

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

**Eightieth Session
February 21, 2019**

The Committee on Legislative Operations and Elections was called to order by Chair Sandra Jauregui at 4:02 p.m. on Thursday, February 21, 2019, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sandra Jauregui, Chair
Assemblyman Ozzie Fumo, Vice Chair
Assemblyman Skip Daly
Assemblyman Glen Leavitt
Assemblyman William McCurdy II
Assemblywoman Brittney Miller
Assemblywoman Daniele Monroe-Moreno
Assemblyman Tom Roberts
Assemblywoman Selena Torres

COMMITTEE MEMBERS ABSENT:

Assemblyman John Hambrick (excused)

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Senate District No. 5
Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Kevin Powers, Committee Counsel
Christopher Roske, Committee Manager
Catherine Bodenstein, Committee Secretary
Melissa Loomis, Committee Assistant



OTHERS PRESENT:

Elliot Anderson, Private Citizen, Henderson, Nevada
Hugh Anderson, Managing Director, Partner, HighTower Las Vegas; and Chairman,
Government Affairs Committee, Las Vegas Metro Chamber of Commerce
Warren B. Hardy II, representing The Lincy Institute, University of Nevada,
Las Vegas
Maureen E. Schafer, Executive Director, Council for a Better Nevada
Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance
Kevin J. Page, Chair, Board of Regents, Nevada System of Higher Education
Jason Geddes, Vice Chair, Board of Regents, Nevada System of Higher Education

Chair Jauregui:

[Roll was called and Committee protocols were explained.] Welcome, everyone, to the Assembly Committee on Legislative Operations and Elections. I will now open the hearing on Assembly Joint Resolution 5 of the 79th Session.

A.J.R. 5*: Proposes to amend the Nevada Constitution to remove the constitutional provisions governing the election and duties of the Board of Regents of the State University and to authorize the Legislature to provide by statute for the governance, control and management of the State University and for the reasonable protection of individual academic freedom. (BDR C-60)

Senator Joyce Woodhouse, Senate District No. 5:

Good afternoon, Committee members. Thank you, Madam Chair and members of the Committee. I am Senator Joyce Woodhouse, representing Senate District 5 in Clark County. Former Assemblyman Elliot Anderson and I have proposed the Nevada Higher Education Reform, Accountability and Oversight Amendment, also known as Assembly Joint Resolution 5 of the 79th Session, in response to the events of the past several years.

In the lead-up to previous sessions, the Nevada System of Higher Education (NSHE) has often tried to control, alter, or misrepresent information provided to policymakers, including the Nevada Legislature. Obviously, this is unacceptable. Former Assemblyman Anderson and I would like to commend the Board of Regents and the Chair for taking interim steps to correct many of these issues. However, as policymakers, we must be focused on building systems of governance, not on individual personalities. We owe the citizens of Nevada a culture of accountability in all levels of government. This higher education system belongs to all Nevadans—it is our collective investment in the future of our state.

Assembly Joint Resolution 5 of the 79th Session passed overwhelmingly last session and we are grateful for the support of our colleagues. In the Assembly, A.J.R. 5 of the 79th Session passed 38 to 4. In the Senate, it passed 18 to 2, with one member excused. If the Legislature passes the resolution again this session, it will go to the ballot during the 2020 General Election.

Assembly Joint Resolution 5 of the 79th Session removes the Board of Regents from the *Nevada Constitution* but does not substantively change any higher education policy or procedure. It simply puts the Board of Regents and the Nevada System of Higher Education on par with every other governing board and state agency created pursuant to statute. *Nevada Revised Statutes* (NRS) Chapter 396 would continue to exist. *Nevada Revised Statutes* Chapter 396 comprehensively governs the Board of Regents and includes the requirement that the Board be elected.

The purpose of A.J.R. 5 of the 79th Session is twofold: one, it allows the Legislature to exercise unimpeded oversight of NSHE, and two, it allows more flexibility in considering reform proposals. Constitutional governance serves as an antiquated way to oversee higher education, and Nevada is the only state with its entire system governed by a single elected board with constitutional status.

The only reason the Board of Regents was put into the *Nevada Constitution* in the first place was to access land-grant funding under the Morrill Act of 1862 without requiring action by the Legislature. Ever since, we have included all the state's higher education governance and administration under this provision despite a laundry list of studies and analyses recommending reorganization of the state's higher education structure.

It is my belief, with the passage of A.J.R. 5 of the 79th Session during this session and the voters in 2020, that we will see a resurgence of strong support for the Nevada System of Higher Education and the Board of Regents. I pledge my support to work with NSHE administration and the Board on behalf of the students, their families, and our communities to have the best system in our nation.

Madam Chair and Committee members, this concludes my testimony and I would like to turn the microphone over to former Assemblyman Elliot Anderson. Thank you.

Elliot Anderson, Private Citizen, Henderson, Nevada:

I am grateful to be here with you all today to discuss Assembly Joint Resolution 5 of the 79th Session. Somewhere along the way, we lost sight of the fact that the *Nevada Constitution* creates the Board of Regents and gives it the authority to govern "a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining," the curriculum stipulated under the Morrill Act. As the Legislative Counsel Bureau and legal scholars have repeatedly argued, all other authority over higher education is under the purview of the Legislature.

Furthermore, the minutes of Nevada's constitutional convention bear out the misinterpretation of the original intent of the drafters of the *Nevada Constitution*. Originally, the *Nevada Constitution* was written thusly: "The Legislature shall provide for the establishment of a State University, which shall be under the control of a Board of Regents," Debates and Proceedings, page 586.

George Nourse, a lawyer from Washoe County, remarked on the floor of the convention, "I like the general idea of that [the Board of Regents] very much, only I would suggest to add to it, 'whose powers and duties shall be prescribed by the Legislature,' and not leave it to be inferred, perhaps, that they [the Board of Regents] have absolute control." He said that he would vote for it with that addition.

The final language of the Article was modified pursuant to Mr. Nourse's concern and it resulted in this language: "The Legislature shall provide for the establishment of a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law." In legal parlance, "by law" means that the Legislature would have the power to prescribe the duties. That is what that language means. This is the language of the section—even today—in the *Nevada Constitution*, Article 11, Section 4.

Yet, the notion persists that Nevada's constitutionally defined unified system of higher education precludes a role for the Legislature, and it is often used to obstruct efforts to align higher education governance and administration with the state's demographic and economic needs. Indeed, in the past NSHE had regularly interpreted this provision to suggest that it is a "fourth branch of government" extending the constitutional authority of the Board of Regents to govern the three branches of the University of Nevada—University of Nevada, Reno; University of Nevada, Las Vegas; and Desert Research Institute—to a bureaucratic agency funded by the Legislature.

We believe that constitutional status has created an insular culture, one that sometimes acts as though it cannot be touched. In its own legal briefs, the Board of Regents has argued that it has "virtual immunity" from legislative acts. In the past, whenever the system has litigated or lobbied, it often uses its constitutional status to attempt to avoid legislative requirements.

In *King v. Board of Regents*, 65 Nev. 533, 536-69 (1948), the Nevada Supreme Court observed that despite plain language in the *Nevada Constitution* that I just read to you which allowed for the Legislature to exercise control over the Board, the Board of Regents maintained autonomy over the higher education system somewhat without recourse by the Legislature unlike every other state governing board. This constitutional provision is to blame, although I believe that the constitutional provision was misinterpreted based on the plain language of the *Nevada Constitution* and the original intent of the framers. In short—this is a long way of saying that—this provision has become an impediment to reform.

I want briefly, before I end my testimony, to address some of the arguments against taking the Board of Regents out of the *Nevada Constitution*. In the previous 2017 Session, the Board of Regents argued that the Legislature was too political, and therefore, the Board of Regents should remain in the *Nevada Constitution*. I have already noted that this was not the framers' intent. The *Nevada Constitution* never intended for the Board of Regents to be insulated from the political process.

Secondly, someone can get elected to either the Legislature or the Board of Regents, thus the Board of Regents is not insulated from politics if a politically focused regent gets elected. In fact, if a politically minded regent is elected, he or she is but 1/13 of the governing body as opposed to 1/42 or 1/63 in the Legislature. In the Legislature, if someone were focused on higher education and wanted to harm higher education, leadership could keep him off of the committee that has jurisdiction over higher education—be it finance, ways and means, or the education committees, in both houses.

Finally, Nevada's media and citizens focus much more on what happens at the Legislature than they do at the Board of Regents. It is my belief that this focus mitigates those political forces that can cause problems for higher education.

As an additional benefit, in the 79th Session, we also included a provision in A.J.R. 5 of the 79th Session that would constitutionally enshrine academic freedom for Nevada faculty members to ensure that political influence cannot rear its head in the teaching process.

As events over the past several years have indicated, an elected, part-time board composed almost exclusively of individuals with little or no background with higher education policy, is unable to manage the sprawling higher education apparatus that has flourished under these arrangements. In practice, this structure results in too strong an education bureaucracy. In the meantime, Nevada is a bottom-dweller in higher education performance.

If you are different and you are successful, then you are a model; if you are different and failing, then change is in order. It is time that Nevada changed the way higher education is organized and A.J.R. 5 of the 79th Session is an important step in doing so. Assembly Joint Resolution 5 of the 79th Session will allow our state to design a higher education system from the ground up, without regard to what settlers from 1864 thought about what we should be doing in 2019.

Thomas Jefferson said that the earth belongs to the living. So, too, does our higher education system belong to all Nevadans living here today. Assembly Joint Resolution 5 of the 79th Session will enable all of us to design the higher education system Nevada deserves and needs, and ensure that no one is insulated from our system of checks and balances in the *Nevada Constitution*.

We ask for your support, for the second time, of A.J.R. 5 of the 79th Session. Thank you, Madam Chair and Committee members.

Chair Jauregui:

Thank you. It is so nice to see you here again, Mr. Anderson. Thank you, Senator Woodhouse, for being here and presenting A.J.R. 5 of the 79th Session. Do any of the Committee members have any questions? I do have a couple. In section 4, subsection 2, paragraph (b) of A.J.R. 5 of the 79th Session, what is meant by "reasonable protection of individual academic freedom"? What was your intent here?

Elliot Anderson:

That provision is to ensure that faculty members are not being interfered with by legislative prerogatives. Key components of higher education are ensuring that academic freedom is allowed to reign supreme, ensuring that we have faculty members who are free to pursue whatever they deem fit, and ensuring that our research institutions are protected. If you look at higher education nationally, it is an important measure of academic health that faculty members are free to not be impeded by political forces. This would give them constitutional protection in doing so.

Chair Jauregui:

In the preamble in page 4, lines 25 through 32, it refers to the Board's actions to hinder, thwart, or undermine the Legislature's efforts to investigate, review, and scrutinize the institution's programs and operations of NSHE. Can you give examples of the Board's efforts to prevent the Legislature from exercising its oversight?

Elliot Anderson:

Madam Chair, I could, but I am trying to keep this presentation not so focused on the past. I could certainly list a number of examples, but my preference, unless you insist, is that I am not looking to reopen old wounds but simply to move forward into a system that would prevent some of those things from happening in the future.

Chair Jauregui:

I would like to thank you for your presentation. Before we open the hearing up to testimony, I would like to invite our legal counsel, Mr. Kevin Powers, up to the witness table to give a brief history of the Board of Regents. Mr. Powers, if you would also—when you are done giving your history—please elaborate on what A.J.R. 5 of the 79th Session would do and what it would not do if it passes and then goes to the people and is approved.

Kevin Powers, Committee Counsel:

Thank you, Madam Chair and members of the Committee. As you know, the Legislative Counsel Bureau's (LCB) Legal Division is a nonpartisan legal agency. We do not support or oppose any particular policy, viewpoint, or piece of legislation. However, we do provide the Legislature and its members with objective legal advice and analysis regarding issues of law, including the interpretation of constitutions and statutes and the legal effects and consequences of proposed legislation. That is why I am before you today, to give you a background on the constitutional balance of power between the Nevada Legislature and the Nevada Board of Regents. [Mr. Powers submitted a memorandum regarding State constitutional matters relating to community colleges and higher education ([Exhibit C](#)) to supplement his presentation.]

Obviously, when we are talking about the balance of power in the *Constitution*, our starting point is the separation of powers where you have our three branches of government: the Legislative, the Executive, and the Judicial. One of the things I like to emphasize is that there is no such thing as a fourth branch of government. No entity sits outside the other branches or is independent of the other branches. Every state officer and entity must derive

its powers from one and only one of the branches of government. Obviously, the Board of Regents is not a legislative body and it is not a judicial body; therefore, the Board of Regents is part of the Executive Branch of government.

Now, when the framers created the *Constitution* in Nevada, they gave the Board of Regents a slice of sovereign executive power, the power to administer the state university which is itself an institution of the Executive Branch of government. But the power—the sovereign power given to the Board of Regents—is a narrow slice of sovereign power. It is limited to the internal operation, affairs, and management of the university. Article 11 of the *Constitution* in, which is the education article, specifically uses the term "state university." That is the extent and scope of the Board of Regents' powers.

By contrast, the Legislature possesses all sovereign powers of the people except where expressly limited by provisions of the *Nevada Constitution* or the *United States Constitution*. What that means is that the Legislature's powers are broad and only if there is an express or clearly implied limitation will the Legislature be prohibited from passing legislation in a specific area.

Obviously, then, the question is, To what extent does the Board of Regent's slice of narrow sovereign power in the Executive Branch limit the Legislature's power? Well, that issue has been one of controversy throughout Nevada's history and it has been litigated in the courts. The starting point for that is the case mentioned by Mr. Anderson, which is *King v. Board of Regents*. It was a 1948 case before the Nevada Supreme Court. What that case involved was a piece of legislation passed by the 1947 Legislature which created the Advisory Board of Regents of seven members appointed by the Governor. The Advisory Board of Regents was essentially a shadow board of regents entitled to all the privileges that the elected Board of Regents had, but the Advisory Board of Regents did not have the power of a determining vote. They would advise the Board of Regents, but they could not vote on matters that the Board of Regents could vote on. That was challenged as infringing on that slice of narrow sovereign power given to the Board of Regents.

What the Nevada Supreme Court found was that this was a unique piece of special legislation what was unprecedented. It had no comparison in any reported case across the country. What the Supreme Court was concerned with was if the Legislature could create essentially a shadow advisory board to advise the Board of Regents, it could also do so for the Governor or the Secretary of State or any other Executive Branch agency or even the courts. The concern of the Nevada Supreme Court in the *King* case was that the internal affairs and management of the university is given to the Board of Regents and that is where their power lies. So the Legislature cannot create a shadow body to advise them on how to carry out their functions.

That piece of legislation was very particular and unique. In that case, there were some statements by the Nevada Supreme Court that were broad to a certain extent in scope describing how the power of the Board of Regents is significant, but it is only significant within that core slice of sovereign power. Outside of that, the Board of Regents is subject to

the Legislature's power to enact laws of general applicability. Unfortunately, because of some of the language used in the *King* case, the Board of Regents and their attorneys have taken the position in later cases that the Board of Regents is virtually autonomous from the other branches of government. Fortunately, in some of the later cases, the Nevada Supreme Court stepped back from some of the statements in the *King* case. In the *King* case, the Nevada Supreme Court did emphasize that the Board of Regents still was subject to existing legislative rights when it did not involve the internal management and operation of the university.

The next case that was significant was the case of *State ex rel. Richardson v. Board of Regents*, 70 Nev. 144, 147-48 (1953). In that case, the Board of Regents terminated a professor after a hearing for cause. The professor then brought an action for judicial review, saying that the Board of Regents did not have cause to terminate his tenured status as a professor. In that case, which is typical for the Board of Regents, they relied on the *King* case and argued that the Board of Regents, because it is a constitutional body, is beyond any control of the courts. Obviously, the Nevada Supreme Court rejected that proposition. However, it gives you an example of how the Board of Regents uses the *King* case to base its decision-making because it believes it gives us this large slice of sovereign power when it is actually a very narrow slice of sovereign power. In that case, the Nevada Supreme Court found the Board of Regents was subject to judicial review and that the case could be reviewed by the courts to determine whether the Board of Regents properly dismissed that professor for cause.

The next case is the *Board of Regents v. Oakley*, 97 Nev. 605, 607 (1981). That case involved the university's policy with regard to the mandatory retirement of professors at age 70. A professor was told by the Board of Regents that he would be retired because of that mandatory retirement provision in the university code. However, there is a general age discrimination law in the state which provides that employment decisions can only be based on merit and fitness, and not on categories such as race, religion, age, or sex. The university in that case claimed that their unique constitutional status gives them virtual autonomy from all legislative action. They argued they were not subject to the age discrimination law that applied to all other public and private employers. Once again, the Nevada Supreme Court rejected that proposition. It said that the age discrimination law, which was passed by the Legislature, was the policy of the state; and the Board of Regents would have to follow that age discrimination policy like all other public and private employers. The Nevada Supreme Court said that having to follow that general law did not interfere with the internal management affairs and operation of the university.

That gives you a historical prospective from both the background of why the Board of Regents is in the *Nevada Constitution* and how the Board's powers have been interpreted by the courts in Nevada. Obviously, over the years there have been conflicts of opinion between the Office of the Attorney General, which at times did provide counsel to the Board of Regents—they have their own general counsel now—and the office of the Legislative Counsel Bureau. We have had conflicting opinions with the Office of the Attorney General with regard to the power of the Board of Regents. For example, in the area of community

college, it is the opinion of this office that the Legislature would be free to provide for governance of the community colleges by a board other than the Board of Regents. It is the position of the Board of Regents that they have control over all institutions of higher education, whether it is a community college, a four-year college, or the state University, which is actually the only entity mentioned in the *Nevada Constitution*.

Each time there is a situation where there is a potential conflict of powers, there is generally conflicting opinions from the Board of Regents' counsel and the Legislative Counsel Bureau because they continually try to interpret the Board of Regents' powers broadly, where, in fact, it is narrow, in our opinion. Of course we apply what we consider to be the established rules of constitutional construction. One of the most important ones is, if there is any doubt, uncertainty, or ambiguity, as to whether the Legislature or the Board of Regents has any constitutional power, because the people have given the sovereign power to the Legislature, that doubt, uncertainty, or ambiguity must be resolved in favor of the Legislature and against the Board of Regents. That generally should be the rule of constitutional construction that the Board of Regents follows, but in our experience, that is not necessarily the case when we have received legal opinions from the counsel for the Board of Regents.

That is an overview of the history and the balance of power between the Board of Regents and the Nevada Legislature. I am certainly open to any questions the Committee may have.

Chair Jauregui:

Before we open it up to questions, I would like you to give an overview to the Committee of what A.J.R. 5 of the 79th Session will do, and what it will not do, if it passes for the second time when it goes to the vote of the people.

Kevin Powers:

The primary purpose of A.J.R. 5 of the 79th Session is to remove the Board of Regents from the *Nevada Constitution*, but not to remove the Board of Regents from the law. The Board of Regents would then become a statutory agency of the Executive Branch, just like all other statutory agencies of the Executive Branch. That means the Board of Regents would be subject to the statutory control of the Legislature. The existing statutes now provide for a Board of Regents of 13 members who are elected by the people from Board of Regent districts.

If A.J.R. 5 of the 79th Session were to be passed by the Legislature this session and be approved by the voters, that statute would not change. The Board of Regents would still be elected under that statute and its powers would be the same under the statute. The existing statutes in NRS Chapter 396 also provide that the Board of Regents shall prescribe rules for the governance and management of the university. There is existing statutory power for the Board of Regents to govern the university. If A.J.R. 5 of the 79th Session passed and was approved by the voters, that statute would not change as well. The Board of Regents would still have statutory authority to govern the university. The primary purpose of A.J.R. 5 of the 79th Session is that by removing the Board of Regents from the *Nevada Constitution*, you make the Board of Regents more responsive to the Legislature because, like any other state

agency of the Executive Branch, they would owe their existence, power, and control to statutory directives and, therefore, to the control of the people's branch of the Legislature—the policy-making body and the elected representatives in the Legislature.

Chair Jauregui:

I want to make the record clear. If this bill passes, it does not seek to change the ability to elect the Board of Regents. Is that correct?

Kevin Powers:

That is correct. The existing statutes in place would remain in place if this were to be approved by the voters. Of course—I just want to emphasize—the Legislature would be free to change those statutes if it wanted to, but that would be a legislative policy-making choice. It could move the Board of Regents from an elected body to an appointed body, or a hybrid body where some members were elected and some members were appointed. Assembly Joint Resolution 5 of the 79th Session itself does not do that, it just gives the Legislature the power to do that.

Assemblyman Roberts:

To clarify, you mentioned a number of prior case laws that have basically supported that the Board of Regents is under the purview of the Legislature in some shape or form. Is that case law not sufficient and do we need to codify the statute? Is that what we are doing here?

Kevin Powers:

What I think the case law illustrates is that, indeed the courts have, in the end, favored the Legislature when it comes to laws of general applicability. What it also illustrates is that the Board of Regents will probably litigate each time the Legislature passes a statute that it thinks, in even the slightest way, interferes with the Board of Regents' powers. Instead of the policy-making bodies enacting the policies and seeing if they are implemented and determining whether to change those policies after you have seen them implemented, it gets litigated. As your chief litigation counsel, I will tell you that litigation is painfully slow. Not only is it litigated, but there is a long delay between passing enactment, it getting challenged in the courts, and whether or not it actually gets implemented. I think A.J.R. 5 of the 79th Session provides the Legislature the ability to avoid what seems to be constant litigation when it comes to those areas where there is a question as to whether the Board of Regents has power or the Legislature has power.

Chair Jauregui:

I would like to touch on that as well, because we were talking about the *Oakley* case. I heard it a couple of times during today's testimony. Is it safe to say that we, the Legislature, have the lawful right to govern the Board of Regents, correct?

Kevin Powers:

Correct. What the *Nevada Constitution* provides is that the Board of Regents has control over the university under the regulations as prescribed by law and, of course, those regulations are prescribed by the Legislature.

Chair Jauregui:

They said that they have autonomy from any branch of government during one case, and then during the second case, they said they have virtual autonomy from the Judicial Branch as well?

Kevin Powers:

That is correct. In the *Richardson* case from 1953, that is where the Board of Regents argued that it is beyond any control of the courts. Then, in the 1981 *Oakley* case, that is where the Board of Regents argued—and this was in the brief—that the unique constitutional status of the Board gives it virtual autonomy, and thus immunity, from the state policy established by our Legislature. Those are the arguments that it made in its brief. And to follow up as to the earlier question from Assemblyman Roberts, that is what we are talking about. In any area where there is friction between the power of the Legislature and the power of the Board of Regents, it does not result in policy resolution, it results in litigation. Then these kinds of arguments are made and then, obviously, the Legislature makes counter arguments. What it means is the policy is not resolved in the Legislature. It is ultimately resolved by going to the courts and determining where the power lies.

Assemblywoman Torres:

Ultimately—and just to clarify—NSHE would then be under the Nevada Legislature and we would be able to enact policy without the fear of the lawsuits that the Legislature has endured before.

Kevin Powers:

That is correct. That would be the main effect of A.J.R. 5 of the 79th Session. The policy would be exclusively in the hands of the Legislature and then the Board of Regents, like any other statutory agency, would have to carry out that policy.

Chair Jauregui:

How would this amendment alter the relationship between the Board of Regents and the Executive Branch?

Kevin Powers:

Right now, the Governor does not typically have much of a role in the operation or management of the Board of Regents. The Governor is obviously not involved in any way in the appointment of members because they are elected. Because the Board of Regents has that slice of sovereign power, it maintains its own internal separation from other agencies in the Executive Branch. If this constitutional amendment were approved by the voters and became part of the *Nevada Constitution*, the Legislature, by setting the policy, could give other officers and agencies in the Executive Branch, like the Governor, more of a role in the administration and operation of the university.

Chair Jauregui:

Mr. Powers, can you give an example of another board that is under the purview of the Legislature, but is not in the *Nevada Constitution*? So in essence, if we remove the Board of Regents from the *Nevada Constitution*, then they would run like "x board."

Kevin Powers:

Although there is no perfect analogy of a state agency like that, similar state agency structures would be like the State Board of Education. The way the Board of Regents is structured in the Nevada System of Higher Education is, there is the Board of Regents; they appoint a chancellor; and the chancellor conducts the day-to-day operation. The Board of Regents and the chancellor together operate the Nevada System of Higher Education. In the Department of Education, there is a State Board of Education. The State Board of Education also has a Superintendent of Public Instruction who is appointed by the Governor. The State Board of Education and the Superintendent of Public Instruction operate the Department of Education. Both the State Board of Education and the Superintendent of Public Instruction operate under the statutes adopted by the Legislature. The policy being carried out by the Department of Education is the policy adopted by the Legislature.

Similarly, the Department of Transportation has a Board of Directors and also that board has a Director of the Department of Transportation. They work together to carry out the statutory policy of the Legislature. Another example is the Nevada Gaming Commission. The Legislature sets the policy on gaming and statutes, and the Nevada Gaming Commission carries out the Legislature's policy. Obviously, there are many other agencies in the Executive Branch, but I think those three provide a pretty good example of how the Board of Regents, as a statutory board, would be subject to statutory policy like those other boards.

Chair Jauregui:

Thank you for that. That was very helpful. I have one last question because of this special carveout. If you were an attorney advising the Board of Regents, how does the *Nevada Constitution* and imbalance of power influence how you advise your clients? How would you interpret this "carveout" for them?

Kevin Powers:

To again emphasize what we know from the litigation with the Board of Regents, as an attorney for a public agency, you determine the extent of your agency's power by looking at its governing documents. Most agencies are statutory, so you look at the statutes and you determine what power you have. In this case, the Board of Regents' attorneys are looking at the *Nevada Constitution* and they have to interpret the *Nevada Constitution* either narrowly or broadly. Like I said, they have been interpreting the *Nevada Constitution* broadly. Most times when there are questions of whether the Legislature or the Board of Regents have power, the Board of Regents' attorney, whether it is in litigation, in briefs, or opinion letters sent to this office or the Legislature, interprets the Board of Regents' powers broadly under the *Nevada Constitution*, where, in fact, it is our belief under the rules of constitutional construction, it should be interpreted narrowly.

Chair Jauregui:

Does anyone else have any questions for either the bill's sponsors or Mr. Powers? Seeing no further questions, I am going to open up the testimony to everyone in support of A.J.R. 5 of the 79th Session both in Carson City and Las Vegas.

Assemblywoman Shannon Bilbray-Axelrod, Assembly District No. 34:

Good afternoon, Chair and members of the Committee. I served on this Committee in the 79th Session when we heard this bill for the first time; it is good to be back. I would like to thank my colleague from Senate District No. 5 and former Assemblyman Elliot Anderson for bringing A.J.R. 5 of the 79th Session forward. Their tireless efforts have allowed us to be here today.

I am a southern Nevadan and come from a family entrenched for decades in public service in the community. I support this constitutional amendment. My father, as many of you know, has a rich history with the University of Nevada, Las Vegas and in our community as a public servant himself.

Assembly Joint Resolution 5 of the 79th Session is about accountability, good governance practice, and a clear separation of power between the branches of government. In 2017 the Legislature passed this resolution with overwhelming bipartisan support. We must continue to move forward this session and send this resolution to the voters. We have a responsibility to our constituents to do that.

To me, A.J.R. 5 of the 79th Session is about moving higher education forward, not just for southern Nevada, but for the whole state. I am here because I want a governance structure that benefits all our students. We owe it to our constituents to do what is right, and we need to support this resolution. Assembly Joint Resolution 5 of the 79th Session is about good policy, and that is why I am here to support it today. I would be happy to answer any questions, and I thank the Committee for your time.

Chair Jauregui:

Thank you, Assemblywoman. Seeing no questions for the Assemblywoman, we will take the next testimony.

Hugh Anderson, Managing Director, Partner, HighTower Las Vegas; and Chairman, Government Affairs Committee, Las Vegas Metro Chamber of Commerce:

Good afternoon. On behalf of the state's largest and broadest business association, I would like to thank the Committee and Chair for allowing me to speak today. I would also like to thank the primary bill sponsors, Senator Joyce Woodhouse and Mr. Elliot Anderson, for bringing this resolution forward and the work that they have done to move higher education forward for our state. They began this process at the 2017 Legislature, and I appreciate the commitment that they made to bring this resolution forward again to this Committee in 2019.

As Committee members know, the Las Vegas Metro Chamber of Commerce (Chamber) has a long history of engagement on higher education matters because workforce development is

critical and a top issue for our employers and our members. Nevada's employers need students who are ready to enter the workforce when they graduate from an institution of higher education. The Chamber has a long history of supporting NSHE projects and initiatives as well. It is for that reason that the Chamber is supportive of A.J.R. 5 of the 79th Session as part of our longstanding priorities relating to higher education reform.

The Chamber supports A.J.R. 5 of the 79th Session as it would provide clarity between the Board of Regents and you, the State Legislature. We believe governance reform has been an ongoing discussion in this building for many years, and we need to take action. The Chamber has been consistently for higher education governance reform repeatedly.

In 2017 we heard from LCB staff explaining the legal background on this issue, and we agree that there is no fourth branch of government. It has been a systematic concern of the Chamber for several decades regarding the governance structure of the Board of Regents and the need to see meaningful reform by this body and that is the importance of A.J.R. 5 of the 79th Session.

The Chamber believes that the passage of A.J.R. 5 of the 79th Session is an important component reforming the state's higher education governance structure and its alignment meeting the needs of today's students and employers. We all recognize that the demands on our workforce are quickly changing, and we need to review how our higher education structure is responding to these changes.

We do recognize that there have been recent efforts by NSHE to align the needs, but for the long-term benefits of both students and employers, good public policy is based on sound reasoning, data, and facts. That is why we urge this body to pass A.J.R. 5 of the 79th Session and send it to voters in November 2020 as part of necessary governance reform. Our support is based on the policy and the merits of the legislation. Thank you for your time and I am happy to answer any questions.

Chair Jauregui:

Thank you for your testimony. We appreciate it. Does the Committee have any questions? Seeing none, we will move on to the next testimony.

Warren B. Hardy II, representing The Lincy Institute, University of Nevada, Las Vegas:

Thank you, Madam Chair and members of the Committee. I am here today representing The Lincy Institute at University of Nevada, Las Vegas (UNLV). For those members who might not be familiar with The Lincy Institute, it is an institute at UNLV that conducts and supports research that focuses specifically on improving the lives of Nevadans in the areas of health, education, and social services. We conduct our own research; we participate in other research. But our intent is to build capacity for providers of services so we can assist Nevadans in getting the services they need—with a special emphasis on children, seniors, and families. I am proud to be part of The Lincy Institute. I have known about it for a long time, and it is my pleasure to be here on their behalf this session.

I want to thank Mr. Anderson and Senator Woodhouse for bringing this forward. This, in my opinion, is really long overdue. My introduction to this problem that I think Assemblywoman Torres, Madam Chair, hit the nail right on the head and went straight to the point, first came to my attention during the 2003 Interim when I chaired an interim study committee as a member of the Senate that dealt with higher education reform, with what we needed to do, and the things we needed to look at. That is where I first ran across the problem we are discussing today and addressing today: our inability to move forward. We have many smart people in this Legislature; we have many smart people on the Board of Regents; we have many smart people in the state of Nevada. We can fix the challenges we have with higher education, but we have to have the capacity to do it. This will allow that.

Times are very different than when the provisions were added to the *Nevada Constitution*. Technology alone is something we cannot ignore. Again, I really respect and admire what Assemblywoman Torres said. We have to be able to do this as members of the Legislature; you have to be able to do this as members of the Legislature without the fear of lawsuits challenging your ability to do that. Your constituents, the citizens of Nevada, do not know or understand those turf battles; they do not understand those jurisdictional fights. They want quality higher education in the state of Nevada, and to whom they are looking? They are looking to the Legislature. I used to get the emails too. They are not going to listen to a jurisdictional argument. They want action and they want you to fix it.

It is time, I think, for us as a state to move forward and do what other states have done with regard to higher education to turn their states around. That is what will happen here. The potential is absolutely unlimited in what we can do. Again, there are a lot of smart people bringing ideas forward. For us to have to stop and fight about jurisdictional matters before we can get to those issues is not the way business should be conducted. I appreciate the opportunity to be here; I appreciate the opportunity to be part of this process. I especially appreciate the opportunity to help finish what I sort of helped start in 2003 and address this problem so we can move our higher education system forward. I appreciate the opportunity to be here.

Chair Jauregui:

Thank you, Mr. Hardy. We appreciate your being here and sharing your testimony as well. Is there any other testimony in support in Carson City? Seeing none, we will move down to Las Vegas. We are taking testimony in support.

Maureen E. Schafer, Executive Director, Council for a Better Nevada:

Good afternoon, Madam Chair and members of the Committee. Thank you for the opportunity to come before all of you today. I represent the Council for a Better Nevada, a collection of Nevada business, labor, and philanthropic leaders whose time, acumen, and engagement in issues are dedicated to creating a higher quality of life for all Nevadans.

We are here to testify in support of A.J.R. 5 of the 79th Session. Our existing NSHE Board of Regent framework and governance structure, while appropriately supporting the state for many decades in the state's foundational phase, has been outgrown by Nevada. There are far

more diverse, complex, and advanced educational requirements for our state's students to adequately compete within the state's growing competitive environment and anywhere in the world. There have been many unintended consequences over time of not changing the system from its original 1865 structure to keep up with the evolving, aspiring, and innovative Nevada.

The establishment of the Board of Regents in the *Nevada Constitution* allowed Nevada access to the Morrill Act's land grant resources. Since that time, there has been a natural inclination for the state to place all of its growing higher education assets into this original structure that was never meant to hold such a diverse entity. This resulted in the most centralized system in the country—a single board, one funding stream, and a bloated administrative bureaucracy, especially when compared to other states. The similar state of Virginia has 70 employees in its higher education office to manage 49 academic institutions compared to NSHE's now 270 employees for Nevada's 11 institutions.

Over the years, the constitutional claim has been utilized by NSHE to criticize—and even block—genuine, thoughtful, and progressive legislative efforts on your part to check, oversee, and reform various aspects of the system. This prevents the ability to keep pace with Nevada's own evolution and growing higher education needs as a state.

The current constitutional protection does not challenge the system to perform, or hold it, you, or us who work within it accountable. The Legislature has generously funded the Nevada System of Higher Education at a level above the national median on a per-student basis, yet Nevada's higher education system is currently ranked 45th in college attainment. Nevada can and must do better, and we will.

Lastly, in the past there has been testimony in opposition to this bill due to the idea that A.J.R. 5 of the 79th Session removes the election of the Board of Regents. This provision is currently codified in NRS.

Showing great respect and reverence for our state's educational history, and those talented people who have worked hard and still do today within it, has brought the system to where it exists today. Successful legislative passage of A.J.R. 5 of the 79th Session again will allow the Legislature the appropriate and transparent control this important area of Nevada requires to reform and modernize all aspects of higher education to reflect the needs and priorities of today's Nevada in its ambitious and ever-changing future. Thank you, and I will take any questions, if necessary.

Chair Jauregui:

Committee, do you have any questions? Thank you for your testimony. We appreciate your being here. Is there anybody else in Las Vegas to testify in support? [There was no one.] Next, we will move up here to Carson City and then back down to Las Vegas. We will now hear testimony in opposition.

Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance:

Good afternoon, Chair Jauregui and Committee members. The Nevada Faculty Alliance (NFA) is an independent, statewide association of university and college faculty at all eight NSHE institutions. Based on input from our members, we are opposed to A.J.R. 5 of the 79th Session in its present form.

The independence of public universities and colleges from direct political influence is essential for the success of the system. As an affiliate of the American Association of University Professors, NFA works to promote shared governance between the faculty and administrators of our higher education institutions. Taking the Board of Regents out of the *Nevada Constitution* entirely will make the Nevada System of Higher Education like any other Executive Branch agency. It will increase the possibility that a future Governor will seek to control curricular and promotion decisions, or will seek to remove a regent, chancellor, president, or even a faculty member, as can happen with other Executive Branch boards.

As the collective bargaining agent for three of our community college campuses, NFA sympathizes with frustration regarding the policies of the NSHE administration at times. We appreciate your, the Legislature's, commitment to improve the state of higher education in Nevada and we would welcome a higher level of engagement between the Legislature and higher education stakeholders to improve student completion rates, faculty retention, and institutional efficiency.

At present, faculty members fear too few of the 63 legislators are actively considering better funding mechanisms and best practices for NSHE. If A.J.R. 5 of the 79th Session is enacted, it means the Legislature will be accepting not only a higher level of control and oversight, but also a higher level of responsibility for the improvement of higher education, both in policy and in funding.

One specific concern on A.J.R. 5 of the 79th Session is that the "whereas" clause on page 5, lines 11 through 18 of the bill, will be misleading to the average voter. Although it is technically correct that changing the *Nevada Constitution* does not immediately change statutes regarding the election of the Regents, passage of A.J.R. 5 of the 79th Session, as has been mentioned, would allow a future Legislature to change the method of selection of regents at any future time. Making the Board of Regents an appointed or a hybrid body has indeed been a subject of conversation, although a conversation that has not yet included NSHE faculty at large.

Other issues of legislative control or reform of NSHE can be addressed without waiting for a constitutional amendment with an uncertain outcome at the polls. The NFA could possibly support a revised constitutional amendment that would make explicit the authority for the Legislature to set the number and method of selection of regents without eliminating the Board of Regents entirely from the *Nevada Constitution*, as well as modernizing the constitutional description of public higher education in the state and delineating the shared responsibility of the Legislature and the Board of Regents.

We would hope that if A.J.R. 5 of the 79th Session is passed and enacted by the voters, that this body will rigorously engage higher education stakeholders taking up that higher level of responsibility. Please let us be your partners in that effort should that happen, and we would like to be partners anyway. Thank you very much.

Chair Jauregui:

Thank you, Mr. Ervin. I do have a question. You touched on the possibility of the Legislature being able to hire and fire faculty if this passes. Has that ever happened? Do you have examples of that happening?

Kent Ervin:

I do not have examples at hand for that happening. I could find examples from other states, though. I know there are cases where that has happened, but I do not have specific examples with me today. We are also concerned, not just about the Legislature, but about the chain of command through the Executive Branch.

Chair Jauregui:

Thank you. We appreciate your willingness to partner with us. Is there anyone else here to testify in opposition? Is there anyone in Las Vegas to testify in opposition? Seeing none, we will open up testimony for those who are here to testify in a neutral position.

Kevin J. Page, Chair, Board of Regents, Nevada System of Higher Education:

Good afternoon, Madam Chair and Committee members. With me is Vice Chair Jason Geddes. The starting point of any discussion on changes to higher education and governance must begin and end with how it will impact students and student success. I know this is how this body approaches these discussions and it is the starting point for the Board of Regents.

While most states define the terms of higher education governance through statutes, 24 states use constitutional provisions to govern universities and colleges. Most prominently, constitutional provisions have been used to establish the constitution autonomy of public colleges and universities to limit governmental interference and institutional operations. The unifying principal for these 24 states, including Nevada, has been ensuring education's independence from the political passions of the moment. So far, these constitutional provisions have served students, our colleges, and universities well.

The 24 states where governance of universities is enshrined in the constitution are varied, and include so-called progressive and conservative states. These states include Alabama, Alaska, Arizona, California, Florida, Georgia, Hawaii, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, South Dakota, Oklahoma, Virginia, and Wyoming. As you may have noticed, many of these states on the list are recognized as the leaders in higher education. They are known for best practices. The constitutional structure does not prevent their success and might very well contribute to it.

Chair Jauregui:

Mr. Page, I just want to confirm—this is testimony for neutral. You are neutral, correct?

Kevin Page:

We are neutral.

Chair Jauregui:

Okay. It sounds like opposition.

Kevin Page:

Yes, we are neutral because the Board of Regents has not taken a position on A.J.R. 5 of the 79th Session at this point.

Chair Jauregui:

So are you testifying personally? Or are you testifying on behalf of the Board?

Kevin Page:

On behalf of the Board, and we are neutral at this point. The founders of the state of Nevada in 1864 expressly intended that higher education in Nevada be governed by an elected Board of Regents that is directly accountable to voters. This is why the Board of Regents was specifically included in Article 11 of the *Nevada Constitution*.

The Board of Regents is one of the few state elected bodies that is recognized in the *Nevada Constitution* and our founders intended for it to operate outside the biennial cycle of Nevada government. Its mission is fundamentally different than other state entities: to educate citizens, and to obtain and disseminate knowledge throughout the state, the nation, and the world.

The Board of Regents has overseen the expansion of higher education in Nevada for over 150 years and has grown from a single university to include two R1 designated top-tier research universities—interestingly enough about an R1, there are seven states, there used to be eight, that have no R1 institutions. We were one of them. There are 10 states that only have one R1 institution; 17 have two. So we moved from the "no R1" category to the other 17 with two.

Today the Board of Regents oversees all aspects of higher education of over 107,000 students and 14,200 employees located in five major cities in Nevada. The Board of Regents operates in a shared governance model where the decision-making process includes not only the Board of Regents, but the Nevada System of Higher Education, institution presidents, administrative and professional faculty, student government representatives, and community voices, including those of legislators.

Assembly Joint Resolution 5 of the 79th Session removes the Board of Regents from the *Nevada Constitution* and places it under the control of the Nevada State Legislature. By

doing so, the Legislature will open the door to fundamental change to the governance structure to the Board of Regents.

Chair Jauregui:

Mr. Page, I am going to stop you because this testimony is in opposition. If you would like to continue, I am going to request that the secretary record this under opposition.

Kevin Page:

I will end there.

Assemblywoman Monroe-Moreno:

Thank you, Madam Chair. Thank you for your neutral opposition. I have a question. I sat on this Committee last session and went through the very long hearing. I sit here again today. I read over A.J.R. 5 of the 79th Session again. Nowhere in it did I see where the voters would lose their right to vote for their regent. Could you point out to me—because you made a statement that the voters would not be able to vote for their regent—where was that in A.J.R. 5 of the 79th Session that I missed? Could you point that out to me?

Kevin Page:

No, I cannot point that out. If that was said, it was said in error. The voters would still vote the way it is structured right now.

Assemblywoman Monroe-Moreno:

And if A.J.R. 5 of the 79th Session is passed this session, and it goes to the vote and the voters approve it, how would that directly affect the students and the outcome of the students' success who are going to our higher education? Please explain that because that statement was also made.

Kevin Page:

Currently with the shared governance, it includes faculty, administrative staff, and the students. It is not saying that it will necessarily, but it could over time. Right now if it changes to the Legislature, on a whim things could change without having to go back with a say from those people.

Assemblywoman Monroe-Moreno:

So correct me if I am wrong. What I hear you saying is that you feel that this legislative body, who are also elected officials, on a whim or a political movement, would do something to negatively affect the students in our higher education institutions. Is that what I hear you saying?

Kevin Page:

No. The way it is structured right now, no. No one knows what will happen down the road in terms of changes to the way it is structured at this point.

Assemblywoman Monroe-Moreno:

I do agree with you. None of us can predict the future. What we do know is what has happened in the past. As elected officials, we have a responsibility; if we see that there is something that should be corrected, we should all work to make those corrections. It is just a statement. You do not have to make a comment.

Chair Jauregui:

If you are testifying in neutral, I urge you to proceed. If you are testifying in opposition, I would like you to submit your written testimony, so we can enter it into the record for opposition.

Jason Geddes, Vice Chair, Board of Regents, Nevada System of Higher Education:

I am testifying in neutral. I just wanted to get a little more information on the record as far as what was presented to you today. I am a former Assembly member, and I deeply respect this institution, this body, and the legislative authority. I can tell you, as Mr. Powers stated, we have a slice—a narrow, sovereign piece—of the pie that we think is our authority. The other issues are up to the legislative body to decide. That includes the biennial budget requests that we put together and interim changes given to the Interim Finance Committee on any budget.

The main composition of the system—there was testimony—is that all the community colleges, state college, Desert Research Institute, and everything that is within our authority, has been given to us by this body. We also have many reports we submit to this body in terms of transparency and meeting information, such as a planning report every two years that talks about all majors, programs, and everything on the campuses we are anticipating; registration and nonresident tuition fees semiannually; differential fees report annually; remedial report annually; diversity report biannually; student completion of workforce report biannually; veterans report annually; and a list of all of our consultants.

If we are going on the assumption that A.J.R. 5 of the 79th Session is going to pass and go to the vote of the people in 2020, for this body's implementation in 2021, we would like to discuss things that we can start working on now with this body to address some of the issues that have come up to make sure there is a smooth transition in 2021 and beyond—if that is the will of this body and the voters. I want to point out that Regent Page and I are both termed out, so we will not be impacted by this legislation one way or the other. We think last session we did not do a very good job of explaining the concerns going forward of what could happen; we want to make sure to get those concerns to this body and will do so.

Assemblyman Daly:

Based on what you just said, you put in the budget and you are following the rules and various requirements. What exactly, from what is happening now based on what you just told us, would change from the way it is now to after the provision, other than the argument going away that you are not subject to anything and you are your own branch of government? I am not seeing where anything is going to change. You are still subject to redistricting, the same as the rest of us, and under state law passed by the Legislature, all of the provisions that go forward. As you know and I am sure legal counsel can tell us, this Legislature cannot

bind or make policy that binds a future Legislature. We can say we do not have an intent to change the election, and I do not think anybody does. Nobody I have ever talked to does. There are things outside the Legislature that people can do, a referendum in order to cement that in, but there is a process for all of that. What do you really think is going to change from the structure and the processes you just described, with or without this change other than the litigation part?

Jason Geddes:

The point of listing all of that is that according to a lot of the testimony we heard, we do not follow the intent of this Legislature, and we do. I just wanted to emphasize that. I do not think that would change either. Everything you put in NRS would stay in NRS. As the Chair stated, we do not have a position, and the reasoning is that our Board has not voted on it. I can share the concern of last time that the future bodies, as Mr. Powers pointed out, could change it from an elected to an appointed board. I think all the NRS would be there. I just wanted to make sure you all know that we take the NRS very seriously, and we do whatever you direct us to do.

Assemblywoman Torres:

This legislation is not eliminating the Board of Regents, so all of those processes in place right now would still be there. The only change would be all policies would now be made through the Board of Regents with this bill. Is that correct?

Jason Geddes:

I do not understand the question.

Assemblywoman Torres:

I feel a lot of the concern with this legislation is that we would be eliminating the Board of Regents, but that is not a part of this piece of legislation.

Jason Geddes:

We do not think it is eliminating the Board of Regents. I do not see that in the legislation either.

Assemblywoman Torres:

Exactly. So would all the processes we have in place now stay in place?

Jason Geddes:

I believe so, and we follow all of those processes.

Assemblyman McCurdy:

What aspects of this piece of policy, to you, are not favorable to the Board of Regents?

Jason Geddes:

The big concern that came up last session, and again we do not have a position because the Board has not taken action, was that future legislatures could change the way the Board was

elected versus appointed or with a hybrid board and those activities. That would be at the discretion of future legislatures. Whereas currently we are elected by the people of the state of Nevada, and that could go away. A future legislature could take that action.

Assemblyman McCurdy:

In your opinion, do you believe that the ability to be duly elected by your constituents would change?

Jason Geddes:

I think it could change. I do not know if it would or it would not, but it could change. It would not impact me because I will not be up for election again.

Chair Jauregui:

I would like to point out that would be subject to the entire legislative process. It would have to become a bill and be approved by the legislative body that is hearing it. Is there any further testimony? Is there anyone else here in Carson City wishing to testify in neutral? Is there anybody in Las Vegas wishing to testify in neutral? Seeing no one, I would like to ask the bill sponsors to please come forward and give any final remarks.

Senator Woodhouse:

Thank you very much for the opportunity for us to address A.J.R. 5 of the 79th Session again today, following up on the actions of this same Committee and your house two years ago. We really do appreciate that.

I also want to put on the record that Bryan Wachter from the Retail Association of Nevada was stuck in a meeting of the Committee on Taxation and could not get here to testify in support; he asked us to put on the record that they are in support of this legislation as well. Thank you.

Elliot Anderson:

I also want to thank the Committee for their time and attention and for enjoying this history lesson that we all had today from Mr. Powers; it was probably the highlight of my day.

I also wanted to respond briefly to some of the points we have heard in opposition. First, we heard from the Nevada Faculty Alliance about political influence, curriculum, and freedom. That is specifically why we added the reasonable protection of academic freedom provision in the legislation, so that if a future Supreme Court is reviewing these minutes, that provision is specifically included to stop interference with core academic functions, such as curriculum, academic freedom for professors, and whatnot. That is specifically designed to constrain the Legislature from intruding into that sacred academic ground.

In terms of the Governor removing presidents, this is just complete speculation. Really, that is what we have heard today in opposition because this bill does not substantively change anything. You should also know that there is a separation of powers article that is still in place. The Legislature cannot interfere in hiring and firing presidents—Mr. Powers can

correct me if I am wrong—that would blatantly violate the separation of powers article that still overlays the *Nevada Constitution*. There is no intent on the record here, from us, that would allow the Legislature to hire and fire presidents. I would also say, if the Governor or any person had a problem with a chancellor or a president, political pressure can always be put on, even now. It is not just having something in a bill that allows somebody to do something like that anyway. That sort of a fear could happen now. You could have political pressure put on. Assembly Joint Resolution 5 of the 79th Session is not really going to affect that. There are no proposals that are even being envisioned that would allow the Governor to hire and fire a future chancellor. That power is still invested in the Board of Regents under NRS Chapter 396, as you heard from Mr. Powers.

I did also want to address the election of the Regents issue. As you have heard, this bill does not change that. I want to go even further and say, I do not personally support appointed Regents. But I also, even more strongly, do not support people from 1864 telling us how to run our state in the modern age. It is up to our state now to design what kind of system this state wants. I would also note for the record, in 2015 and 2017 the Legislature considered appointed school board bills and beat them back both times. I was at the forefront of that, particularly in 2015. This was at a time when Governor Sandoval, who, as we know, was able to get a lot done that session. That was the one thing that he could not get done. So even Governor Sandoval, with a unified Republican Legislature, could not pass that in 2015; in 2017 a Democratic Legislature similarly killed that type of legislation. So we can sit here and worry about what may or may not happen, but that is going to be a pitched battle if someone wants to do that. We have to have trust in future legislatures. The earth belongs to the living, as Thomas Jefferson said, not people who have been long dead.

In terms of hiring and firing with the Legislature, I already addressed that. The separation of powers article would preclude that; there is analogous case law at the federal level where the Congress tried to similarly appoint Executive Branch officials, and the U.S. Supreme Court struck down that sort of an effort. The Supreme Court would likely rely on that sort of analysis if the Legislature tried to do that.

We heard from our colleagues at the Regents that the Legislature is only here four months every two years; but the Regents would still be in existence. I do not understand how that would affect anything that would be happening anyway. We heard about the intent of the constitutional framers to keep the Board of Regents insulated. I read to you direct citations, and it is in the resolution from George Nourse who specifically said, "not leave it to be inferred, perhaps, that they [Regents] have absolute control." It is provably false, by looking at the constitutional minutes.

Finally, in terms of affecting students in transitions literally nothing substantively in the higher education policy changes. This simply allows the Legislature the full power to consider policy and consultation with the Regents and with the faculty. As you can see, the faculty and other stakeholders are up here and they are represented. You will get that feedback if future legislatures are able to exercise the full extent of their power. With that, I know this was a bit high-level and a bit long, so I appreciate your attention. I will be

around tomorrow, until late afternoon, to answer any questions. I am happy to sit down with anyone and walk them through this line by line. Thank you.

Chair Jauregui:

Thank you, Mr. Anderson and Senator Woodhouse, for your presentation, and Mr. Powers for the history. We will now close the hearing on Assembly Joint Resolution 5 of the 79th Session.

Next on our docket, we will be hearing Assembly Bill 121. I will invite the bill sponsor to the witness table. I will now open the hearing on Assembly Bill 121.

Assembly Bill 121: Revises certain provisions relating to public officers and candidates for public office. (BDR 17-776)

Assemblyman Skip Daly, Assembly District No. 31:

Thank you, Madam Chair. I am here to present Assembly Bill 121. Some of you who were on the Committee last session might remember some of this. I had a similar bill and it passed through the Assembly and then stalled in the Senate. As you recall, there was a *de minimis* element to that—the gift definition—which we left out this time. There are some important pieces that need to be addressed and get into the statute as clarification.

Assembly Bill 121 is meant to make some clarifications in *Nevada Revised Statutes* (NRS) regarding the language from Senate Bill 307 of the 78th Session passed in 2015. In the guide—this green guide which everybody, I hope, has read—prepared by the Legal Division of the Legislative Counsel Bureau (LCB) (Exhibit D), provides interpretations of S.B. 307 of the 78th Session that we have all been kind of following.

Regarding two separate areas—how and when a thing of value, or "gift," given to a legislator was or was not a gift: when it was a gift, it was therefore prohibited under the Nevada Lobbying Disclosure Act in NRS Chapter 218H. When that thing of value was not a gift, it still had to be reported under the Financial Disclosure Act. These were some of the things covered in S.B. 307 of the 78th Session, and the LCB tried to give us guidance. At least for me it was still unclear, and we are trying to clear that up.

In the guide made by the LCB, they laid out, in my opinion, a strong, logical, and legal basis for the guidance provided, but with many things there was still some uncertainty. This bill is trying to codify and provide clarity to the NRS to several of the interpretations made by the LCB that we have come to rely upon but to my knowledge have not been tested legally. Without getting too far into the weeds, I will go ahead and walk you through the bill and, of course, I will be happy to answer any questions.

Section 1 revises NRS Chapter 218H on lobbying regarding an educational or informational meeting. Section 1 clarifies and adopts the LCB interpretation that when a legislator, or a member of his or her family, attends a meeting or event as part of his or her employment,

such a meeting or event is not a gift, even if the legislator is reimbursed for his or her expenses.

We are now putting into the statute the reasoning given by the LCB that it is presumed that when a public or private employer provides an employee reimbursement for expenses, or other things of value provided by an employer to the employee, that it is done in exchange for the services of that employee. Therefore, it meets the requirement to give consideration of equal or greater value by the person receiving that thing of value. It sounds simple enough. That was the guidance that was given. We are trying to have language that supports that so future administrations, or people who would oversee this, would have a much clearer view of that and we would not have to second-guess.

In other words, when you are sent on a business trip, the reimbursements for expenses or other things of value are in exchange for your time as an employee and therefore not a gift, not prohibited under the Lobbying Act, and not reportable under the Financial Disclosure Act.

Section 1 also codifies the interpretation that when all legislators are invited to an event and there is no formal educational content associated with the event, it is not a gift. It might still be reportable under the Financial Disclosure Act, but it is not a gift.

Section 2 gives some further guidance regarding a noneducational event. If the event is held in a governmental building or the notice is labeled as a legislative event, there is a presumption that every legislator is invited. A lot of people have invited us to events, especially during the legislative session, and they put a note that all 63 legislators were invited. This just gives some clarification in alignment with LCB guidelines.

Section 2 also adds to the list of things that would not be considered a gift, including:

1. Income from investment property—and I am paraphrasing here, you can read the sections of the bill.
2. The purchase or sale of goods or services in the regular course of business at prices generally available to the public. It is the so-called arm's length transaction. You cannot have any sweetheart deals and get things for less than market value that other people could not get and would not be able to claim were not gifts. Everything needs to be done at an arm's length and open.
3. Payments and benefits received as a result of employment or pursuant to a custom or policy adopted without regard to the person also being a legislator. As an example, some of the guidance in the LCB opinion was if your company has a policy that they will supply donuts and coffee to all of the staff and it is open to everybody, and they had that policy or custom and did not institute it just because now we have a legislator on our staff, then that would not be a gift or reportable.
4. Payments or things of value paid as a result of a court decision or arbitration. Again, if you end up suing somebody or win an arbitration or judgment and

that person happens to be a lobbyist, it would not be against the law for you to take that.

Section 3 clarifies that a person who hires a lobbyist is not himself or herself a lobbyist unless they independently meet the definition of a lobbyist. There are a lot of instances where an employer or an agency—hotel casinos or whatever—hires a lobbyist to represent them, but unless those people engage in lobbying activities independently of themselves, they do not meet the definition of a lobbyist. There was language in the guide to explain that.

Section 4 makes the same change as section 1, but it does it in the financial disclosure statement section of NRS, the same issues there.

Section 5 gives some additional guidance to the definition of an interested person under the Financial Disclosure Act by implementing a reasonable man standard. For example, if you are getting something or there is a question of whether or not you have to put it on your financial disclosure—of course, you will also have to make the determination if it is a gift or not a gift, although that language does not have the term "interested person" in it, only in the financial disclosure section. So you have two prongs you have to decide. What we are trying to do is to say, if by all the evidence by what a person in that position and normal people would think that you should know. You can have a defense that says, I did not know this person was an interested person, but if it is obvious to everybody else, you cannot claim that defense. It is a reasonable man standard, which I think most people understand. For example, if you did not know someone was an interested person and you did not report an action on your financial disclosure statement, that action would be measured by what a reasonable person in a similar circumstance knows or should have known.

Sections 6 and 7 deal with a person who is filing for office for the first time or is appointed to fill a vacancy. Often people do not know if they will actually get an appointment, or even if there will be a vacancy, until right before it happens; and sometimes people decide to file for office at the last minute without much planning. Under the existing law, people are required to file a financial disclosure statement 15 days after the close of filing, and in that financial disclosure statement you are required to go back 12 months to determine if you have received any of these gifts or been to educational events, or anything that might be reportable.

Sections 6 and 7 deal with two different scenarios, and we have had appointments this session. Some people did not know there was even going to be a vacancy until there was an appointment to another vacancy in the Senate, and that person, when they got appointed, had to fill out their financial disclosure statement under the current statute and try to remember what happened back for 12 months if they could and, of course, they were not keeping track of it. They did not have that in their mind. It is difficult to know. This changes it to 30 days.

Also, if it were the first time you were filing, the 30-day requirement would be in effect. But in the example I spoke about earlier with the Chair, former Assemblyman Brooks was already in office when he was appointed to the Senate, so none of these provisions would apply to him because he was already in office. He had to file his financial disclosure

statement and never came out from underneath the requirement, so the full 12 months would still apply to his situation.

That is it and I am happy to answer any questions.

Chair Jauregui:

Does the Committee have any questions?

Assemblyman Leavitt:

I appreciate this bill's clarity; it seems to add a level of protection that I, in my course of duties, appreciate. The more information I can get and the more clarity I can get, I think it serves to protect us. Nothing in here really jumped out at me as new information. As I was reading through it, somehow I already knew I was to follow that particular guideline. In this revised NRS, is there anything that is really new that I should look for? As I read through it several times, I did not see anything and as you are the author of it, maybe you can shed some light if there is something new that is not common practice now.

Assemblyman Daly:

No, I do not believe there is anything really new. Most of the information that is in here comes from the guideline, with the one exception in Section 2 in which it talks about the investment property, purchase and sale of goods, arbitration, court decisions, and various things. Those were not really in the guide. In the statute now, it is not prohibited to get a commercial bank loan, even from a lobbyist—that is not a gift. These other four come from my personal knowledge and experience basically as my position—my regular job is a union official. There is a section in the National Labor Relations Act, Section 302, which has similar prohibitions. I cannot take anything of value from an employer that we bargain with or seek to bargain with. Of course then in that section, there are exceptions. Some of those additional exceptions are just to provide some clarity on some things that were not thought of by the original author of S.B. 307 of the 78th Session that are in other areas of statutes that I felt were reasonable exceptions that should be added to our legislation.

Assemblyman Leavitt:

I, too, appreciate it for that reason, as in my normal course of work, I work for a public agency for which I often went to things and they would often ask me to announce myself as either an elected official or a candidate. I adamantly refused to do so. For that reason, I wanted to separate the two. I appreciate this effort.

Assemblyman Roberts:

This may be more for legal than myself. I am not the sharpest tool in the shed on some of these things, so sometimes it is hard for me to read through it, but under section 2, line 35, it talks about—I will give you an example—if someone were to loan me a painting or something like that and I hung it in my office, would that be a violation or would that be permissive under this statute, the loaning of gifts?

Kevin Powers, Committee Counsel:

Under the existing gift prohibitions in the Lobbying Act, a lobbyist is prohibited from giving a gift of any value to a legislator or a member of his or her immediate family, unless one of the specific exceptions applies. "Gift" is defined broadly as any advance, loan, deposit, exchange of money, services, or anything of value, unless consideration of equal or greater value is provided. If a lobbyist were to loan you a painting to hang in your legislative office during the session, that, in fact, would be a gift because it would be a transfer of something of value, even if it is for a temporary period of time. This legislation would not change that; that would still be a prohibited gift from a lobbyist.

Assemblyman Roberts:

Thank you for that clarification. So another legal question is, a lot of the substance in this bill does not really change anything under current prohibitions under gifts or anything like that?

Kevin Powers:

Correct. As Assemblyman Daly explained, the LCB produced the LCB guide for the Legislative Branch with regard to gifts, educational and informational meetings, events and trips, and related matters. Because I was part of producing it, I like to hold it up as Assemblyman Daly did. I am thanking Assemblyman Daly for reading it twice. Few things warm my heart and that is one of them. In any event, the purpose of this bill is to take some of these administrative interpretations from the guide and put them in statute. The reason is, administrative interpretations do not have the force of law. They are persuasive if the issue goes to court and the administrative agency is given deference in interpretation, but those interpretations do not have the force of law. By putting the interpretations in the statute, you give them the force of law. Therefore, it is clear for everyone what is or is not a gift, and what some of the prior interpretations are. I think with regard to sections 1, 2, and 3, the goal mostly is to codify administrative interpretations. However, as Assemblyman Daly mentioned, he also wanted to clarify some other things that are not in the LCB guide.

Assemblyman Roberts:

I was not here for the last version of the bill, so thank you for the clarification.

Chair Jauregui:

Are there any other questions from the Committee? [There were none.] I have a quick question, Assemblyman Daly. Could you please help give me a better understanding of the new items under section 2, subsection 2, paragraphs (g), (h), (i), and (j)? For instance, paragraph (g), "Gross income from property held for investment or revenue production" That is income, correct? Gross income, so it would never be considered a gift. Why the need to include it, just for my understanding.

Assemblyman Daly:

My reading of that, the way I understand it and the reason it is in there—again, it was taken out of Section 302 of the National Labor Relations Act, or at least paraphrased when it was drafted. For instance—and this is just the thought—if you had rental income or property and

you wanted to rent an apartment to a lobbyist, under this provision, it would not be a gift for you to accept or receive that income or if you rented them something else or various things. Of course, then I think the provision about the arm's length transaction portion would also have to be in place; if the roles were reversed and you had a sweetheart deal and paid less than market value, that would be a gift, the same as lending the painting would be a gift. That is just to clarify some of those things. It would probably be a rare occurrence, but you would not be prohibited from engaging in some other business that you might be in just because you are a legislator and they are a lobbyist. We are trying to maintain some openness, transparency. We are not trying to change any of that stuff, but people should be able to engage in normal courses of business.

Chair Jauregui:

Thank you, and I have one other question under paragraph (j), "the payment or delivery of anything of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or a compromise, adjustment, settlement, release or other disposition of any claim, complaint or grievance." We had this discussion, so I want to make sure that this is if you were suing the lobbyist for some wrongdoing that he or she would be able to pay you, and that would not be considered a gift. Is that correct?

Assemblyman Daly:

It is the same as what we just said. In the normal course of business, it would not apply—or none of this actually applies to someone who is not a lobbyist. If it were a lobbyist and you engaged in that, you should have the right if you were awarded a judgment or an arbitration, to accept that even though that person is a lobbyist. So yes, that is exactly correct, it would not be a gift in that circumstance. The facts are all going to be dictated by what the case is and the outcome. We did not want to leave those things to chance. That was, again, something that came from Section 302 of the National Labor Relations Act.

Chair Jauregui:

I appreciate you walking us through section by section. You pretty much answered all of my questions. Are there any further questions from the Committee? Seeing no further questions, we will open the hearing for testimony in support in Carson City and in Las Vegas. [There was none.] Is there any testimony in opposition in Carson City and Las Vegas? [There was none.] Is there anyone in Carson City and in Las Vegas who wishes to testify in the neutral position? Seeing no one, I will invite the bill's sponsor up to give final remarks.

Assemblyman Daly:

Thank you, Madam Chair. I believe it is a noncontroversial bill. Hopefully, we can move forward without any further delay. Thank you.

Chair Jauregui:

I will now close the hearing on Assembly Bill 121. Next on the agenda is the introduction of a Committee bill draft request. Bill Draft Request R-509 originated with the Legislative Committee on Public Lands and was assigned to the Assembly Committee on Legislative Operations and Elections for introduction.

BDR R-509—Directs the Legislative Commission to conduct an interim study concerning wildfires. (Later introduced as [Assembly Concurrent Resolution 4.](#))

Chair Jauregui:

This measure directs the Legislative Commission to conduct an interim study concerning wildfires. A vote in favor of introducing a bill draft request (BDR) does not imply a commitment to support the measure later, pursuant to Assembly Standing Rule 57. All this action does is allow the BDR to become a bill and then be referred to a committee for a possible hearing. A vote to introduce a BDR requires a majority vote of the entire Committee. In our Committee, it would require six members for it to be introduced. I will entertain a motion to introduce BDR R-509.

ASSEMBLYMAN FUMO MOVED FOR COMMITTEE INTRODUCTION
OF BILL DRAFT REQUEST R-509.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN HAMBRICK WAS ABSENT
FOR THE VOTE.)

I will now open the hearing to public comment in Carson City and Las Vegas. [There was none.] Our next meeting will be on Tuesday, February 26, 2019, at 4 p.m. Thank you, everyone. The meeting is adjourned [at 5:38 p.m.].

RESPECTFULLY SUBMITTED:

Catherine Bodenstein
Committee Secretary

APPROVED BY:

Assemblywoman Sandra Jauregui, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a memorandum dated March 11, 2014, provided by Kevin Powers, Committee Counsel, Legal Division, Legislative Counsel Bureau, regarding state constitutional matters relating to community colleges and higher education.

[Exhibit D](#) is a document titled "Guide for the Legislative Branch of Nevada State Government: Lobbying and Financial Disclosure: Gifts, Educational and Informational Meetings, Events and Trips and Related Matters," dated January 11, 2017, written by Legal Division, Legislative Counsel Bureau, provided by Assemblyman Skip Daly.