct. at 2. That conclusion seems to me to be no less sound today than it was at the time of the *MacDougall* decision.[2] Illinois' policy is, in fact, not at

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all unlike that upheld by the Court only two Terms ago in Dusch v. Davis, 387 U.S. 112, 87 S.Ct. 1554, 18 L.Ed.2d 656, in which a district-residence requirement imposed upon municipal officers despite population variations among districts was nevertheless held proper as reasonably "reflect[ing] a detente between urban and rural communities * * *." *Id.*, at 117, 87 S.Ct. at 1556. Cf. Lucas v. Forty-Fourth General Assembly, 377 U.S. 713, 744, 84 S.Ct. 1459, 1477, 12 L.Ed.2d 632 (Stewart, J., dissenting); Reynolds v. Sims, *supra*, at 589, 84 S.Ct. at 1395 (Harlan, J., dissenting).

I respectfully dissent.

1. *MacDougall* involved Ill.Rev.Stat., c. 46, § 10–2, relating to ballot position for candidates of new political parties; Ill.Rev.Stat., c. 46, § 10–3, involved here, imposes identical signature requirements for independent candidates.

2. While *MacDougall* involved candidates for various offices, the appellants here all sought election as presidential electors. See U.S.Const., Art. II, § 1:

"Each State shall appoint, *in such Manner as the Legislature thereof may direct*, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress * * *." (Emphasis added.)

AJR14

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UNIVERSITY OF NEVADA, RENO

POLITICAL SCIENCE
Reno, Nevada 89507
(702) 784-6722

March 10, 1975

The Honorable Robert Benkovich
Nevada State Assemblyman
Legislative Office Building
Carson City, Nevada

Dear Assemblyman Benkovich:

It is not possible for me to come to Carson City on March 11 because I have a class at 8 o'clock. I am sorry that I am unable to be present to comment on AJR 14. The matters that I would wish to discuss include the following:

1. Would passage of AJR 14 make the initiative process easier? My own answer is yes, it would, since the requisite number of signatures could be secured in just one of the metropolitan areas.

2. Is making the process easier a good idea? Here I would wish to discuss with the committee the nature of the initiative, the kinds of measures that have resulted from its use, and whether it is wiser to rely on the ordinary legislative process to produce our laws and amendments. My point is that I have confidence in the orderly, thoughtful method of legislative consideration and debate. I would certainly never argue for abolition of the initiative, but I do indeed have some uncertainties about its application, with reference particularly to the lottery amendment of 1967-68. Note must be taken of the fact that the voters soundly defeated that proposal; so it is well to recall that there are safeguards against an unwise and self-serving initiative proposal.

3. Are these safeguards sufficient to protect the minority, especially residents of small counties, should AJR 14 be adopted? My answer is yes. It will be remembered that an initiative petition proposing a law must be either passed by the Legislature or put on the next general election ballot. Therefore, in the first case, the same majority vote is required in the Legislature as if that body itself had initiated the law. In the second

case, the majority of the voters makes the decision. Both of these possibilities insure open decision-making; so I am not afraid that the fact that a particular initiative could be started in just one area of the state would cut anyone out of his chance to record his position in the established, constitutional way.

An initiative petition proposing a constitutional amendment bypasses the Legislature entirely (a mistake, in my opinion, but not relevant to our present discussion). Such a proposed amendment must be passed by the voters at two successive general elections. Again, I find no danger of shortcutting the process of majority rule.

4. Would AJR 14 further weaken the voice of the non-urban areas in Nevada? To the extent that such areas would not need to be canvassed for signatures, the answer is yes. But the political problem that I am sure your committee is debating is whether the less populous counties should be empowered to exercise such a veto? I am of a divided mind, but essentially I count on the above-mentioned safeguards to insure that majority will is honored--a will that is expressed in the orderly election procedure.

5. My last question is this: could the present requirements for signatures of 10 percent of the voters in thirteen counties survive a court challenge? My answer is that it could not. In Moore v. Ogilvie, a United States Supreme Court decision in 1969 concerning initiative arrangements in Illinois, the rule was laid down that signatures could not be required from a specified number of counties because such a requirement gave disproportionate strength to sparsely settled areas. The invalidated Illinois law and Nevada's present law are very similar. Thus, it is my belief that a resident of one of Nevada's metropolitan areas finding himself disadvantaged by the necessity of securing initiative petition signatures in thirteen counties could contest the existing law and would win.

I always regret the occasions when what I view as legislative matters become entangled in the legal process. I much prefer that legislative bodies debate and settle their own problems. Since I am convinced that our current law would be cast out should it be brought before a court, and since I do not find a threat to residents of the less populous counties in AJR 14, I believe it should be passed.

Thank you for considering my position and please accept my regret that I cannot be present.

Sincerely,

Eleanore

Eleanore Bushnell
Professor

EB:mhd

AJR14
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655 Kirman Avenue
Reno, Nevada 89502
March 8, 1975

Members of the Committee on Elections
Legislative Office Building
Carson City, Nevada 89701

Gentlemen:

May I urge your favorable consideration of AJR 14. The present law concerning Initiative Petitions is completely out of step with the way we conduct our other governmental affairs. When we choose our United States senators and congressman, we need only a majority of the votes in the entire state to elect them. This is true also when we elect our governor and the other statewide officials; however, the way Nevadans can make their wishes known by Initiative Petition is clearly not in accord with the one-man, one-vote principle.

How could it be lawful, or even reasonable, to require 10% of the number of those voting in the previous general election in THIRTEEN COUNTIES, as well as 10% of the votes cast in the state as a whole? We are urged to participate in our government, to make our thoughts and wishes known to our lawmakers, to vote; yet, at the grass-roots level we have an almost insurmountable roadblock.

If some citizens know of a way to improve our government, it should not be made so difficult for them to do so that they will lose interest. With loss of interest you have citizens who are apathetic, unhappy, or disgruntled. The wishes of the residents of the three most populous counties are not necessarily incompatible with the wishes of the residents in the other fourteen less populated counties; therefore, I can see no reason to fear the results of the passage of AJR 14.

Sincerely yours,

Juanita Tumbleson

Juanita Tumbleson

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Citizens For Private Enterprise.

P. O. Box 633, Carson City, Nevada 89701
Telephone: 882-2697 or 882-1943

March 7, 1975

Members of the Assembly
Nevada Legislature
State of Nevada
Carson City, Nevada 89701

Subject: AJR 14 - Open Letter from the Washoe County CPE

Gentlemen:

As members of Citizens for Private Enterprises' Legislative Committee, the undersigned feel that a grave mistake would be made should AJR 14 become effective.

It is our belief that the purpose of the initiative petition is to involve more of the voters in the operation of their government. When the voters use the initiative petition it is because the Legislative bodies elected by them have failed to enact a specific law or specific amendment to the Constitution.

Currently, in the Nevada Constitution, by the use of the initiative petition, a law can be made in the absence of any action by the Legislature or in the face of opposition by the Legislature. And an amendment to the Constitution can be initiated without any Legislative involvement at all in the process. To add to this bypassing of the Legislative function, the proposed change as written in AJR 14 to Article 19 of the Nevada Constitution, would deprive the majority of voting residents in Nevada from participating in the initiative petition process in accordance with the intent of the Nevada Constitution.

The eliminating of the requirement to obtain the needed 10% of the signatures in 75% of the counties in the State is a serious violation of representative government. Under the proposed change, all the needed signatures could be gathered in either Clark or Washoe Counties with total disregard of the balance of less populous counties of the State. The people in these counties would be allowed to dominate a privileged function that is to involve the majority of the voters throughout the State. Furthermore, it weakens and dilutes your legislative powers by lessening the initiative petition requirement.

It distresses us that you are ignoring the experience of 1958 and 1962 concerning the use of the initiative petition. In 1958 the voters used the initiative to make the requirements for the initiative process more stringent. The change required that the 10% of the signatures be gathered in 75% of the counties in the State. And in 1962, the requirement of 10% of the qualified voters was changed to those who actually voted in the preceding general election in 13 of the counties.

This history should point out to you that the residents of Nevada value their right of initiative petition and by no means take its responsibility lightly. The people themselves, through the proper procedures, sought to make the privilege more equitable and safe.

Therefore, it is our considered and researched belief that this session of the Legislature should not tamper with the current Article 19 of the Nevada Constitution.