

MEMBERS PRESENT: Chairman Glover
Vice Chairman Chaney
Mr. Beyer
Mrs. Ham
Mrs. Hayes
Mr. Malone
Mr. Nicholas
Mr. Prengaman
Mr. Robinson
Mr. Sader

MEMBERS ABSENT: Mr. Hickey

GUESTS PRESENT: William Swackhamer, Secretary of State
David Howard, Deputy Chief Secretary of State
Michael Melner, American Civil Liberties Union
John Barridge, Intern
Chris Black Adar, American Civil Liberties Union

Chairman Glover called the meeting to order at 3:05 p.m. in Room 200. He directed the committee's attention to AJR 13.

AJR 13: Proposes constitutional amendment to change the number of petitioners need to recall a public officer.

William Swackhamer, Secretary of State, said that AJR 13 was drafted at his request because he felt there was a serious flaw in recall procedure as required by the State Constitution. He noted that in the Constitution signatures of 25 percent of the registered voters electing the officer are required for a recall petition which in the smaller counties is a ridiculously low number. He pointed out that in Eureka County only 90 signatures were required to recall a sheriff in that county and that a sheriff can anger 90 people in a small county in one afternoon. He added that in the larger counties, such as Washoe and Clark County, the Constitutional requirement is so high that it is almost impossible to obtain this many signatures. He explained that the bill was drafted along the same lines as the California statute requiring 10 percent in large counties of more than 100,000 registered voters up to 30 percent in small counties of less than 1,000 registered voters.

When Mr. Glover asked what the actual number of signatures required in this bill would be for Clark County, Mr. Swackhamer replied that there were 129,658 registered voters in that county in 1980 so 12,965 signatures would be required for recall. He added that in Esmeralda County 480 persons voted in the last election and in Eureka County 582 persons voted.

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Dr. Robinson pointed out that the 100,000 figure would only apply to a statewide or Clark County election and that the smaller the area the more signatures required.

When Mrs. Hayes asked if this was constitutional under the United States Constitution, Mr. Swackhamer answered that he presumed so because they were using these figures in California. Mrs. Hayes commented that she did not feel this was fair to require more signatures in small counties and Mr. Swackhamer pointed out that requiring 25 percent in the large counties effectively prohibited the recall procedure.

When Mr. Beyer asked why signatures were required of actual voters in the last general election rather than of registered voters, Mr. Swackhamer said that he presumed it was because these persons were interested enough to vote and had probably elected the official. Mr. Beyer then asked if the wording were changed to 25 percent of registered voters rather than 25 percent of those who voted, would it solve the problem and Mr. Swackhamer answered no.

Mr. Sader pointed out that in small counties where you could have an influx of registered voters, an official could, in effect, be recalled by these new registrants.

Mike Melner, representing the American Civil Liberties Union, said the ACLU was opposed to this legislation as drafted because they feel that it gives differing rights to citizens, a lesser right to the recall process for persons residing in a rural county. He noted that the ability of 90 persons to recall an officer in a rural county was a problem in the nature and structure of the county or governmental entity. He stated that they were in favor of the concept of easy access to the recall process but felt all persons should be treated equally.

When Mr. Glover mentioned the difficulty in obtaining so many signatures as required in Clark County, Mr. Melner replied that he did not think that difficulty was the issue, that the value of a vote and the value of a signature should be equal.

When Mr. Prengaman asked if in recent years more recalls have occurred in rural or urban areas, Mr. Swackhamer answered that two years ago there were three sheriffs recalled in rural counties but that he did not know about cities because they did not participate in those recalls.

Mrs. Ham commented that she was concerned with the recall process being used for frivolous reasons rather than for malfeasance of office, and that she would be in favor of making this process more difficult.

Mr. Prengaman commented that because getting elected was a draining experience costing much time, money and effort and recall caused expensive legal fees and another election, recall should not be used for frivolous reasons. When he asked

Mr. Melner if he agreed, Mr. Melner said that it was difficult to define frivolous and that their argument with this legislation was the matter of treating people differently and applying different standards of access to the process. Mr. Prengaman pointed out that urban and rural counties are different and are treated differently in a great deal of legislation.

Mr. Melner argued that even though there are differing needs voters should be treated the same way no matter where they are and should have equal access to the election process.

Mrs. Hayes commented that in the rural counties it was easier to contact the people who were recalling you than in the larger counties. She then asked Mr. Swackhamer if the verifying of signatures was done by the registrar of voters and he replied yes on their level but in a statewide recall his office would only be able to count the signatures.

Mr. Malone suggested that the bill should read "no less than twenty five percent" rather than being so restrictive on percentages, and Mr. Swackhamer said that this could be a bill drafting error and should be taken up with Mr. Daykin.

Mrs. Ham suggested that since there was no way of verifying whether a person did vote or not, there ought to be a time limit set on registering to vote in order to take part in a recall. She noted that a person who was petitioning for recall could solicit new registrations of sympathetic persons.

John Barridge, intern for Senator Raggio, said that he was only speaking for himself and that he was opposed to AJR 13 because of the principle of one man, one vote. He questioned the decision that 90 persons are too small a group to initiate a recall and commented that our system is based upon the adage that truth can stand alone which should prove itself at the polls in an unwarranted recall.

Mr. Nicholas commented that, in effect, with this bill the cost of recall was reduced for senators, assemblymen and other high officials while the cost was increased for offices below this level. He observed that those who would have to pay more are the ones who are least able to do so.

Chairman Glover then directed the committee's attention to AB 74.

AB 74: Clarifies definition of "residence" for voter registration purposes.

William Swackhamer, Secretary of State, noted the increasing difficulty in determining residency for voters. He said that formerly when there were no districts in the state residency was taken very lightly and people were apt to vote where it was most convenient, but that now with districts and reapportionment this was no longer viable. He noted that contests can be

filed on the basis of a person voting out of their district such as happened three times in the past election. He pointed out that this bill only distinguishes a residence of a person as a place of continuous habitation from a place of constructive habitation for registration purposes. He said that the Constitution reads "a person who shall have actually and not constructively resided in this state." He explained that many people feel they have the right to vote where they own property which is not correct and that this bill only tries to make it more clear that you have to vote where you actually live.

When Mr. Sader asked if "constructive habitation" was defined anywhere in the constitution, Mr. Swackhamer replied no but to him it meant that you vote where you live not where you own property.

Mr. Prengaman questioned the problem of a person who by the nature of his job is required to reside for a period of one or two weeks at that job but who also maintains an actual residence some place else, and he wondered if "constructive habitation" should be defined. Mr. Swackhamer said that there were several lawsuits against him now concerning this and that he felt that ultimately the courts would have to define this. He added that the wording is in the constitution, but he would like to have this wording included in the Election Laws so that county clerks and registrars would have better access to it.

Mr. Sader said that he agreed with Mr. Prengaman in that he did not feel this language would effectuate what Mr. Swackhamer wanted. He felt that it would be advantageous to have some definition of residency in the statutes, but that residence as a legal term was really a question of intent, not a question of actual physical presence. He noted that an intent to make someplace your home is the definition of what a residence is. He explained that if you are actually living there, that is one major indication but there are other manifestations such as where you are registered to vote or where you have your driver's license. He felt that if residency were pinned down to actual continuous habitation, there could be legal problems in cases where persons are not continually living where they vote such as students, the military or Federal officials.

David Howard, Chief Deputy Secretary of State, said that the purpose of this legislation was to resolve very real problems and to aid county clerks and registrars in making decisions on their level concerning residency. For example, he explained that in 1976 when he was registrar of voters in Washoe County he revoked the registration of ten persons living in Verdi, California, based on the fact that they did not live in the State of Nevada. He said that the ACLU initiated a suit against him to reregister these people because they had established constructive habitation which the ACLU defined as a car license in Nevada, a post office box in Nevada, a bank account in Nevada and working in Nevada.

When Mr. Prengaman commented that even though this bill gave the clerks help in determining residency, it really did not give them an operational definition of residency, Mr. Howard replied that this did not preclude the secretary of state from making rules and regulations to interpret constructive habitation after AB 74 is passed.

Mike Melnor, representing the American Civil Liberties Union, stated that the ACLU was opposed to AB 74 because of the reasons given by Mr. Sader and because it does not add anything. He added that he was not sure that this wording from the Nevada Constitution was constitutional under the United States Constitution.

Mr. Melner informed the committee and guests that, for the record, many people use the name of the ACLU in threatening suits but that they were not aware of any law suit or threatened law suit that the ACLU was a part of as was alleged in previous testimony.

When Mr. Glover asked if he was in favor of the concept of a person residing in Sparks voting in Storey County, Mr. Melner replied that he thought people should vote where they reside but questioned how you define reside. He noted that constructive habitation did nothing to define reside and that he felt this bill made it more difficult to determine where people reside.

When Mr. Glover asked if he had any suggestions of how to solve the problem, Mr. Melner suggested the possibility of a more detailed application to establish intent covering such questions as where you pay income and property tax, where your children attend school, where your driver's license is, and where you sleep.

Dr. Robinson reminded Mr. Melner that they were trying to establish residency for voting purposes only and commented that he felt the secretary of state could make rules and regulations for establishing residency for voting purposes which would have nothing to do with taxes, licenses or school.

Mr. Howard reported that the clerk in Storey County had developed her own check list for establishing residency and was now being sued.

When Dr. Robinson suggested adding to this bill the right of the secretary of state to make rules and regulations for establishing residency, Mr. Howard said this was already covered in NRS Chapter 293.247

When Mr. Sader asked if the bill were written without the words "continual habitation" would Mr. Melner be in favor of it, he replied yes. Mr. Sader commented that this would still allow Mr. Swackhamer to make rules and regulations as guidelines for clerks to establish residency. Mr. Melner said he felt

that "constructive habitation" should be defined within the meaning of the Supreme Court guidelines.

AB 75: Changes procedure for notifying elector of cancellation of registration.

William Swackhamer, Secretary of State, said that AB 75 refers to the mailing of a postcard to a registrant after his name has been purged from the rolls. He added that this bill was drafted because of a number of requests from people who doubted its wisdom and argued that it cost too much.

David Howard, Chief Deputy Secretary of State, pointed out some of the practical problems with returning a postcard to reregister: 1) Unless the registrant returns this affidavit in person to the registrar, he must have his signature notarized, 2) There is an indefinite period of time for returning the card, and 3) This prevents the county clerk from purging the rolls in an efficient manner after the general election. He noted that the county clerk in Elko County sent out 830 postcards and he had only received 31 back. He further pointed out that these cards must be sent out by March 15th of the year following the election which is 18 months before the next general election and the chances are that 40 percent of the returned cards will have different addresses by the time of the next election.

Chris Black Adar, representing the American Civil Liberties Union, stated that the ACLU was opposed to this bill because they felt that removing this provision would make it more difficult for people to reregister. He added that he did not think that cost was a significant problem and that the time frame could be changed.

Mr. Malone pointed out that sending out 830 postcards and only receiving 31 back was a significant expense and wondered how many of these must be sent in Clark County.

When Mr. Glover asked Mr. Black Adar if he was bothered by the requirement of a notarized signature, he replied that he did not realize this was a requirement until now but that he felt that these postcards at least provided a procedure for someone to register who had trouble getting to the courthouse.

Mr. Beyer commented that before elections there are usually deputy registrars in grocery stores or department stores enabling people to register without going to a courthouse.

Chairman Glover asked for a motion to approve the minutes of January 27th and February 2. The motion for approval was made by Mr. Malone, seconded by Mr. Prengaman and carried unanimously by the members present.

Mr. Glover informed the committee that AB 96 would be discussed on Tuesday, February 17th and then adjourned the meeting at 4:46 p.m.

Respectfully submitted,

Patricia Hatch

Patricia Hatch
Secretary

ASSEMBLY

AGENDA FOR COMMITTEE ON..... ELECTIONS.....

Date TUESDAY, FEB. 10 Time 3:00 p.m. Room 200.....

Bills or Resolutions to be considered	Subject	Counsel requested*
AJR 13	Proposes constitutional amendment to change the number of petitioners needed to recall a public officer.	
AB 74	Clarifies definition of "residence" for voter registration purposes.	
AB 75	Changes procedure for notifying elector of cancellation of registration.	

*Please do not ask for counsel unless necessary.