

THE CASE FOR ANNUAL SESSIONS

Testimony by
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To
Interim Committee on the Structure and Operations
of the Nevada Legislature

Las Vegas, July 26, 2012

I appreciate the opportunity to offer testimony in support of annual sessions. Before I make the case, permit me to note that I submitted testimony in a letter of March 25, 2009 on the same subject. My argument here goes to a similar conclusion, but states the case somewhat differently.

If Woody Allen is correct in his observation that 90 percent of life is showing up, then legislatures that meet annually lead fuller lives than those that meet biennially. At the present, every legislature with the exception of those in Montana, North Dakota, Texas, and Nevada, shows up at the capitol annually to engage in the processes of lawmaking. Most recently, in November 2010, Oregon changed from biennial to annual sessions. Since the mid-1960s, twenty-five states have replaced their biennial sessions with annual ones. None of them has reverted back

Every state and every legislature is distinctive and not quite like any other. Nevertheless, the experience of the large majority of the states strongly suggests that in going to annual sessions Nevada would be making an improvement.

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Meeting Date 07-26-12

Permit me to comment on the ways in which meeting every year, rather than every other year, would provide the opportunity for the Nevada Legislature to do a better job. By better job, I refer to what legislatures are constitutionally authorized to do and what they are generally expected to do: first, to represent constituents and constituencies; second, to engage in lawmaking; third, to balance the power of the executive; and fourth, to provide for the well being of the legislature as an institution.

In representing constituents and constituencies, legislators spend a good deal of time and effort *serving people's interests*. They do not need to be in the Legislative Building to do this. During sessions and especially during the interim legislators keep in touch with their constituents, answer their questions, give them information, hear their complaints, offer them reassurance, assist in resolving problems with government, and go to bat for them when they need help. This is an enormously important part of the job of being a representative. In their representational capacity, legislatures (and legislators also) are also tasked with *expressing constituents' views*, and mainly those that relate to public policy. To be properly responsive to such views, legislators have to introduce bills and try to get them enacted and have to be able to engage on bills introduced by others. Effective representation does not require an immediate response to public demands, but rather a timely one. A two-year wait is too long. Annual sessions, by contrast, afford legislatures the ability to respond in a more timely manner to the policy concerns of members' constituents.

The second part of the legislative job is *lawmaking*, which involves the introduction of bills, their consideration, and their modification, adoption, or rejection by the legislature and the governor. Making laws hinges on the formation of majorities by means of studying issues, deliberating pros and cons, and negotiating settlements. On controversial and even non-controversial items, all of this necessitates compromises along the way.

Lawmaking can be done on a biennial basis, as in Nevada, or on an annual basis, as in fifty-six other states. However, there are several advantages to meeting every year. First, lawmaking occurs more regularly and thus can maintain its fundamental importance as a major priority. If legislators are removed from lawmaking for long periods of time, constituency service becomes by far their main activity. That's what they do and that's where they spend continuous time. Second, and especially with their terms limited to twelve years, none are experienced enough not to lose some touch with the lawmaking process from biennium to biennium. Greater continuity of lawmaking experience would help keep them from getting rusty. Third, given the problems facing the states—in particular, the economic, fiscal, and budgetary problems—legislatures have to be able to act when action is necessary and not to have to wait almost two years. This does not mean that legislatures have to meet in unlimited sessions every year, but it does mean that they should be at their lawmaking job more often.

Probably as important as anything else in view of current conditions, the state budget needs attention that cannot really be given by a biennial legislature. A number of states choose to budget on a biennial basis, but nevertheless they review and adjust their budgets in the off years. Less frequent review is problematic in these challenging times.

If the legislature decides on annual sessions, it ought to build in as much flexibility as possible. There may be an inclination to try to hold the number of days in session to 120 over the two-year period, so that the amount of time remains the same. But a session, and even a short, session requires a certain amount of time if the process is to work as it should. Two ninety-day sessions or a ninety-day and sixty day (in the non-budget year) should provide enough time. In any case, a few more days in session will not transform the Nevada Legislature into a full-time, professional body.

With annual sessions the interim period will become shorter. But it should still be used productively—to prepare for the next legislative session. Many states have already reformed their interim committees so that they are more aligned with work during the session. In these places standing committees have taken on the job of interim committees—studying issues, formulating legislation, and beginning to build support. The same committees continue to have jurisdiction during the session that follows.

None of this should necessitate much by way of additional staff or increased expenditures on the legislature (although a strong case can be made for increased legislative pay under any conditions). The legislature's "citizen" status would not be in jeopardy. Most annual-session states retain "citizen" legislatures. Nor should more frequent meetings affect the number of laws enacted or the size of government, although the new schedule would probably result in the more effective use of professional staff.

The third part of the legislature's job is *balancing the power of the executive*. Because of structural, constitutional, statutory, and political factors, governors normally have the upper hand in their dealings with the legislature. The governor is one and the legislature is relatively many, and therefore the governor can formulate and initiate a policy agenda. The legislature responds. In all but a dozen states the governor puts together the budget, and for the most part the governor dominates the budget process. The legislature responds. In Nevada the legislature is also limited by not having the authority to call itself into special session and by not having a session to try to override gubernatorial vetoes. Finally, term limits further weakens the legislature in any attempt to balance the power of the governor. Members and leaders have shorter tenure, less experience, and less incentive to challenge the governor.

If the legislature is not even able to meet one year out of two, it is at an even greater disadvantage. Annual sessions cannot be expected to redress the executive-

legislative imbalance in Nevada, but they may help. When the legislature is in the capital and at work, a governor is more constrained. That may not appear to be much, but the presence of the legislature can lead to greater consultation between the governor on the one hand and the legislative leaders on the other. Consultation can be the beginning of influence. The more they deal with one another, the greater the influence of the legislative branch is likely to be.

The fourth part of the job of the legislature is that of *maintenance*. Someone has to take care of the legislative institution. The responsibility falls largely to legislators and the legislative staff. In view of all the pressures weighing on legislators, it is understandable that they spend little of their energy on their institution. They take it for granted. They may not fully appreciate that the genius of representative democracy in America is embedded in the legislative institution. Historically, the legislative branch and its processes are more important than the particular laws it has made or the monies it has budgeted. The legislature is not only a means to an end, it is an end itself. It is the heart of our political system.

Institutional commitment can be enhanced—to some extent at least—by annual sessions, which will enable legislators whose careers are capped to assemble as a bicameral lawmaking body more frequently. Now, Nevada legislators spend most of their time by far in their districts. The sense of constituency dominates, as it should. But it is probably out of balance. More time together in Carson City will add to the

legislature's state perspective and to its lawmaking perspective, while not diminishing the pervasive influence of constituency.

One additional comment is in order here. If the committee decides that annual sessions is an objective worthy of the legislature's pursuit, it should cast the issue in a broader framework, much like the Oregon Legislature did. It is important to take hold of every possible opportunity to educate, not only the citizens of Nevada, but also the members of the legislature. A commission composed of legislators and former legislators, in addition to a variety of citizens, could prove to be a useful educational force. Any discussion of the job of the legislature and the work of legislators, the processes and the problems, and possible improvements is worth having, whether or not an annual-sessions provision is adopted. If the people of the state were to gain an appreciation of the legislative institution and lawmaking and if legislators were to increase their commitment to their institution, Nevada would come out well ahead.