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6
7 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

8 STEVE SISOLAK, an Individual and elector
citizen,

9
10 Petitioner,

11 vs.

12 HARVARD L. LOMAX, Registrar of Voters for
Clark County; DAVID ROGER, Clark County
District Attorney, in their official capacities,

13
14 Respondents,

15 and

16 BRUCE L. WOODBURY, in his capacity as
candidate for Clark County Commissioner,
District A,

17
18 Real Party in Interest.

Supreme Court No.

**EMERGENCY PETITION FOR WRIT
OF MANDAMUS AND/OR, IN THE
ALTERNATIVE, FOR WRIT OF
PROHIBITION**

19
20 Petitioner Steve Sisolak ("Petitioner") elector citizen, by and through his counsel Dominic
21 P. Gentile and Leigh C. Davis of the law firm of Gordon & Silver, Ltd., hereby respectfully
22 petition this Court for a Writ of Mandamus pursuant to NRAP 21, Article 15, § 3 of the Nevada
23 Constitution, NRS 34.160, 34.320 and NRS 293.182 to Clark County Registrar of Voters
24 Harvard L. Lomax ("Mr. Lomax") mandating that he exclude Bruce L. Woodbury ("Mr.
25 Woodbury")'s name from the 2008 primary and general election ballots, as his twelve year term
26 limit will have expired this year. Alternatively, Petitioner requests that the Court issue a Writ of
27 Prohibition preventing Mr. Lomax from including Mr. Woodbury's name on the ballots.
28

1 Petitioner further respectfully petitions this Court for a Writ of Mandamus pursuant to
2 NRAP 21, Article 15, § 3 of the Nevada Constitution, NRS 34.160, NRS 34.320 and NRS
3 293.182 to Clark County District Attorney David Roger ("Mr. Roger"), mandating that he
4 remove Mr. Woodbury's name from the 2008 primary and general election ballots, as his twelve
5 year term limit will have expired this year. Alternatively, Petitioner requests that the Court issue
6 a Writ of Prohibition preventing Mr. Roger from including Mr. Woodbury's name on the ballots.¹

7 On May 27, 2008 and within the statutory time period prescribed by NRS 293.182,
8 Petitioner filed a written challenge ("Sisolak Challenge") to the declaration of candidacy of
9 Bruce L. Woodbury for the Office of County Commissioner in Clark County, District A
10 ("Woodbury Declaration").² The Sisolak Challenge was based upon Article 15 § 3 of the
11 Nevada Constitution — made effective on November 27, 1996 by this Court's completion of its
12 canvass of votes ("Effective Date") — which provides that no person may be elected to any local
13 governing body "*who has served in that office, or at the expiration of his current term if he is so*
14 *serving will have served, 12 years or more*" (the "Term Limitation Clause"). By year's end, Mr.
15 Woodbury will have served as County Commissioner for twelve years since the Term Limitation
16 Clause was approved by Nevada voters³; as such, Mr. Woodbury is prohibited from running for
17 reelection for another term under the Term Limitation Clause. Mr. Roger, however, concluded
18 that there was no probable cause to support the Sisolak Challenge or to remove Mr. Woodbury
19 from the November 2008 ballot. In so doing, he argued that the twelve year term limitation
20 contained in the Term Limitation Clause does not apply to officials elected in 1996; rather, the
21 Term Limitation Clause applies to those who took office in subsequent elections.

22 ...

23 _____
24 ¹ Petitioner recognizes that, pursuant to NRS 293.182, the appropriate remedy as to Mr. Roger would be to request a
25 Writ of Mandamus compelling Mr. Roger move forward with Petitioner's written challenge to Mr. Woodbury's
26 Declaration of Candidacy and petition a court of competent jurisdiction to order Mr. Woodbury to appear.
27 However, Petitioner believes that this remedy would be wholly-inadequate at this time, given the imminence of the
28 upcoming elections and the need to promptly resolve this dispute in order to timely prepare the ballots.

² On or about May 22, 2008, the Secretary of State also filed a challenge to the Woodbury Declaration on identical grounds.

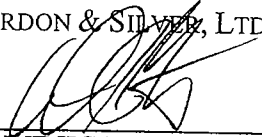
³ Mr. Woodbury was first appointed as County Commissioner in 1981 and as such has been serving in this office for nearly twenty six years.

1 This Court has original jurisdiction over this writ action. Nev. Const. art. 6, § 4; NRS
2 34.150 et seq. There is no just, speedy, or adequate remedy at law other than the issuance of a
3 Writ of Mandamus and/or, in the alternative, Writ of Prohibition. Mr. Roger has abused his
4 discretion and/or acted in an arbitrary and capricious manner in rejecting the Sisolak Challenge
5 and refusing to remove Mr. Woodbury's name from the ballot in violation of the Nevada
6 Constitution. Moreover, judicial economy and sound administration of justice demand issuance
7 of the writ as this case presents a unique opportunity for the Court to clarify an important issue of
8 law that has generated much controversy of late: At what time does the twelve year term
9 limitation contained in Article 15, § 3 of the Nevada Constitution begin to run?

10 WHEREFORE, Petitioner makes this request upon the attached Memorandum of Points
11 and Authorities, all papers and pleadings on file, and any oral argument deemed just and proper
12 by this Court and asks that this Court issue the Writ of Mandamus.

13 Dated this 6th day of June, 2008.

14 GORDON & SILVER, LTD.

15 
16 _____
17 DOMINIC P. GENTILE, ESQ.
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19 LEIGH C. DAVIS, ESQ.
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21 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR**
22 **WRIT OF MANDAMUS**

23 **I.**
24 **STATEMENT OF RELEVANT FACTS**

25 **A. THE 1994 AND 1996 INITIATIVE CONCERNING TERM LIMITATIONS IS**
26 **PASSED.**

27 In 1994 and again in 1996, the Initiative to Limit Terms of State and Local Officers
28 ("Initiative") appeared on the general election ballots proposing to amend the Nevada

1 Constitution to impose term limits upon various state and local officers.⁴ The argument for
2 passage of the Initiative read as follows:

3 Proponents argue that passage will **stop career politicians** since no one will be
4 able to hold office for several terms. Passage may **lessen the power of lobbyists**
5 **and special interest groups** since state officials and local governing body
6 members will only be in office for a limited amount of time. State officials and
7 local governing body members would have the opportunity to **focus on the issues**
8 **instead of reelection**. A greater number of Nevadans would be allowed to serve
9 as state officials and as members of local governing bodies.⁵

10 The Initiative passed by an overwhelming majority of voters in both the 1994 and 1996
11 general elections, and the proposed amendment went into effect upon the completion of the
12 canvass of votes by the Nevada Supreme Court, or on November 27, 1996 (the "Amendment").
13 Nev. Const. art. 19, §2(4).⁶ The Amendment reads in pertinent part as follows:

14 No person may be elected to any state or local governing body who has served in
15 that office, or at the expiration of his current term if he is so serving will have
16 served, 12 years or more, unless the permissible number of terms or duration of
17 service is otherwise specified in this constitution.

18 Nev. Const. art. 15, § 3 (the "Term Limitation Clause").

19 **B. THE ATTORNEY GENERAL ISSUES AN OPINION CONCERNING**
20 **APPLICATION OF TERM LIMITATIONS**

21 In 1996, the Douglas County District Attorney sought an opinion from the Attorney
22 General, Frankie Sue Del Papa, concerning how the Initiative was to be interpreted and,
23 specifically (1) to which offices the term "local governing body" would apply, and (2) how the
24 limitations on elective service were to be construed and applied.⁷ In response, the Attorney
25 General issued Opinion No. 96-23 (the "AG Opinion").⁸ Answering the first question posed, the
26

27 ⁴ A true and correct copy of the Initiative from the 1994 general election is attached hereto as Exhibit "1". In
28 Nevada, voters at two consecutive elections must approve such a ballot before it becomes law. See Nev. Const. art.
19, § 2(4).

⁵ *Id.* (emphasis added)

⁶ Article 19, § 2(4) provides in pertinent part that "If a majority of such voters votes approval of such amendment, it shall, unless precluded by subsection 5 or 6, become a part of this Constitution upon completion of the canvass of votes by the Supreme Court."

⁷ This was assuming, of course, that the Initiative would pass. As it had passed by nearly 70% in 1994, there was a strong likelihood that it would pass again in 1996. See Attorney General Opinion No. 96-23, attached hereto as Exhibit "2."

⁸ *Id.*

1 AG Opinion discussed the meaning of a "governing body" as one that performs legislative
2 functions, and concluded that the county commission, board of supervisors, or the city council
3 would be included, while individual officers including but not limited to the county clerk,
4 recorder, sheriff, treasurer, and assessors would not.⁹

5 In answer to the second question posed, the AG Opinion addressed two subparts (a) when
6 would the Initiative go into effect, and (b) which terms of office would be counted under the
7 proposed term limitations. Answering subpart (a), the AG Opinion cited to this Court's opinion
8 in Torvinen v. Rollins, which held that a "constitutional amendment adopted pursuant to Article
9 16 becomes effective upon the canvass of the votes by the supreme court." 93 Nev. 92, 94, 560
10 P.2d 915, 917 (1977).¹⁰ As such, the AG Opinion concluded that, if the voters approved the
11 Initiative, the Amendment would go into effect on the day of the canvass, or November 27,
12 1996.¹¹ In answering subpart (b), the AG Opinion again cited to Torvinen when noting that, as a
13 general rule, "a constitutional amendment in Nevada is to be given only prospective application
14 from its effective date unless the intent to make it retrospective clearly appears from its terms."¹²
15 Because the language of the initiative was not clear in terms of when the tenure limitations
16 would begin, and because the right to hold public office is a valuable right of citizenship, the
17 Attorney General noted that "ambiguities are to be resolved in favor of eligibility of office."¹³
18 As such, the Attorney General concluded that

19 If the voters approve [Question No. 9] in the general election in November 1996,
20 **only periods of service commencing after November 27, 1996 will be counted**
21 **as a term for limitation purposes.**¹⁴

21 ...

22 _____
23 ⁹ Id.

24 ¹⁰ A true and correct copy of the Torvinen case is attached for the Court's easy reference as Exhibit "3."

25 ¹¹ Id. In rendering this opinion, the Attorney General relied upon U.S. Term Limits, Inc. v. Hill, 872 S.W.2d 349,
26 360 (1994), *aff'd on other grounds*, U.S. Term Limits v. Thornton, 514 U.S. 779, 115 S.Ct. 1842 (1995), which held
27 that only periods of service commencing on or after the effective date of the amendment would be counted as a term
28 for limitations purposes. Id. at 361.

¹² Id., citing to Torvinen, 93 Nev. at 94, 560 P.2d 917.

¹³ Id.

¹⁴ Id. (emphasis added)

1 C. BRUCE WOODBURY'S 27 YEAR TENURE AS CLARK COUNTY
2 COMMISSIONER IS CHALLENGED

3 Bruce L. Woodbury ("Mr. Woodbury") was first appointed as the Clark County
4 Commissioner for District A in 1981, and began serving his first full term in 1982.¹⁵ As such, he
5 had served on the County Commission for approximately 14 years prior to the effective date of
6 the Amendment.

7 Mr. Woodbury submitted his Declarations of Candidacy for the Office of Clark County
8 Commission, District A — and has been reelected in that position — in 1996, 2000 and 2004.¹⁶
9 As such, commencing on the Effective Date of the Amendment in 1996 and continuing through
10 this year, Mr. Woodbury will have held this office for twelve years.

11 On May 6, 2008, pursuant to NRS 293.177, Mr. Woodbury again submitted his
12 Declaration of Candidacy, indicating his intent to run for Clark County Commissioner, District
13 A, this November.¹⁷

14 On May 27, 2008, in accordance with NRS 293.182, Steve Sisolak ("Mr. Sisolak" or
15 "Petitioner") filed a written challenge to Mr. Woodbury's Declaration of Candidacy for Clark
16 County Commissioner, District A, based upon the Term Limitation Clause.¹⁸ Namely, Mr.
17 Sisolak believes that Mr. Woodbury is precluded from running for this office based upon the
18 twelve year term limitation imposed by the Nevada Constitution.

19 On or about May 22, 2008, the Secretary of State also filed a written challenge to Mr.
20 Woodbury's candidacy, among others, on identical grounds, to wit, that Mr. Woodbury and
21 various other candidates are in violation of the Term Limitation Clause.¹⁹

22 ...

23 _____
24 ¹⁵ A true and correct copy of Mr. Woodbury's Biography as it appears on the Clark County Commissioners' Website
is attached hereto as Exhibit "4."

25 ¹⁶ True and correct copies of Mr. Woodbury's Declarations of Candidacy for 1996, 2000 and 2004 are attached
hereto collectively as Exhibit "5"

26 ¹⁷ A true and correct copy of Mr. Woodbury's Declaration of Candidacy for 2008 is attached hereto as Exhibit "6."

27 ¹⁸ A true and correct copy of the Sisolak Challenge, without exhibits, is attached hereto as Exhibit "7."

28 ¹⁹ A true and correct copy of the May 27, 2008 letter from David Roger to the Secretary of State responding to the
Secretary of State's challenges is attached hereto as Exhibit "8."

1 On or about May 29, 2008, Mr. Sisolak received a letter from David Roger, Clark County
2 District Attorney ("Mr. Roger") indicating that he did not find the probable cause required under
3 NRS 293.182 to remove Mr. Woodbury from the ballot.²⁰ Specifically, Mr. Roger read the AG
4 Opinion and the "prospective application" of the Term Limitation Clause to mean that the twelve
5 year term limitation began ticking only *after* 1996, or upon a subsequent elections.²¹ He further
6 suggested that he had been informed that only a "handful of candidates" had been affected by
7 this issue, and that those candidates have indicated they will abide by any future term limitations
8 imposed upon them. Upon information and belief, on or about May 27, 2008, the Secretary of
9 State received a similar letter from Mr. Roger.²²

10 **II.**
11 **STATEMENT OF ISSUES PRESENTED AND RELIEF SOUGHT**

12 **A. ISSUES**

13 1. Did the Clark County District Attorney abuse his discretion and/or act arbitrarily
14 and capriciously in failing to find probable cause to challenge the candidacy of Mr. Woodbury as
15 County Commissioner, District A?

16 2. Does the twelve year term limitation imposed by Article 15, § 3 of the Nevada
17 Constitution, effective November 26, 1996, prohibit Mr. Woodbury from serving additional
18 terms as Clark County Commissioner?

19 **B. RELIEF SOUGHT**

20 Petitioner asks this Court to issue a writ of mandate or, alternatively, a writ of prohibition
21 to Mr. Lomax directing him to exclude Mr. Woodbury's name on the 2008 primary and general
22 election ballots, as Mr. Woodbury is precluded by Article 15, § 3 of the Nevada Constitution
23 from serving more than 12 years in this office.

24 ²⁰ A true and correct copy of the May 29, 2008 letter is attached hereto as Exhibit "9."

25 ²¹ Ex. 2. Mr. Roger seemed to rely in large part on the following statement contained in the AG Opinion:

26 [T]erm limitations will not apply to affected officials elected in the 1996 general election. If
27 approved, term limits would be in effect for the 1997 municipal elections, and the 1998 primary
elections, and so on.

28 ²² Ex. 8.

1 County of Clark, 116 Nev. 127, 134, 994 P.2d 692, 697 (Nev. 2000) ("The only way this split
2 can be resolved is for this court to exercise its constitutional prerogative to entertain these writ
3 petitions.") This Court may also "exercise its discretion to grant mandamus relief where an
4 important issue of law requires clarification." Redeker, 122 Nev. at 167, 127 P.3d at 522 (citing
5 to State v. Dist. Ct. (Epperson), 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004)).

6 Mandamus relief is justified in this case, given the need for prompt resolution of this
7 issue in order to ensure that the primary and general election ballots are timely prepared. The
8 process for challenging the qualifications of a candidate is codified in NRS 293.182 (the
9 "Challenge Statute"). Pursuant to the Challenge Statute, any elector may file a written challenge
10 with the filing officer indicating which qualifications the candidate does not meet. The filing
11 officer must then transmit the challenge to the Attorney General or district attorney, who must
12 review the challenge and determine whether probable cause exists to support the challenge, and
13 if so, petition the appropriate court for a hearing on the matter. Id. It then falls upon the court to
14 determine if a candidate lacks one or more qualifications for the office that he seeks and, if so,
15 order that his or her name be excluded from the ballot. Id. Although Petitioner followed the
16 appropriate steps to challenge Mr. Woodbury's candidacy, Mr. Roger abused his discretion and
17 acted in an arbitrary manner in refusing to petition the district court for a hearing on his
18 qualifications; there is at this time no plain, speedy or adequate remedy in the ordinary course for
19 Petitioner in this case.

20 There is a need for prompt resolution concerning whether Mr. Woodbury is qualified to
21 run for reelection under Nevada law. Indeed, courts in other jurisdictions have recognized that
22 the nature of candidacy disputes not only justifies a writ proceeding, but call for a writ
23 proceeding as the only expedient and adequate remedy. The urgency in the ballot preparation
24 process prompted one court in a gubernatorial election to recognize "a special rule with regard to

25 ...
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1 determining the eligibility of candidates in advance of an election." State ex rel. Maloney v.
2 McCartney, 223 S.E.2d 607, 616 (W. Va. App. 1976). By this rule:

3 [a]ny person with standing to challenge the candidate's eligibility may raise such
4 challenge . . . through an action in mandamus, without regard to the statutory
5 times provided to the Secretary [of State] for certain ministerial acts. We arrive at
6 this conclusion in order to achieve as expeditious a resolution of the controversy
as possible because of the limited time available for the printing of ballots and
campaigning by other candidates.

7 Id., 223 S.E.2d at 617. Petitioner contends that a writ is appropriate under these circumstances to
8 prevent voter confusion, disenfranchisement and the ensuing irreparable harm that will result
9 from unsettled ballots.

10 Moreover, because the application of the Term Limitation Clause involves an issue of
11 statewide concern, and is one that has lead to conflicting opinions in at least four counties in the
12 State, mandamus relief is justified in this case. On May 22, 2008, Mr. Griffin filed a written
13 challenge to the candidacy of Howard Rosenberg ("Mr. Rosenberg") as Regent, Washoe County,
14 District 10, based upon the Term Limitation Clause. Mr. Rosenberg has served as a Regent since
15 1996.²³ On May 23, 2008, Richard Gammick, Washoe County District Attorney, rejected the
16 challenge, stating that he could not find probable cause to remove Mr. Rosenberg from the ballot.
17 In so doing, he, like Mr. Roger of Clark County, relied on the AG Opinion and this Court's
18 Torvinen opinion in finding that the Initiative requires prospective application, and the Term
19 Limitation therefore applies only to elections held after the Amendment's effective date.²⁴

20 However, in both Pershing and Humboldt counties, the district attorneys **have found**
21 **probable cause** to challenge the candidacy of individuals under the Term Limitation Clause.
22 Specifically, Jim Shirley, Pershing County District Attorney, filed a Petition for Order to Show
23 Cause Regarding the Validity of the Candidacy of Todd A. Plimpton for the Office of Pershing
24 County School Trustee, Seat B (the "Pershing Petition"), based on the Secretary of State's written
25 challenge, wherein he contends that, as Mr. Plimpton had served as Trustee since 1997 (having

26 _____
27 ²³ A copy of Mr. Rosenberg's Biography as it appears on the Washoe County Commissioners' Website is attached
hereto as Exhibit "10"

28 ²⁴ A true and correct copy of Mr. Gammick's May 23, 2008 letter to Mr. Miller is attached hereto as Exhibit "11."

1 been elected in 1996) and will have served 12 years or more or three four-year terms by year's
2 end, he is ineligible for reelection based upon the Term Limitation Clause.²⁵ Similarly, Russell
3 Smith, Humboldt County District Attorney, recently filed a Petition for Order to Show Cause
4 Regarding the Validity of Candidacy of John H. Milton, III for the Office of Humboldt County
5 Commission, Seat B (the "Humboldt Petition"), based on the Secretary of State's written
6 challenge, wherein he contends that, as Mr. Milton has served as Commissioner since 1997
7 (having been elected in 1996) and will have served 12 years or more or three four year terms by
8 year's end, he is ineligible for reelection based upon the Term Limitation Clause.²⁶ Given this
9 conflicting authority between and among the counties, the approaching primary and general
10 elections and the imminent need to have the ballots prepared and finalized, there is an urgency
11 and strong necessity to have this issue resolved at the earliest available opportunity.

12 IV. 13 CONCLUSION

14 The language of the Term Limitation Clause is clear: no person may be elected "who has
15 served in that office, or at the expiration of his current term if he is so serving will have served,
16 12 years or more." The language of the Nevada Constitution is similarly clear: any amendment
17 approved by the voters of this State "shall" "become a part of this Constitution upon completion
18 of the canvass of votes by the Supreme Court;" in this case, the Court completed its canvass of
19 votes on November 27, 1996.

20 Petitioner's position in this case is not only wholly-consistent with this language, it is also
21 consistent with this Court's holding that constitutional amendments must be applied
22 prospectively absent clear language to the contrary. If the twelve year term limitation had been
23 applied to Mr. Woodbury retroactively, then arguably he would not have been permitted to take
24 office back in 1997 given the fact that he had served as County Commissioner since 1982.
25 Rather, Petitioner is asking this Court to apply the Term Limitation Clause *prospectively* — to

26 ²⁵ A true and correct copy of the written challenge to the candidacy of Todd A. Plimpton, as well as the Pershing
27 Petition, without exhibits, are attached hereto collectively as Exhibit "12."

28 ²⁶ A true and correct copy of the written challenge to the candidacy of John H. Milton, III, as well as the Humboldt
Petition, without exhibits, are attached hereto collectively as Exhibit "13."

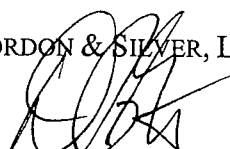
1 have the clock start ticking on the day of service of the first term subsequent to the Effective
2 Date of the Amendment. Surely, this is what the voters of Nevada intended when they passed
3 the Initiative in two successive elections in 1994 and 1996.

4 Yet Mr. Roger seems to suggest that the voters intended that every first term served by an
5 elected state or local official commencing after the Effective Date — including the first term of
6 Mr. Woodbury beginning on January 1, 1997 — was, in effect, a "free pass," which didn't count
7 towards the twelve years that each such candidate may serve. This is not only contrary to logic,
8 but it is also contrary to the will of the voters. And, based upon Mr. Roger's arbitrary and
9 capricious actions in this regard, Mr. Lomax will perform the ministerial tasks to which he is
10 assigned, including placing Mr. Woodbury's name on the 2008 primary and general election
11 ballots.

12 Petitioner therefore respectfully requests that this Court issue a writ of mandamus or, in
13 the alternative, a writ of prohibition, which will cause the exclusion of Mr. Woodbury's name
14 from the 2008 primary and general election ballots as a candidate for Clark County
15 Commissioner, Seat A, in accordance Article 15, § 3 of the Nevada Constitution.

16 Dated this 12 day of June, 2008.

17 GORDON & SILVER, LTD.

18 
19 _____
20 DOMINIC P. GENTILE, ESQ.
21 Nevada Bar No. 1923
22 LEIGH C. DAVIS, ESQ.
23 Nevada Bar No. 8998
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25 Las Vegas, Nevada 89169
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27 Attorneys for Steve Sisolak
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VERIFICATION

Under penalties of perjury, the undersigned declares that he is counsel for Petitioner Steve Sisolak and he knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true.

Executed this 6th day of June, 2008.



Dominic P. Gentile

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon & Silver, Ltd., hereby certifies that on the 6th day of June, 2008, she served a copy of the Emergency Petition for Writ of Mandamus and/or, in the Alternative, for Writ of Prohibition, by facsimile, and by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

Harvard L. Lomax
Registrar of Voters for Clark County
965 Trade Drive, Suite A
North Las Vegas, NV 89030-7802
Fax: (702) 455-2793

David J.J. Roger
Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155
Fax: (702) 477-2900

Catherine Cortez-Masto
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701
Fax: 775-684-1108


ADELE L. JOHANSEN, an employee of
GORDON & SILVER, LTD.

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EXHIBIT "1"

NEVADA
BALLOT QUESTIONS

1994



**A compilation of ballot questions which will appear
on the November 8, 1994, Nevada
general election ballot**

Issued by
CHERYL A. LAU
Secretary of State

QUESTION NO. 9

An Initiative Relating to Term Limits for State and Local Public Officers

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish term limits for state and local public officers?

Yes.....

No.....

EXPLANATION

Other than the office of governor, the Nevada Constitution currently places no limits on the number of terms to which state and local officers can be elected. This amendment would limit members of the state Assembly to serving twelve (12) years or six (6) terms in office. Members of the state Senate would be limited to serving twelve (12) years or three (3) terms in office. Justices of the Supreme Court, justices of the peace, and all other judges would be limited to two (2) terms. The Secretary of State, State Treasurer, State Controller, and the Attorney General would be limited to eight (8) years or two (2) terms. Other state officials and local governing body members would be limited to twelve (12) years. Appointment to an office for any amount of time would be equal to one (1) term.

ARGUMENT FOR PASSAGE

Proponents argue that passage will stop career politicians since no one will be able to hold one office for several terms. Passage may lessen the power of lobbyists and special interest groups since state officials and local governing body members will only be in office for a limited amount of time. State officials and local governing body members would have the opportunity to focus on the issues instead of reelection. A greater number of Nevadans would be allowed to serve as state officials and as members of local governing bodies.

ARGUMENT AGAINST PASSAGE

Opponents argue that it may be difficult to get qualified candidates to run for an office if the term of that office is limited. Experienced state office holders and members of local governing bodies will not be allowed to run for reelection; nor will those who have done a good job and been responsive to the voters. During the state or local officials' final term, the official will not be accountable to the voters during that term, since that official cannot be reelected. This amendment does not consider that Nevada currently has a citizen legislature which meets only once every two years; consequently, the current turnover in the state legislature is quite high.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution would limit the terms of State and Local Officers. The proposal would have no adverse fiscal impact.

FULL TEXT OF THE MEASURE Initiative to Limit Terms of State and Local Officers

The People of the State of Nevada do enact as follows:

Section 1. Section 3 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] *Sec. 3. 1.* The members of the Assembly shall be chosen [biennially] *biennially* by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November and their term of office shall be two years from the day next after their election.

2. No person may be elected or appointed as a member of the Assembly who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.

Sec. 2 Section 4 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] *Sec. 4. 1.* Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four Years from the day next after their election.

2. No person may be elected or appointed as a Senator who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state

Sec. 3. Section 19 of article 5 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] *Sec. 19. 1.* A secretary of state, a treasurer, a controller, and an attorney general, shall be elected at the same time and places, and in the same manner as the governor. The term of office of each shall be the same as is prescribed for the governor.

2. Any elector shall be eligible to [either of said] any of these offices[.], but no person may be elected to any of them more than twice, or more than once if he has previously held the office by election or appointment.

Sec. 4 Section 11 of article 6 of the constitution of the State of Nevada is hereby amended to read as follows:

Sec. 11. 1. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

2. No person may be elected a justice of the supreme court, judge of any other court, or justice of the peace more than twice for the same court, or more than once if he has previously served upon that court by election or appointment.

Sec. 5. Section 3 of article 15 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] *Sec. 3. 1.* No person shall be eligible to any office who is not a qualified elector under this constitution.

2. No person may be elected to any state office of local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this constitution.

EXHIBIT "2"

mean "ineligible to run for election" as well as "ineligible to hold the public office." In light of more recent case precedent, and as explained below, we hereby reverse Op. Nev. Att'y Gen. No. 80-20 (June 19, 1980) to the extent it is inconsistent with this opinion.

The Nevada Supreme Court in *SNEA v. Lau*, 110 Nev. 715, 720, 877 P.2d 531, 535 (1994), construing the Nevada Constitution, held that a provision affecting a candidate's eligibility, if capable of two reasonable interpretations, should be construed "liberally in favor of the right of the voters to exercise their electoral choice. . . ." Quoting from *Gilbert v. Breithaupt*, 60 Nev. 162, 165-66, 104 P. 2d 183, 185 (1940), the Nevada Supreme Court stated:

The right to hold public office is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of the right of the people to exercise freedom of choice in the selection of officers. Furthermore, disqualifications provided by the legislature are construed strictly and will not be extended to cases not clearly within their scope." [Citations omitted.]

See also *Nevada Judges Association v. Lau*, 112 Nev. 51, 54, 910 P.2d 898, 901 (1996) (ambiguities are to be resolved in favor of eligibility to hold office). Attorney General Opinion No. 80-20 notes the term "eligible" as used in NRS 244.020(2) is capable of two different definitions under Nevada law, yet does not consider the mandate of *Gilbert v. Breithaupt*, 60 Nev. 162. The Nevada Supreme Court's conclusion in *Gilbert*, recently affirmed in *SNEA v. Lau*, requires a strict interpretation of NRS 244.020(2). *SNEA v. Lau*, 110 Nev. 715. Since the term "eligible" is capable of two interpretations, the ambiguity must be "resolved in favor of the right of the people to exercise freedom of choice in the selection of officers." *Gilbert v. Breithaupt*, 60 Nev. 162. Therefore, NRS 244.020(2) must be construed to mean that incumbent county officers are eligible to run for the office of county commissioner, but must resign if they are elected to that office.

CONCLUSION

It is the opinion of this office that under NRS 244.020(2), incumbent county and township officers are eligible to run for election to the office of county commissioner. Such county and township officers must resign their positions if elected to the office of county commissioner.

FRANKIE SUE DEL PAPA
Attorney General

By: BROOKE A. NIELSEN
Assistant Attorney General

OPINION NO. 96-23 ELECTIONS; LOCAL GOVERNMENT; PUBLIC OFFICERS: If voters approve term limits for state and local officials in November 1996, only periods of service commencing after November 27, 1996, will be counted as a term for limitation purposes. "Local governing body" is defined and local offices evaluated to determine to which ones term limits will apply.

Carson City, August 9, 1996

The Honorable Scott W. Doyle, Douglas County District Attorney, Post Office Box 218, Minden, Nevada 89423

Dear Mr. Doyle:

You have requested an opinion from this office regarding term limits for state and local public officials.

BACKGROUND

In 1994 an initiative petition proposing to amend the Nevada Constitution to limit terms for various state and local public officers qualified for the general election ballot. This ballot measure was identified as Question 9. The full text of the petition follows. Voters at two consecutive elections must approve such a ballot question before it becomes law. Nev. Const. art. 19, § 2(4). Voters in the 1994 general election approved Question 9.¹⁰ Voters must again approve this question in the 1996 general election for it to be effective.¹¹ Since 70 percent of the voters approved the question in 1994, the issues raised in this opinion request are relevant, as the probability of the question passing in 1996 is high.¹²

The initiative proposes to limit terms of service of three groups of elected officials: all state officers, all judges, and certain local officials. The language of the initiative is clear that all state officers and all judges are included. However, the language is not clear as to which local officials are included.

In drafting the explanation and arguments for and against passage that appear on the ballot, general and inclusive language was used to inform the voters that state and local public officers were subject to the term limitations of the initiative. Since local judges as well as members of local governing bodies would be affected by the initiative, the general term local public officers was used. Also, the initiative petition filed with the Secretary of State is entitled "Initiative to Limit Terms of State and Local Officers." The question then becomes which local public officers would be subject to term limitations if the voters again approve the ballot question.

The full text of the initiative petition as filed with the Secretary of State pursuant to NRS 295.015 is as follows:

INITIATIVE TO LIMIT TERMS OF STATE AND LOCAL OFFICERS

EXPLANATION -- Mater is italics or underscored is new;
matter in brackets[] is material to be omitted.

The People of the State of Nevada do enact as follows:

Section 1. Section 3 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec.] Sec. 3. 1. The members of the Assembly shall be chosen [biennially] biennially by the qualified electors of their respective districts, on the Tuesday next after the first

¹⁰ The 1994 General Election Returns supplied by the Secretary of State at page 12 indicates 259,211 votes in favor of Question 9 and 108,780 votes against.

¹¹ If a majority of voters approve the ballot question, it will become part of the Nevada Constitution upon completion of the canvass of votes by the Nevada Supreme Court. The canvass will be conducted on November 27, 1996. Nev. Const. art 5, § 4; NRS 293.395(2).

¹² The Nevada Judges Association (Association) filed a lawsuit in 1995 to remove from the ballot that portion of the question pertaining to justices of the supreme court, district judges, and justices of the peace. The Nevada Supreme Court denied the relief the Association sought, but split the initiative into two questions: one pertaining to supreme court justices, district court judges, justices of the peace, and all other judges; and the other, to the other affected elected officials. *Nevada Judges Ass'n v. Lau*, 112 Nev. 51, 910 P.2d 898 (1996). The court in a footnote clarified: "If either proposal passes in the 1996 general election, the Constitution will be effectively amended as to the proposal or proposals receiving a majority vote." *Id.* 112 Nev. at 904, n.2. The Association petitioned for a rehearing arguing the divided question pertaining to judges required passage in two general elections before it could be effective. The court denied the rehearing confirming its previous determination that either part of the question only needs to be approved by the voters in the 1996 general election. *Nevada Judges Association v. Lau*, No. 26177 (Nev. Apr. 30, 1996) (order denying rehearing).

Monday in November and their term of office shall be two years from the day next after their election.

2. No person may be elected or appointed as a member of the Assembly who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.

Sec. 2. Section 4 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] Sec. 4. 1. Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four Years from the day next after their election.

2. No person may be elected or appointed as a Senator who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.

Sec. 3. Section 19 of article 5 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 19. 1. A secretary of state, a treasurer, a controller, and an attorney general, shall be elected at the same time and places, and in the same manner as the governor. The term of office of each shall be the same as is prescribed for the governor.

2. Any elector shall be eligible to [either of said] any of these offices[.], but no person may be elected to any of them more than twice, or more than once if he has previously held the office by election or appointment.

Sec. 4. Section 11 of article 6 of the constitution of the State of Nevada is hereby amended to read as follows:

Sec. 11. 1. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointment to any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

2. No person may be elected a justice of the supreme court, judge of any other court, or justice of the peace more than twice for the same court, or more than once if he has previously served upon that court by election or appointment.

Sec. 5. Section 3 of article 15 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 3. 1. No person shall be eligible to any office who is not a qualified elector under this constitution.

2. No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this constitution.

QUESTION ONE

To which offices does the term "local governing body" as used in section 5 of the proposed initiative apply?

ANALYSIS

Section 5 of the initiative proposes to amend section 3 of article 15 of the Nevada Constitution by adding language to limit the number of terms members of local governing bodies may serve. However, the initiative does not define "local governing body."

Courts from various jurisdictions provide guidance. The Minnesota Court of Appeals stated "it is the power to decide, as opposed to the right to recommend, that determines whether one is a member of a governing body." *Blaine v. Anoka-Hennepin Independent School District*, 498 N.W.2d 309, 314 (1993). See also *Minnesota Education Association v. Bennett*, 321 N.W.2d 395

(1982). The Supreme Court of Georgia in one case described a governing body as a policy-making apparatus. *City of Cave Spring v. Mason*, 310 S.E.2d 892, 893 (1984). In another case, the Supreme Court of Georgia identified a governing authority with performing legislative functions. The Supreme Court of Florida agrees a governing body would have the last word concerning policies. *Metro-Dade Fire Rescue Service District v. Metropolitan Dade County*, 616 So.2d 966 (1993).

The Supreme Court of Virginia characterizes a governing body as having the authority to legislate by ordinance. *Laird v. City of Danville*, 302 S.E.2d 21 (1983). The Supreme Court of Texas agrees a governing body exercises legislative powers. *Burch v. City of San Antonio*, 518 S.W.2d 540 (1975). The Superior Court of New Jersey also equates governing body with legislative functions. *Mentus v. Town of Irvington*, 191 A.2d 806 (1963).

After reviewing these court decisions, it is our opinion a governing body performs legislative functions, makes policy for the jurisdiction it governs, and makes decisions as opposed to making recommendations. Applying this definition, we evaluated many different local boards to determine which are governing bodies whose members would be subject to the term limitations.

Term limits clearly apply to members of a county commission, board of supervisors, or a city council since these bodies are local governing bodies. The Supreme Court of Delaware, in an unreported case, characterized the New Castle County Council as the legislative governing body of the county. *Riley v. Moyed*, 1986 WL 8169 (Del. July 22, 1986).

It is also equally clear, term limits would not apply to other elected county officials, such as county clerk, recorder, sheriff, treasurer, assessor, district attorney, and public administrator, since they are not members of governing bodies. The same conclusion applies to elected city attorneys, city clerks, and city treasurers¹³, as well as township constables.¹⁴ The Minnesota Supreme Court in *McGuire* stated the city attorney is not part of the governing body. *McGuire v. Hennessy*, 193 N.W.2d 313 (1971). Pursuant to various enabling statutes, these elected officials discharge their duties individually or with the assistance of deputies and staff. See NRS 246.060; 246.030; 247.060; 247.030; 248.090; 248.040; 249.090; 249.010; 249.060; 250.010; 250.060; 252.110; 252.070; 253.040; 253.025; 258.070; 258.060; 266.405; 266.470; 266.480; 266.500; and 266.455. The nature of these offices does not involve a governing body in performance of duties and therefore, these officers are not subject to the proposed constitutional term limitations.

However, if an elected official is a member of a group whose function is to govern, that is to control, direct, or exercise authority over others, or perform legislative or policy making decisions, then that officer would be subject to the term limitations.

The office of mayor and other local boards are more difficult to analyze. It is not clear whether mayors are included, nor is it clear which boards within a county would be affected. Mayors have both executive and legislative duties. Cf. NRS 266.165; 266.190; and 266.200. An examination of the instrument creating each city is necessary before a conclusion can be reached as to whether a mayor would be subject to term limits. If the creating instrument indicates the mayor's main function is to be an administrator for the city, and the mayor does not exercise legislative power as a member of the city council, then the mayor would not be subject to term limits. If, on the other hand, the mayor functions as a member of the city council, a governing body, then term limits would apply to that position as well as to the other members of the city council.

¹³ If a city has an auditor who is elected, that auditor would not be subject to term limits.

¹⁴ Term limits would apply to justices of the peace and elected municipal court judges pursuant to section 4 of the initiative petition.

Cities can be created either by special charter or by general law. Nev. Const. art. 8, §§ 1, 8. General law cities have the authority to create the office of city manager. NRS 266.390(1). These city managers can have the duties of chief administrator for the city. If such is the case, the duties performed by the mayor are more legislative in nature, that is, to preside over city council meetings and exercise legislative power as a member of the council. Therefore, the proposed term limitations would apply to mayors of general law cities if the office of city manager has been created and the city manager is the chief administrator for the city. In general law cities with no city manager and the mayor's duties are executive in nature (i.e., mayor is not voting member of council), the proposed term limitation would not apply.

The charters of cities created by special charter must be examined on a city by city basis. If the mayor is appointed, instead of elected, then the mayor is not subject to term limits. If the mayor is elected, has voting authority, and does not merely preside over council meetings, then the mayor is a member of the governing body and the number of terms served would be limited. In those cities, the mayor is part of the governing body that discharges legislative duties for the city.

Carson City is unique in that it is a consolidated city and county government with features comparable to both cities and counties. The functions performed by members of the board of supervisors and the mayor are legislative in nature, so the proposed initiative would apply to both the board members and the mayor.

If members of a town board are elected and perform legislative duties comparable to those in municipalities, then such members would be subject to term limitations. Citizen advisory council members would not be subject to the limitation since such offices are appointive and merely advisory. The same conclusion applies to town advisory boards if the members are appointed.

However, if members of a town advisory board are elected, they would be subject to term limits. We reach this conclusion even though the board may be denominated the "town *advisory* board" since such a board may often have the same attributes as a local governing body. By statute, a town advisory board may be responsible for providing and managing many town services, may control expenditures, and may have the authority to promulgate town bylaws and codes as well as acquire, manage, and improve town property. See NRS 269.575; 269.580; 269.590; 269.595; 269.600; 269.610; and 269.620.

Elected trustees of county school districts would be included in the term limitation due to the nature of the responsibilities they discharge pursuant to NRS 386.350 and the fact that school districts are political subdivisions pursuant to NRS 386.010(2). "Elected members of a county board of education are 'members of the legislative body of [a] political subdivision . . .'" *West Virginia v. West Virginia Public Employees Retirement System*, 401 S.E.2d 916, 918 (1991).

Statutory authority exists for creation of other local districts. The test to determine whether term limits will apply to the directors of such districts is two-fold: (1) Are the directors elected? and (2) Is the function of the directors legislative in nature? Examples of these types of boards include: districts created pursuant to the Nevada Improvement District Act, NRS 309.050 and 309.070; general improvement districts, NRS ch. 318; boards of hospital trustees and district hospitals, NRS ch. 450; county fire protection districts and districts for the control of floods, NRS ch. 474. An example of a board to which term limits would not apply is an irrigation district.

NRS ch. 539 authorizes creation of irrigation districts. If such a district is created, it is to be administered by elected directors. NRS 539.045. However, the Nevada Supreme Court has characterized an irrigation district as a "public corporation" and elaborated that "[t]he district is not established for political or governmental purposes." *In re Walker River Irrigation District*, 44 Nev. 321, 339, 195 P. 327, 335 (1921). Subsequent courts have agreed with this reasoning. See

Truckee-Carson Irrigation Dist. v. McLean, 49 Nev. 278, 287, 245 P. 285, 294 (1926); *Truckee-Carson Irrigation Dist. v. Barber*, 80 Nev. 263, 266, 392 P.2d 46, 49 (1964).

If such a district has no governmental purpose, then it cannot be a local government for purposes of the term limitation petition and its directors would not be members of a local governing body. This conclusion is supported by *State of Nevada Employees Ass'n, Inc.* which requires liberal construction in favor of the right of the voters to exercise their electoral choice. *State of Nevada Employees Ass'n v. Lau*, 110 Nev. 715, 720, 877 P.2d 531, 535 (1994).¹⁵

Elected members of the State Board of Education would be subject to the 2-term limitation pursuant to the language in section 5 of the initiative petition that includes other state elected officials. NRS 385.021(6) currently imposes a limitation of three terms upon members of this state board; however, the exemption granted in section 5 of the petition is only for those offices where the term is already limited by the Nevada Constitution, like the position of governor.

Members of the board of regents would also be subject to the term limitation under the "any state office" limitation in section 5 of the initiative petition.

If a question arises concerning an elected local position which is not resolved by the guidelines provided above, this office will issue a supplemental opinion upon request of the district attorney or city attorney.

CONCLUSION TO QUESTION ONE

The initiative will apply to county commissioners for the reasons that they are elected and perform a legislative function as members of the county commission, a "local governing body." The petition will not limit terms of service of the county clerk, recorder, sheriff, treasurer, assessor, district attorney, and public administrator because they do not perform legislative functions as part of a "local governing body."

The initiative will also apply to city councils and to mayors in general law cities where city managers have been appointed, but not to mayors in general law cities where no city manager has been appointed and the mayor exercises only executive functions. The petition will not limit terms of service of city attorneys, city clerks, and city treasurers. Nor will it limit terms of township constables.

For special law cities, the limitation will apply to city council members and those mayors who, by charter, are part of the city council.

Members of an elected town board would be subject to term limitations, but advisory board members would not, if they are appointed, not elected. If advisory board members are elected and perform legislative functions, term limits would apply.

For other districts, the test is whether the directors are elected and whether the function of the directors as a board is legislative in nature. If the answer to both of these questions is yes, then term limits would apply. An exception to this is an irrigation district.

QUESTION TWO

How will limitations on elective service be construed and applied should the initiative be approved by the voters in the general election in November 1996?

¹⁵ This case is discussed more fully in the analysis to the second question of this opinion.

ANALYSIS

If this measure is approved in November, limitations on terms of elective service for most state and many locally elected officials will be placed in the Nevada Constitution. To answer this second question, two issues must be resolved: (1) When does the initiative go into effect? and (2) Which terms of office will be counted under the proposed limitations on service?

The issue of when the initiative goes into effect is controlled by a 1977 opinion issued by the Nevada Supreme Court. In *Torvinen v. Rollins*, 93 Nev. 92, 560 P.2d 915 (1977), the court addressed a similar question regarding the effective date of a constitutional amendment approved by the voters extending the term of office for district court judges.

In *Torvinen* the lower court ruled the amendment applied retroactively to all judges holding office at the time it was adopted, thereby extending their 4-year terms to six years. *Id.* at 93. The supreme court reversed, holding "the amendment applies prospectively only to elections held after its effective date." *Id.* at 94.

The supreme court reasoned:

We therefore determine a constitutional amendment adopted pursuant to article 16 becomes effective upon the canvass of the votes by the supreme court. This provides uniformity for the effective date of amendments adopted pursuant to article 16 and those adopted pursuant to the initiative procedures of article 19, which specifically mandates such amendments "become a part of this constitution upon completion of the canvass of voters by the supreme court." Nev. Const. Art. 19 §2.

As a general rule, a constitutional amendment is to be given only prospective application from its effective date unless the intent to make it retrospective clearly appears from its terms. Here, the amendment is void of any term indicating the legislature or electorate intended retrospective application.

Id. (citations omitted). Accordingly, if the voters approve this term limitation initiative, the provisions will go into effect on the day of the canvass, November 27, 1996.

The *Torvinen* case also assists in analyzing the second issue in this question: Which terms of office will be counted under the proposed limitations on service?

The court in *Torvinen* applied the general rule that "a constitutional amendment is to be given only prospective application from its effective date unless the intent to make it retrospective clearly appears from its terms." *Id.* The court had previously stated "statutes are presumed to operate prospectively and shall not apply retrospectively unless they are so strong, clear and imperative that they can have no other meaning or unless the intent of the legislature cannot be otherwise satisfied." *Holloway v. Barrett*, 87 Nev. 385, 390, 487 P.2d 501, 506 (1971).

An examination of the language of the term limitation initiative reveals the petition is not clear as to when the tenure limitations start. In fact, it is vague and ambiguous on the point of when to begin counting terms. The Arkansas Supreme Court in *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 360 (1994) *aff'd* *U.S. Term Limits, Inc. v. Thornton*, ___ U.S. ___, 115 S. Ct. 1842 (1995)¹⁶, noted several other states have adopted term limitation amendments and provided a date certain from which terms will be counted:

¹⁶ *Hill* addressed term limitations for state and congressional officers. The U.S. Supreme Court granted certiorari, but limited its review to the issue of term limits for congressional officers.

--State of Washington. Wash.Rev.Code § 29.15.240 (Supp.1993) (no terms served before November 3, 1992, may be used to determine eligibility to appear on the ballot) (approved Nov. 3, 1992).

--State of California. Cal. Const. art. XX, § 7 (applies to terms of state constitutional officers and legislators where the official was elected or appointed to the office after November 6, 1990) (adopted Nov. 6, 1990).

....
--State of Colorado. Colo. Const. art. XVIII, § 9a (applies to terms of office in Congress beginning on or after January 1, 1991) (approved Nov. 6, 1992).

--State of Wyoming. Wyo.Stat. §§ 22-5-103, 22-5-104 (1992) (terms of service in state offices and in Congress prior to January 1, 1993, shall not be counted) (approved Nov. 3, 1992).

Nevada's term limits initiative does not provide a date after which terms of service will be counted, although it easily could have stated that it applies to all prior terms of service.

The court in *Hill* concluded only periods of service commencing on or after the effective date of the amendment would be counted as a term for limitation purposes. *Id.* at 361. Besides applying the rule of statutory construction that constitutional amendments operate prospectively unless the language used or the purpose of the provision indicates otherwise, the court also reasoned "with respect to an amendatory act the legislation will not be construed as retroactive when it may be reasonably construed otherwise. The same rule of construction is equally applicable to a constitutional amendment." *Id.* at 361 (citations omitted); *see also State v. Dovey*, 19 Nev. 396, 399 (1885).

Since the initiative fails to include specific language indicating it is intended to be retroactive in effect, it must be applied prospectively. This is especially apparent in light of the Nevada Supreme Court holding: "The right to hold public office is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. *Gilbert v. Breithaupt*, 60 Nev. 162, 165-66, 104 P.2d 183, 185 (1940)." *Nevada Judges Ass'n*, 112 Nev. at 54.

In 1994, the court addressed the term limitation provision imposed on the governor by article 5, section 3 of the Nevada Constitution. In holding a governor who had served two "years" of another governor's term was eligible for reelection since "years" as used in the constitution referred to "official years" rather than "calendar years," the court stated:

Most importantly, we conclude that the people's ability to choose a governor should not be restricted by an ambiguous provision. Petitioners should prevail only if the phrase "years of a term" cannot possibly refer to anything other than "calendar years." If a constitutional provision is capable of being understood in two or more senses by reasonably informed persons, it must be liberally construed in favor of the right of the voters to exercise their electoral choice:

The right to hold public office is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office

"Statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers." *Gilbert v. Breithaupt*, 60 Nev. 162, 165-66, 104 P.2d 183, 185 (1940) (quoting 46 C.J.S. *Officers Sec. 32* at 937 (1928)).

State of Nevada Employees Ass'n v. Lau, 110 Nev. 715, 720, 877 P.2d 531, 535 (1994) (citations omitted).

Since the effective date of the petition would be November 27, 1996, the term limitations will not apply to affected officials elected in the 1996 general election. If approved, term limits would be in effect for the 1997 municipal elections, and the 1998 primary and general elections, and so on.

CONCLUSION TO QUESTION TWO

If the voters approve the Initiative to Limit Terms of State and Local Officers in the general election in November 1996, only periods of service commencing after November 27, 1996, will be counted as a term for limitation purposes.¹⁷

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General

OPINION NO. 96-24 BOARD OF PRISON COMMISSIONERS; PRISONS, NEVADA DEPARTMENT OF: Board is head of Department of prisons, sets policies, and guides the Director of the Department of Prisons. The Director is responsible for administration, including budget. Interlocal agreements and contracts are given effect by the Board. The Board need not hold meetings unless action is required by statute, and it may meet jointly with the Board of Examiners. Board approval of women's prison under S.B. 278 is not required, but the Department of Prisons anticipates seeking Board approval under the request for proposal. The Board serves public interest by guiding prison policies and acting as check on the Director.

Carson City, September 5, 1996

The Honorable Dean Heller, Secretary of State, State of Nevada, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Heller:

You have requested an opinion from this office in response to various questions regarding the role and responsibilities of the Board of Prison Commissioners (Board).

QUESTION ONE

What is meant by the term "head of the department" as used in NRS 209.101(2) to describe the Board?

QUESTION TWO

How does this designation relate to the appointment of the prison director in NRS 209.121 and the delineation of his responsibilities in NRS 209.131?

QUESTION THREE

¹⁷ Officials elected at the general election on November 5, 1996, but who take office at a later date, are not affected by this opinion.

EXHIBIT "3"

Westlaw.

560 P.2d 915
 93 Nev. 92, 560 P.2d 915
 (Cite as: 93 Nev. 92, 560 P.2d 915)

Page 1

C
 Torvinen v. Rollins,
 Nev. 1977.

Supreme Court of Nevada.
 Roy L. TORVINEN, Appellant,

v.
 Ann ROLLINS, as Registrar of Voters, and William
 D. Swackhamer, as Secretary of State, Respondents.
 No. 9433.

March 9, 1977.

In action for declaration that constitutional amendment extending term of district judges did not affect terms of incumbent judges, the Second Judicial District Court, Washoe County, James J. Guinan, J., rendered adverse judgment from which plaintiff appealed. The Supreme Court held that amendment became effective on date votes for amendment were canvassed and had only prospective application, without effect on term of incumbent judges.

Reversed.

West Headnotes

[1] Judges 227 ↪ 7

227 Judges

227I Appointment, Qualification, and Tenure

227k7 k. Term and Tenure of Office in General. Most Cited Cases
 Constitutional amendment increasing elective term of office for district judges became effective on date votes for amendment were canvassed and had only prospective application, without effect on term of incumbent judges. Const. art. 6, § 5.

[2] Constitutional Law 92 ↪ 566

92 Constitutional Law

92III Amendment and Revision of Constitutions
 92III(C) State Constitutions

92III(C)4 Submission to Popular Vote; Initiative

92k566 k. Canvassing or Tabulation of Votes. Most Cited Cases

(Formerly 92k5)

Constitutional amendment becomes effective upon canvass of votes by Supreme Court. Const. art. 16, § 1 et seq.; art. 19, § 2.

[3] Constitutional Law 92 ↪ 630

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(C) Retroactive Operation

92k630 k. In General. Most Cited Cases

(Formerly 92k23)

Generally, constitutional amendment is given only prospective application from its effective date unless intent to make it retrospective clearly appears from its terms.

*92 **916 John Tom Ross and Robert A. Grayson, Carson City, for appellant.
 Robert List, Atty. Gen., Donald Klasic, Deputy Atty. Gen., Carson City, Larry R. Hicks, Dist. Atty., and Russell S. Nash, Jr., Deputy Dist. Atty., Washoe County, Reno, for respondents.

***93 OPINION**

PER CURIAM:

[1] On November, 1976, Nevada voters approved a constitutional amendment which increased the elective term of office for district court judges from four to six years.[FN1] Thereafter, appellant sought a declaratory judgment stating the amendment had no effect on the term of office of incumbent judges. However, the district court ruled the amendment applied retroactively to all judges holding office at the time it was adopted, thereby extending their four year terms to six years. Since we conclude the amendment became effective on the date the votes for the amendment were canvassed and the amend-

560 P.2d 915
 93 Nev. 92, 560 P.2d 915
 (Cite as: 93 Nev. 92, 560 P.2d 915)

Page 2

ment has only prospective application, the district court's judgment is reversed.

FN1. The amendment, now included in article 6, section 5, of Nevada's Constitution, provides in pertinent parts:

'The District Judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of (four Years) 6 years (excepting those elected at said first election) from and including the first Monday of January, next succeeding their election and qualification; . . . See: 1975 Nev. Stats. 1931-34.

Shamberger v. Ferrari, 73 Nev. 201, 314 P.2d 384 (1957), left open the question whether an amendment, such as this, adopted pursuant to article 16 of Nevada's constitution, becomes effective on the date of election or upon the canvassing of the votes by the supreme court. Article 16, section 1, is silent on the subject and only provides: '(If the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall . . . become a part of the Constitution.' However, guidance is given elsewhere in our constitution.

*94 Article 5, section 4, requires the justices of the supreme court to canvass the election returns and declare 'the results of the vote cast upon any question submitted to the electors of the State of Nevada.' This canvass is as much a part of the amendment process as the casting of votes by the electorate, for without it, no determination that the majority had voted favorably for the amendment could be made. See: Opinion of the Justices, 362 Mass. 907, 287 N.E.2d 910 (1972); State v. Kyle, 166 Mo. 287, 65 S.W. 763 (1901). Thus, the canvass is an adjunct to the amendment process, **917 and to hold an amendment becomes effective before the date of canvass would, in the event the canvass showed a different result, thwart the will of the electorate.

[2] We therefore determine a constitutional amendment adopted pursuant to article 16 becomes effective upon the canvass of the votes by the supreme court. See: Torres v. State, 161 Tex. Cr. R. 480, 278 S.W.2d 853 (1955); Opinion of the Justices, 251 Ala. 78, 36 So.2d 499 (1948); City of Duluth v. Duluth St. Ry. Co., 60 Minn. 178, 62 N.W. 267 (1895). This provides uniformity for the effective date of amendments adopted pursuant to article 16 and those adopted pursuant to the initiative procedures of article 19, which specifically mandates such amendments 'become a part of this constitution upon completion of the canvass of votes by the supreme court.' Nev. Const. art. 19, s 2.

[3] As a general rule, a constitutional amendment is to be given only prospective application from its effective date unless the intent to make it retrospective clearly appears from its terms. People v. Elliot, 186 Colo. 65, 525 P.2d 457 (1974); Drennen v. Bennett, 230 Ark. 330, 322 S.W.2d 585 (1959). Here, the amendment is void of any terms indicating the legislature or electorate intended retrospective application. Cf. Rice v. Wadkins, 92 Nev. 631, 555 P.2d 1232 (1976).

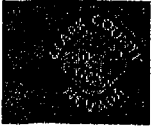
Therefore, the amendment applies prospectively only to election held after its effective date, and the district court's judgment is reversed.

Nev. 1977.
 Torvinen v. Rollins
 93 Nev. 92, 560 P.2d 915

END OF DOCUMENT

EXHIBIT "4"


Search

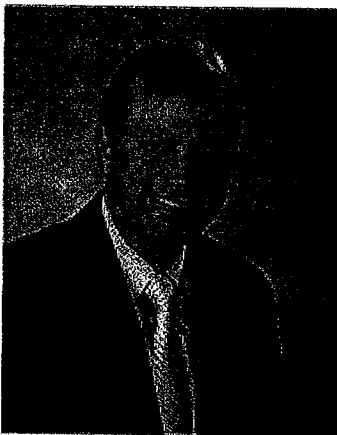


Clark County, NV > County Services > Commission > **Commissioner Bruce Woodbury**

Bruce L. Woodbury

500 Grand Central Parkway
Las Vegas, NV 89106
702-455-3500

 E-mail to <u>Commissioner Woodbury</u>	Citizen Connector: <u>District "A"</u>
---	--



Biography

Clark County Commissioner Bruce L. Woodbury is a native Las Vegan who was appointed in 1981 to Commission District "A". He was elected to his first full term in 1982. His current term of office expires the first Monday in January 2009.

Bruce graduated from Las Vegas High School and attended the University of Utah , where he graduated Phi Kappa Phi, Phi Beta Kappa and Magna Cum Laude. He then attended Stanford School of Law, where he earned his Doctor of Jurisprudence and was a member of the Board of Editors of the Stanford Law Review.

Commissioner Woodbury currently serves in the following capacities:

- Chairman - Regional Transportation Commission
- Member - Regional Flood Control District
- Chairman - Big Bend Water District Board of Trustees
- Vice Chair – Kyle Canyon Water District

As a Clark County Commissioner, Bruce also serves on the following boards:

- Las Vegas Valley Water District Board of Directors
- University Medical Center Board of Trustees
- Clark County Liquor & Gaming Licensing Board
- Clark County Water Reclamation District
- Member – Henderson Chamber of Commerce Board of Directors
- Member – Las Vegas Springs Preserve
- Member – Las Vegas Centennial Celebration Executive Committee

Some of Bruce's past accomplishments include:

- Chairman - Board of County Commissioners (1989 - 1990 & 1999 - 2000)
- Chairman - Clark County Liquor & Gaming Licensing Board
- Chairman - Clark County Air Quality Management Board
- Chairman - Environmental Quality Policy Review Board
- Vice Chairman - Clark County Water Reclamation District Board of Trustees
- Member - Las Vegas Convention and Visitors Authority
- Member - Citizens Environmental Resources Advisory Board
- Member - General Obligation Bond Commission
- Member - Southern Nevada District Board of Health
- County Representative - Conservation District Board of Supervisors
- Member - Southern Nevada Water Authority
- Member - Colorado River Commission
- Member - Southern Nevada Strategic Planning Authority
- Member - Southern Nevada Regional Planning Coalition

Other special boards of which Bruce was a member include:

- Appointed and commissioned by Governor Miller in January 1994 to serve as a member of the National and Community Service Commission for the State of Nevada for a two-year term
- Appointed by Governor Bryan to the Blue Ribbon Henderson Commission in 1988
- Appointed by Governor Bryan to Governor's Commission on Aging
- Appointed by Governors Bryan and Miller as a member of Eldorado Valley Advisory Board
- Appointed by Secretary of Interior as member of the Las Vegas District Advisory Council

As a community-minded citizen, Bruce also has been heavily involved in local civic and youth organizations, including:

- Past Chairman - Civilian Military Council
- Past President - Las Vegas Host Lions Club
- Member - Boulder City Elks Lodge
- Member - Las Vegas Executives' Association
- Member - Boulder City Chamber of Commerce
- Member – Board of Directors Henderson Chamber of Commerce
- Honorary Member - Boulder City Rotary Club
- Honorary Member - Advisory Board of Discovery, the Children's Museum
- Former Member - Board of Directors of Nevada Special Olympics
- Former youth coach for baseball, basketball and softball in Las Vegas and Boulder City
- Former Member - Board of Directors, American Red Cross, Las Vegas Chapter
- Member - Board of Directors, Southwest USA Bank

Bruce is a partner in the law firm Jolley, Urga, Wirth, Woodbury and Standish. He and his wife Rose, who have resided in Boulder City since 1978, have seven children: Rodney, Melissa, Wendy, Rebecca, Benjamin, Adam, and Ashley; and fifteen grandchildren: Joseph, Samuel, Anna, Eliza, Jess, Elias, Sylvie, Rory, Seth, Rose, Bruce, Jacob, Isabella, Naomi, and Cindy. Bruce's interests and hobbies include sports, reading and joining his children and grandchildren for their activities.

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EXHIBIT "5"

Partisan Office

State of Nevada

Declaration of Candidacy of

BRUCE L. WOODBURY

For the Office of

COUNTY COMMISSION DISTRICT A

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

For the purpose of having my name placed on the official ballot as a candidate for the REPUBLICAN Party nomination for the office of County Commission District A, I, the undersigned BRUCE L WOODBURY, do swear or affirm that I reside at No. 1501 San Felipe Dr., in the City or Town of Boulder City, County of Clark, State of Nevada; (mailing address if different: ---); that my actual residence therein began on a date 30 days or more before the date of the close of filing of declarations of candidacy for this office; that I am registered as a member of the REPUBLICAN Party; that I have not, in violation of the provisions of NRS 293.176, changed the designation of my political party or political party affiliation on an official application to register to vote in any state since September 1 before the closing filing date for this election; that I generally believe in and intend to support the concepts found in the principles and policies of that political party in the coming election; that if nominated as a candidate of the REPUBLICAN Party at the ensuing election, I will accept that nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this state; that I will qualify for the office if elected thereto; and that I understand that my name will appear on all ballots as designated in this declaration.

Bruce L. Woodbury
 Signature of Candidate for Office

Subscribed and sworn to before me this 15th day
 of May, 1996.

WOODBURY, BRUCE

Designation of name to appear on ballot

WOODBURY, BRUCE

If elected, designation of name to appear on certificate of election

Julie Jenkins
 Notary Public (or other person authorized to administer an oath)

Partisan Office

State of Nevada

**Declaration of Candidacy of
Bruce L. Woodbury**

For the Office of
County Commission Dist. A

STATE OF NEVADA
COUNTY OF CLARK

For the purpose of having my name placed on the official ballot as a candidate for the Republican Party nomination for the office of County Commission Dist. A, I, the undersigned Bruce L. Woodbury, do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at 1501 San Felipe Drive, in the City or Town of Boulder City, County of Clark, State of Nevada; that my actual, as opposed to constructive, residence in the state, district, county, township, city or other area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office; that I am registered as a member of the Republican Party; that I have not, in violation of the provisions of NRS 293.176, changed the designation of my political party or political party affiliation on an official application to register to vote in any state since September 1 before the closing filing date for this election; that I generally believe in and intend to support the concepts found in the principles and policies of that political party in the coming election; that if nominated as a candidate of the Republican Party at the ensuing election, I will accept that nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this state; that I will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the constitution and laws of this state concerning the number of years or terms for which a person may hold the office, and that I understand that my name will appear on all ballots as designated in this declaration

Bruce L. Woodbury
Signature of candidate for office

Bruce L. Woodbury
Designation of name to appear on ballot

Bruce L. Woodbury
If elected, designation of name to appear on certificate of election

1501 San Felipe Drive - Boulder City, NV 89005
Mailing address if different

Subscribed and sworn to before me this 3rd
day of the month of May, of the year 2000

Matthew Smith
Notary Public or other person authorized to administer an oath

Declaration of Candidacy of

Bruce L Woodbury

For the Office of

County Commissioner District A

STATE OF NEVADA

COUNTY OF CLARK

For the purpose of having my name placed on the official ballot as a candidate for the Republican Party nomination for the office of County Commissioner District A, I, the undersigned Bruce L Woodbury, do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at 1501 San Felipe Dr, in the City or Town of Boulder City, County of Clark, State of Nevada; that my actual, as opposed to constructive, residence in the state, district, county, township, city or other area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office, in addition to any other requirements required by law; that my telephone number is 293-3674, and the address at which I receive mail, if different than my residence, is 1501 San Felipe Dr, Boulder City NV 89005; that I am registered as a member of the Republican Party; that I am a qualified elector pursuant to Section 1 of Article 2 of the Constitution of the State of Nevada; that if I have ever been convicted of treason or a felony, my civil rights have been restored by a court of competent jurisdiction; that I have not, in violation of the provisions of NRS 293.176, changed the designation of my political party or political party affiliation on an official application to register to vote in any state since September 1 before the closing filing date for this election; that I generally believe in and intend to support the concepts found in the principles and policies of that political party in the coming election; that if nominated as a candidate of the Republican Party at the ensuing election, I will accept that nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this state; that I will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the constitution and laws of this state concerning the number of years or terms for which a person may hold the office; and that I understand that my name will appear on all ballots as designated in this declaration.

Bruce L Woodbury
Signature of candidate for office

Bruce Woodbury
Designation of name to appear on ballot

Bruce L Woodbury
If elected, designation of name to appear on certificate of election

s1@juwww.com
E-mail address (optional)

Subscribed and sworn to before me this 5th
day of the month of May of the year 2004

Taleric S. Melis
Notary Public or other person authorized to administer oaths

EXHIBIT "6"

State of Nevada Declaration of Candidacy of

Bruce L. Woodbury

For the Office of

County Commissioner District A

Major Political Party - Partisan Office

Secretary of State Ross Miller

STATE OF NEVADA
COUNTY OF CLARK

For the purpose of having my name placed on the official ballot as a candidate for the Republican Party nomination for the office of County Commissioner District A, I, the undersigned Bruce L. Woodbury, do swear or affirm under penalty of perjury that I actually, as opposed to constructively, reside at 1501 San Felipe Dr., in the City or Town of Boulder City, County of Clark, State of Nevada; that my actual, as opposed to constructive, residence in the state, district, county, township, city or other area prescribed by law to which the office pertains began on a date at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office, in addition to any other requirements required by law; that my telephone number is (702) 293-5455, and the address at which I receive mail, if different than my residence, is _____; that I am registered as a member of the Republican Party; that I am a qualified elector pursuant to Section 1 of Article 2 of the Constitution of the State of Nevada; that if I have ever been convicted of treason or a felony, my civil rights have been restored by a court of competent jurisdiction; that I have not, in violation of the provisions of NRS 293.176, changed the designation of my political party or political party affiliation on an official application to register to vote in any state since December 30th before the closing filing date for this election; that I generally believe in and intend to support the concepts found in the principles and policies of that political party in the coming election; that if nominated as a candidate of the Republican Party at the ensuing election, I will accept that nomination and not withdraw; that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practices in campaigns and elections in this state; that I will qualify for the office if elected thereto, including, but not limited to, complying with any limitation prescribed by the Constitution and laws of this State concerning the number of years or terms for which a person may hold the office; and that I understand that my name will appear on all ballots as designated in this declaration.

Bruce L. Woodbury
Signature of candidate for office

Bruce L. Woodbury
Designation of name to appear on ballot

Bruce L. Woodbury
Designation of name to appear on certificate of election

lw@juww.com
E-mail address (optional)

Subscribed and sworn or affirmed to before me this 6th day of the month of May of the year 2008.

Bruce L. Woodbury
Name of Candidate

Kenneth M. Durso
Notary Public or other person authorized to administer an oath

EXHIBIT "7"

2008 MAY 29 A 9 19

**Steve Sisolak
29 Burning Tree Ct.
Las Vegas, NV 89113**

May 29, 2008

Mr. Larry Lomax
Registrar of Voters
965 Trade Drive
Suite A
North Las Vegas, NV 89030-7802

RE: Challenge to Candidacy of Bruce Woodbury

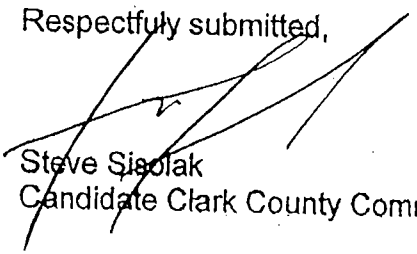
Dear Mr. Lomax,

Please be advised that pursuant to NRS 293.182 and the Nevada Constitution, Article 15, Section 3, as a candidate, I Steve Sisolak hereby challenge the Candidacy of Bruce Woodbury, candidate for the office Clark County Commission District A.

Pursuant to NRS 293.182(2b and 2c) attached hereto is my affidavit in support of this challenge, the official general election results for Clark County for the years 1996, 2000, and 2004, respectively and the applicable section of Article 15, Sec.3 of the Nevada Constituion. Also attached are MR. Woodbury's declaration of candidacy for 1996, 2000, 2004 and 2008. I am also attaching a copy of the NEVADA BALLOT QUESTIONS from 1994, including the question and the full text of the measure, "Initiative to Limit Terms of State and Local Officers".

Should you have any questions, please do not hesitate to contact me at (702) 275-2498.

Respectfully submitted,



Steve Sisolak
Candidate Clark County Commission, Dist. A

State of Nevada)

County of Clark)

I, Steve Sisolak, candidate for Clark County Commission District A, do solemnly swear and affirm that:

1. As a qualified elector and under NRS 293.182, I hereby challenge the candidacy of Bruce Woodbury, candidate for Clark County Commission District A.
2. This challenge is based upon the knowledge and belief that Mr. Woodbury ran for Clark County Commission District A in 1996, was elected and took office in January 1997.
3. This challenge is based upon the knowledge and belief that Mr. Woodbury ran for Clark County Commission District A in 2000 and was elected and took office in January 2001.
4. This challenge is based upon the knowledge and belief that Mr. Woodbury ran for Clark County Commission District A in 2004 and was elected and took office in January 2005.
5. This challenge is based upon the knowledge and belief that Mr. Woodbury is currently running as a candidate for Clark County Commission District A.
6. That pursuant to Article 15, Section 3 of the Nevada Constitution, no person may be elected to any state office of local governing body who has served in that office or at the expiration of his current term, if he is so serving will have served, 12 years or more, unless the permissible number of terms of service is otherwise specified in the Nevada Constitution.

DATED this 29 day of May, 2008



STEVE SISOLAK

Subscribed and sworn to before me on this 29 day of May 2008.



NOTARY PUBLIC



EXHIBIT "8"



OFFICE OF THE DISTRICT ATTORNEY

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

May 27, 2008

Matthew M. Griffin
Deputy Secretary of State
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4786

Re: Challenge to the Candidacies of Thalia Dondero, Ruth Johnson,
Mary Beth Scow, and Bruce Woodbury

Dear Mr. Griffin:

You have filed, pursuant to NRS 293.182, challenges to the candidacies of Thalia Dondero, Ruth Johnson, Mary Beth Scow, and Bruce Woodbury. These challenges are based on your assertion that these candidacies are in violation of Article 15, Section 3 of the Nevada Constitution. That section, which was adopted pursuant to an initiative and effective on November 27, 1996, prohibits an official being elected to state or local governing bodies if he has "served in that office or the expiration of his current term if he is so serving will have served, 12 years or more." By implication from your challenge, you are contending that the term these officials won in the November, 1996 election should be counted within the 12 year limitation period.

Courts considering term limitation initiatives have uniformly held that, in the absence of express language in the initiative regarding its effective date, such provisions shall be given prospective application only. There seems to be little debate on that point. The question of what term should be considered the initial term, for purposes of term limitations, is not so clear cut and can fairly said to be ambiguous. Language in a term limit amendment is ambiguous if it is "reasonably susceptible to more than one interpretation." *Davidson v. Sandstrom*, 83 P.2d 648 (Colo. 2004) (construing that state's term limits amendment to its constitution).

May 27, 2008

Page 2

If the intent of the voters on a term limits initiative cannot be discerned from the language, "courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment." *Id.* A court may determine this "by considering other relevant materials such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislative." *Davidson, supra* (relying, in part, on attorney general's description of scope of effect). In addition, the circumstances surrounding a vote on term limits are to be taken into account when construing its application. *See Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997), cert den. 523 U.S. 1021, 118 S. Ct. 1302 (1998)(holding that representations in opposition materials and extensive media attention was sufficient notice of scope of application even though express language of amendment did not say "lifetime").

In Nevada, prior to the question being voted on a second time in 1996, the Attorney General issued an opinion, based upon a previous Nevada Supreme Court case, opining that the measure would have prospective application only. This opinion was released to the public before the election, and was not challenged at the time. The opinion was issued to a district attorney who only represented officials who customarily took their oaths of office in January. Based on language in that opinion ("[T]erm limitations will not apply to affected officials elected in the 1996 general election. If approved, term limits would be in effect for the 1997 municipal elections, and the 1998 primary and general elections, and so on."), local legislative office holders have for years assumed that terms held by officials elected in 1996 would not count. The main proponent of the term limits initiative has also said that that terms won in 1996 were not intended to be included in the scope of this amendment.

It is now our impression that the Attorney General reads the language of that office's opinion to apply only to members of the Assembly and the Senate, whose terms, regardless of when they are sworn in, begin immediately after the November election. In reviewing the ballot question submitted to the voters, nothing in that measure indicates that the initial application to assembly and senators would or should be treated in a different fashion than it would be to local officials, and it is unlikely that voters would have discerned such a distinction.

Treating Assembly and Senate officers differently than local legislative officials raise the question of whether such a distinction violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The Equal Protection Clause keeps governmental decisionmakers from treating differently persons who are in all relevant aspects alike. Where, as here, the classification system does not create any suspect class or affect fundamental rights, courts will uphold such a system as long as it is a rational means of promoting a legitimate governmental interest or purpose. *State ex rel. Johnson v. Gale*, 734 NW2d 290 (Neb. 2001)("even applying minimal scrutiny, disqualifying only second-term legislators midway through their term is not relationally related to the main purpose of term limits: to eliminate incumbent advantage.")

May 27, 2008

Page 3

No distinction between state and local legislators was provided, however, in either the ballot language or in the campaign material, at the time that the initiative was passed, and no governmental purpose is apparent from treating them differently now. Where a constitutional provision or statute may be construed in two ways, one offensive to the U.S. Constitution and one not, the Nevada Supreme Court will ordinarily adopt the construction which favors constitutionality, thus permitting the state law or constitutional provision to operate in a manner compatible with the U.S. Constitution. This is especially true in matters that affect a candidate's right to run for office. In *State ex rel. Santini v. Swackhamer*, 90 Nev. 153, 521 P.2d 568 (1974), the Nevada Supreme Court construed the limits on a judicial officer running for a nonjudicial election to be mean only *state* offices but not *federal* offices, because a more inclusive construction would have violated the U.S. Constitution. Again, in *State ex rel. Schur v. Payne*, 57 Nev. 286, 63 P.2d 921 (1937), the Court construed the word "district" in the Nevada Constitution to not include "township," allowing a candidate to run for Justice of the Peace, although he had not yet met the residency requirement there.

More to the point, in *Nevada Judges Association v. Lau*, 112 Nev. 51, 910 P.2d 898 (1996), the Court outlined the standard of review when judging candidate qualifications:

There is little doubt that candidate eligibility requirements implicate basic constitutional rights, as the exclusion of candidates burdens voters' freedom to vote for the candidate of their choice. "The right to hold public office is one of the valued rights of citizenship. The exercise of the right should not be declared prohibited or curtailed except by plain provision of law. Ambiguities are to be resolved in favor of eligibility to office.

Id. at 55, 910 P.2d at 901.

As events have evolved, it has developed that the question of initial application affects only a handful of officials in Clark County. Despite the long held belief that term limited officials could run in 2006, there remain only four officials who were elected in 1996 and who still remain in office and seek an additional term. We are informed that they have done so with the intention of this being their last term and without intention of challenging the application of term limits to them in the future. Based on the information available to the voters in 1996 when they approved this measure and which was not

....
....

May 27, 2008
Page 4

previously challenged, because the issue affects a limited number of candidates, and most important, because ambiguities should be resolved in favor of candidacy when possible, this office finds that probable cause does not exist to remove the challenged candidates from the ballot.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Roger". The signature is written in a cursive, somewhat stylized font.

DAVID ROGER
District Attorney

DR/ab

EXHIBIT "9"



OFFICE OF THE DISTRICT ATTORNEY
CIVIL DIVISION

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

MARY-ANNE MILLER
County Counsel

May 29, 2008

Steve Sisolak
29 Burning Tree Court
Las Vegas, NV 89113

Re: Challenge to Candidacy of Bruce Woodbury

Dear Mr. Sisolak:

This letter acknowledges the receipt in our office of the above referenced challenge that you filed with the Registrar of Voters this date. For the same reasons expressed in the attached May 27, 2008 letter from David Roger to the Deputy Secretary of State, we find no probable cause to proceed to court on this challenge.

Sincerely,

DAVID ROGER
DISTRICT ATTORNEY

By: 

MARY-ANNE MILLER
County Counsel

MAM:ab



OFFICE OF THE DISTRICT ATTORNEY

DAVID ROGER
District Attorney

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

May 27, 2008

Matthew M. Griffin
Deputy Secretary of State
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4786

Re: Challenge to the Candidacies of Thalia Dondero, Ruth Johnson,
Mary Beth Scow, and Bruce Woodbury

Dear Mr. Griffin:

You have filed, pursuant to NRS 293.182, challenges to the candidacies of Thalia Dondero, Ruth Johnson, Mary Beth Scow, and Bruce Woodbury. These challenges are based on your assertion that these candidacies are in violation of Article 15, Section 3 of the Nevada Constitution. That section, which was adopted pursuant to an initiative and effective on November 27, 1996, prohibits an official being elected to state or local governing bodies if he has "served in that office or the expiration of his current term if he is so serving will have served, 12 years or more." By implication from your challenge, you are contending that the term these officials won in the November, 1996 election should be counted within the 12 year limitation period.

Courts considering term limitation initiatives have uniformly held that, in the absence of express language in the initiative regarding its effective date, such provisions shall be given prospective application only. There seems to be little debate on that point. The question of what term should be considered the initial term, for purposes of term limitations, is not so clear cut and can fairly said to be ambiguous. Language in a term limit amendment is ambiguous if it is "reasonably susceptible to more than one interpretation." *Davidson v. Sandstrom*, 83 P.2d 648 (Colo. 2004) (construing that state's term limits amendment to its constitution).

5/14
CID → [initials]
5/28
5 DAs
5/29

May 27, 2008

Page 2

If the intent of the voters on a term limits initiative cannot be discerned from the language, "courts should construe the amendment in light of the objective sought to be achieved and the mischief to be avoided by the amendment." *Id.* A court may determine this "by considering other relevant materials such as the ballot title and submission clause and the biennial 'Bluebook,' which is the analysis of ballot proposals prepared by the legislative." *Davidson, supra* (relying, in part, on attorney general's description of scope of effect). In addition, the circumstances surrounding a vote on term limits are to be taken into account when construing its application. *See Bates v. Jones*, 131 F.3d 843 (9th Cir. 1997), cert den. 523 U.S. 1021, 118 S. Ct. 1302 (1998) (holding that representations in opposition materials and extensive media attention was sufficient notice of scope of application even though express language of amendment did not say "lifetime").

In Nevada, prior to the question being voted on a second time in 1996, the Attorney General issued an opinion, based upon a previous Nevada Supreme Court case, opining that the measure would have prospective application only. This opinion was released to the public before the election, and was not challenged at the time. The opinion was issued to a district attorney who only represented officials who customarily took their oaths of office in January. Based on language in that opinion ("[T]erm limitations will not apply to affected officials elected in the 1996 general election. If approved, term limits would be in effect for the 1997 municipal elections, and the 1998 primary and general elections, and so on."), local legislative office holders have for years assumed that terms held by officials elected in 1996 would not count. The main proponent of the term limits initiative has also said that that terms won in 1996 were not intended to be included in the scope of this amendment.

It is now our impression that the Attorney General reads the language of that office's opinion to apply only to members of the Assembly and the Senate, whose terms, regardless of when they are sworn in, begin immediately after the November election. In reviewing the ballot question submitted to the voters, nothing in that measure indicates that the initial application to assembly and senators would or should be treated in a different fashion than it would be to local officials, and it is unlikely that voters would have discerned such a distinction.

Treating Assembly and Senate officers differently than local legislative officials raise the question of whether such a distinction violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The Equal Protection Clause keeps governmental decisionmakers from treating differently persons who are in all relevant aspects alike. Where, as here, the classification system does not create any suspect class or affect fundamental rights, courts will uphold such a system as long as it is a rational means of promoting a legitimate governmental interest or purpose. *State ex rel. Johnson v. Gale*, 734 NW2d 290 (Neb. 2001) ("even applying minimal scrutiny, disqualifying only second-term legislators midway through their term is not relationally related to the main purpose of term limits: to eliminate incumbent advantage.")

No distinction between state and local legislators was provided, however, in either the ballot language or in the campaign material, at the time that the initiative was passed, and no governmental purpose is apparent from treating them differently now. Where a constitutional provision or statute may be construed in two ways, one offensive to the U.S. Constitution and one not, the Nevada Supreme Court will ordinarily adopt the construction which favors constitutionality, thus permitting the state law or constitutional provision to operate in a manner compatible with the U.S. Constitution. This is especially true in matters that affect a candidate's right to run for office. In *State ex rel. Santini v. Swackhamer*, 90 Nev. 153, 521 P.2d 568 (1974), the Nevada Supreme Court construed the limits on a judicial officer running for a nonjudicial election to be mean only *state* offices but not *federal* offices, because a more inclusive construction would have violated the U.S. Constitution. Again, in *State ex rel. Schur v. Payne*, 57 Nev. 286, 63 P.2d 921 (1937), the Court construed the word "district" in the Nevada Constitution to not include "township," allowing a candidate to run for Justice of the Peace, although he had not yet met the residency requirement there.

More to the point, in *Nevada Judges Association v. Lau*, 112 Nev. 51, 910 P.2d 898 (1996), the Court outlined the standard of review when judging candidate qualifications:

There is little doubt that candidate eligibility requirements implicate basic constitutional rights, as the exclusion of candidates burdens voters' freedom to vote for the candidate of their choice. "The right to hold public office is one of the valued rights of citizenship. The exercise of the right should not be declared prohibited or curtailed except by plain provision of law. Ambiguities are to be resolved in favor of eligibility to office.

Id. at 55, 910 P.2d at 901.

As events have evolved, it has developed that the question of initial application affects only a handful of officials in Clark County. Despite the long held belief that term limited officials could run in 2006, there remain only four officials who were elected in 1996 and who still remain in office and seek an additional term. We are informed that they have done so with the intention of this being their last term and without intention of challenging the application of term limits to them in the future. Based on the information available to the voters in 1996 when they approved this measure and which was not

....
....

May 27, 2008
Page 4

previously challenged, because the issue affects a limited number of candidates, and most important, because ambiguities should be resolved in favor of candidacy when possible, this office finds that probable cause does not exist to remove the challenged candidates from the ballot.

Very truly yours,

A handwritten signature in black ink that reads "David Roger". The signature is written in a cursive, slightly slanted style.

DAVID ROGER
District Attorney

DR/ab

EXHIBIT "10"



Howard Rosenberg, Vice Chair

District 10 - Washoe County

University of Nevada, Reno
 Art Department, MS 224
 Reno, NV 89557
 Phone: (775) 784-6836
 Fax: (775) 825-1399
 E-mail: howardr@unr.nevada.edu

Regent Howard Rosenberg was elected to the Board of Regents in 1996 and currently serves as the vice chair.

Currently Regent Rosenberg is a professor of art, art education, design and film studies as well as the director of advisement in the art department for the University of Nevada, Reno.

Education

- University of California, Los Angeles
 - Film Studies Program/American Film Institute, 1977/1983/1987/1995
 - Film Studies Program/Screen Director's Guild, 1980
- Harvard University Graduate Schools of Education and Design
 - CAS Program, educational administration, 1968
 - Ed.M./M.A., fine arts education/design, 1965
- Massachusetts College of Art
 - B.S. education/fine arts, 1962

Board of Regents' Service

- Past Vice Chair, Board of Regents
- AB 220 Henderson State College Study Committee
- Academic, Research & Student Affairs Committee
- ad hoc Community College of Southern Nevada (CCSN) Presidential Search Committee
- ad hoc Great Basin College (GBC) Presidential Search Committee
- ad hoc Truckee Meadows Community College (TMCC) Presidential Search Committee
- ad hoc University of Nevada, Reno (UNR) Presidential Search Committee
- Appeals Committee for the Millennium Scholarship
- Audit Committee
- Finance and Planning Committee
- Investment Committee

- Millennium Bound Outreach Center Task Force

Academic Experience

- University of Nevada, Reno: 1967-Present
 - Director of Advisement, Department of Art
 - Chairman, Department of Art
 - Professor of Design, Art Education and Film Studies
 - Associate Professor of Design, Art Education and Film Studies
 - Lecturer in Design, Art Education and Film Studies
 - Instructor in Design and Art Education
- Butera School of Art: 1966-1967
- Art Teacher/Preschool-Grade 8: 1964-1966
South Orangetown Central School District Number 1, Orangeburg, NY
- Graduate Program Specialist, Art/Grades 3-8: 1963-1964
Newton Massachusetts Public School, Newton, MA
- Art Teacher/Grades 7-12: 1962-1963
Pentucket Regional Junior/Senior High School, West Newbury, MA

Professional Experience

- Arts and Entertainment Critic: 1993-1997
KSRN Radio, Reno, NV
Reported three times a day/five days a week on local and national entertainment in regard to film, television, legitimate theater and films.
- Chairman, City 2000: 1995-1998
Reno Arts Commission
Chaired an eight-member committee charged with consulting with and advising the Reno City Council on the cultural and artistic merits of the visual and performing arts displayed and performed in the Reno area such as the Uptown, Downtown, Artown Arts Festival presently in its third year. Increased the City 2000 Reno Arts Commission's yearly budget from \$75,000 to \$125,000.
- Media Critic: 1996-1997
Reno News and Review, Reno, NV
Authored a weekly column, "The Media Man," concerning analytical and critical approaches to national and local print and electronic media, its responsibilities, discharge(s) of these responsibilities, possibilities for improvement, programming, etc.
- Arts and Entertainment Critic: 1972-1994
KTVN Television, Reno, NV
Appeared three times a week on early news Live At 5:30 p.m., twice a week on First News Program at 6:00 a.m., and Saturdays on Weekend News at 6:30 p.m., to provide critical analyses and evaluations of art openings, exhibits, cultural events, films, television programming and live performances.
- Howard Rosenberg on Film: 1990-1992
KTVN Television, Reno, NV

- Hosted a monthly, half-hour, prime time Saturday at 7:30 p.m. program, covering contemporary films to be released, through advance footage and interviews with actors, directors, writers, producers and technical crew members.
- Channel 2 Movie Club Host: 1983-1990
KTVN Television, Reno, NV
Hosted a weekly late night movie program to instruct and entertain viewers of feature film shows on television. Each film was screened and cut in four places to explain how it was filmed, why the director made certain choices, what might have happened if other choices had been made as well as relate these older films to contemporary work.
 - Contributor: 1987-1988
KOH Radio, Reno, NV
Appeared daily for a three-minute insert concerning visual arts openings and exhibits, cultural events, commercial entertainment and special events in the Reno-Sparks-Tahoe area.
 - Film Critic: 1991-1992
KSNV Radio, Reno, NV
Appeared twice daily for 90-second inserts concerning visual arts and cultural events, entertainment news, motion picture, television and live performance reviews, and special events in the Reno-Sparks-Tahoe area. Appeared once a week to offer critical analyses of contemporary motion pictures.
 - Film Critic: 1987-1988
KCRA Television, Sacramento, CA
Contributed critical analyses of contemporary motion picture releases twice a week on KCRA Television's TV Lite.
 - Film Critic: 1981-1985
KCRA Television, Sacramento, CA
Appeared as a weekly contributor to KCRA Television's weeknight and evening programs with critical analyses of contemporary motion pictures releases.
 - Film Component Coordinator: 1975-1986
United States Army Music and Theatre Program, Washington D.C.
Visited major installations, smaller network components and combat batteries throughout the United States, Europe and the Far East Army Commands. Brought a series of specifically designed film programs lasting from two days through several weeks for the enlisted personnel in installations including larger commands such as Camp Richardson, Anchorage, AL, and smaller installations such as the DMZ at Panmunjon, South Korea.
 - Columnist: 1982-1988
The Hollywood Reporter, Los Angeles, CA
Authored a weekly column on gaming and casino industry news and contributed reviews of performers and productions in the Reno-Tahoe area.
 - Contributor: 1984-1986
Reno Gazette Journal, Reno, NV
Contributed bi-weekly interview pieces concerning above the line creative and below the line technical people involved in contemporary films in commercial first-run release.
 - Contributor: 1988-1991

The Sparks Daily Tribune, Sparks, NV
Authored a weekly column, "I Was Thinking," reflecting on various subjects such as travel, tourism, education, current events and entertainment.

Professional Affiliations

- Academy of Motion Picture Arts and Sciences
- National Academy of Television Arts and Sciences
- American Film Institute
- American Association of University Professors
- Los Angeles Film Critics Association
- National Art Education Association
- Art Educators of Nevada Association
- Nevada Alliance for Arts Education

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EXHIBIT "11"



Washoe County District Attorney

**RICHARD A. GAMMICK
DISTRICT ATTORNEY**

May 23, 2008

Mr. Ross Miller, Esq.
Secretary of State
101 North Carson Street, Suite 3
Carson City, Nevada 89701-4786

Re: Challenge to Candidacy of Howard Rosenberg

Dear Mr. Miller:

I write in response to the above-referenced challenge which was issued by your office on May 22, 2008. Following a careful legal analysis of NRS 293.182, the language of Section 3 of Article 15 of the Constitution of the State of Nevada, relevant case law and the published advice of the Attorney General of the State of Nevada, I cannot conclude that probable cause exists to support the challenge of the candidacy of Howard Rosenberg for the elected office of Regent, State University District 10. Therefore, I am writing to you with the basis for my decision to not pursue this matter judicially.

As you are aware, NRS 293.182 provides that the District Attorney, following receipt from the filing officer of a timely challenge by an elector to a candidacy for elective office, must determine if probable cause exists to support the challenge. If the District Attorney determines that probable cause exists to support the challenge, he shall, not later than five working days after receiving it, petition a court of competent jurisdiction to order the challenged candidate to appear before the court at a hearing to show cause why the challenge is not valid. As you are further aware, Section 3 of Article 15 of the Constitution of the State of Nevada¹ imposes term limitations on certain elected officials within the State of Nevada. The language of the constitutional provision is clear that all elected state officers and certain elected local officials are included within its scope. This office believes it reasonable to assume that elected regents of the university system are included under the provision's applicability to state officers. Requiring additional

¹ Section 3, Article 15 of the Nevada Constitution provides in relevant part:

No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution.

Mr. Ross Miller, Esq.
May 23, 2008
Page 2

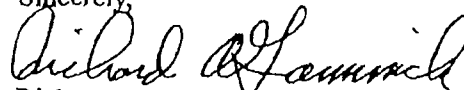
analysis, however, is the question of the starting date of the effectiveness of the Constitution's term limitation restriction.

We believe that question is best analyzed in reliance upon the only relevant decision of the Nevada Supreme Court of which we are aware that determined the effective date of a constitutional amendment impacting the terms of elected officials. In Torvinen v. Rollins, 93 Nev. 92, 560 P.2d 915 (1977), the Supreme Court was faced with the question of whether an amendment to the Nevada Constitution which extended the term of an elected judge from four to six years had any impact on the term of an incumbent judge. In its opinion, the court clearly held that a constitutional amendment becomes effective upon the canvass of the votes by the Supreme Court and that it does not have any impact on the term of an incumbent judge. Applying the rationale of the Torvinen decision to the matter surrounding Mr. Rosenberg's candidacy, as the Supreme Court canvassed the 1996 votes on November 27, 1996, the constitutional amendment took effect that day and it did so with only prospective application.

The Torvinen court went further in its opinion. In its conclusion, the Supreme Court reiterated its holding that a constitutional amendment applies prospectively. It went on to state, however, that this prospective application applies only to an election held after the amendment's effective date. The Torvinen decision's conclusion is followed by the Attorney General in Opinion 96-23 (8-9-1996), which concluded that "term limits ... [are] in effect for the 1997 municipal elections, and the 1998 primary and general elections, and so on." It is also consistent with my belief that counting an elected individual's years served from the date of the first election following the effective date of the term limit provision logically flows from the language of Section 3 of Article 15 of the Nevada Constitution, such language appearing to focus on the election process itself ("No person may be elected"). If the situation were otherwise, Section 3 of Article 15 of Nevada's Constitution would be given impermissible retroactive effect in its application to an election held, and to a successfully elected candidate, before the law's effective date of November 27, 1996.

For the foregoing reasons, I reiterate that I am of the opinion that probable cause does not exist in support of the challenge of Mr. Rosenberg's candidacy. Therefore, I will not be pursuing this matter further.

Sincerely,



Richard A. Gammick
District Attorney

cc: Bill Bilyeu
Dan Burk
Catherine Cortez-Masto

EXHIBIT "12"

ROSS MILLER
Secretary of State

NICOLE J. LAMBOLEY
Chief Deputy Secretary
of State

CHRIS LEE
Deputy Secretary for
Southern Nevada

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

MATTHEW M. GRIFFIN
Deputy Secretary
for Elections

KATE THOMAS
Deputy Secretary
for Operations

May 15, 2008

Donna Giles, Clerk-Treasurer
398 Main Street
P.O. Box 820
Lovelock, Nevada 89419-0820

RE: Challenge to Candidacy of Todd A. Plimpton

Dear Donna:

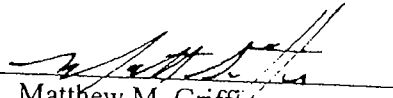
Please be advised that pursuant to NRS 293.182 and Article 15, Section 3 of the Nevada Constitution, the Secretary of State hereby challenges the candidacy of Todd A. Plimpton candidate for the office of School Trustee, Seat B.

Pursuant to NRS 293.182 (2)(b), attached hereto is my affidavit in support of this challenge, the Official Primary Election Results for Pershing County for 2004, the Official General Election Results for 2000, Declarations of Candidacy of Todd A. Plimpton for 1996, 2000, 2004 and 2008, and the applicable section of Article 15, Sec. 3 of the Nevada Constitution.

Should you have any questions, please do not hesitate to contact this office.

Respectfully,

ROSS MILLER
Secretary of State

By: 
Matthew M. Griffin
Deputy Secretary for Elections

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4756
Telephone: (775) 854-6708
Fax: (775) 854-6709

COMMERCIAL RECORDINGS
MEYER'S ANNEX OFFICE
202 N. Carson Street
Carson City, Nevada 89701-4751
Telephone: (775) 854-7755
Fax: (775) 854-7756

LAS VEGAS OFFICE
555 E. Washington Avenue
Las Vegas, Nevada 89101-1000
SECURITIES - Suite 1000
Telephone: (702) 456-2558
Fax: (702) 456-2558
CORPORATIONS - Suite 1000
Telephone: (702) 456-2558
Fax: (702) 456-2558

SECURITIES SATELLITE OFFICE
1755 E. Plumb Lane, Suite 231
Reno, Nevada 89502-6691
Telephone: (775) 854-1500
Fax: (775) 854-1500

Case No. CV 08-10523

2008 MAY 20 PM 4:43

Dept. No. 1

DISTRICT COURT CLERK

Cleric

**IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF PERSHING**

THE STATE OF NEVADA, <i>ex rel.</i>)
Jim C. Shirley, Pershing County)
District Attorney,)
)
Petitioner,)
)
v.)
)
TODD A. PLIMPTON, an Individual,)
)
Respondent.)

**PETITION FOR ORDER TO SHOW CAUSE REGARDING THE
VALIDITY OF THE CANDIDACY OF TODD A. PLIMPTON FOR THE
OFFICE OF PERSHING COUNTY SCHOOL TRUSTEE, SEAT B.**

**PURSUANT TO NRS 293.182(4), THIS PETITION IS ENTITLED TO
PRIORITY OVER ALL NON-CRIMINAL MATTERS.**

The State of Nevada, by and through the Pershing County District
Attorney, Jim C. Shirley, and pursuant to Nevada Revised Statutes 293.182 brings
this action against Todd A. Plimpton ("Plimpton")¹ challenging the candidacy of
Plimpton for Pershing County School Trustee, Seat B ("Trustee")² and requesting

¹ Mr. Todd A. Plimpton will be referred to as "Plimpton" in this pleading. His full name is incorporated by reference wherever the word "Plimpton" appears in the document.

² The Office of Pershing County School Trustee, Seat B will be referred to as "Trustee" in this pleading. The full title of the position is incorporated by reference wherever the word "Trustee" appears in the document.

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the Court to issue an order to Show Cause directing Plimpton or his representative to appear and respond to the challenge.

PARTIES

1. Petitioner, State of Nevada, by and through Pershing County District Attorney, Jim C. Shirley, is authorized to bring this action pursuant to NRS 293.182.

2. Respondent Plimpton is an individual who has filed a Declaration of Candidacy for the Office of Trustee and who has served continuously as a Trustee since January of 1997, being elected to the position in 1996.

JURISDICTION

3. This Court has jurisdiction pursuant to NRS 293.182(4).

4. The Petition is entitled to priority over all other civil matters of the Court pursuant to NRS 293.182(4).

VENUE

5. Venue is proper pursuant to NRS 13.040 and NRS 293.182(4).

FACTS

6. Plimpton first ran for Trustee in 1996 and was elected to the office of Trustee. *See Exhibit #1.*

7. Plimpton took office of Trustee in January of 1997. *See Exhibit #2.*

8. Plimpton again ran for Trustee in 2000 and was re-elected to the office of Trustee. *See Exhibit #3.*

9. Plimpton took office in January of 2001. *See Exhibit #4.*

10. Plimpton again ran for Trustee in 2004 and was elected to the office. See Exhibit #5.

11. Plimpton took office in January of 2005. See Exhibit #6.

12. On or about the 2nd Day of April, 2008, Plimpton filed a Declaration of Candidacy seeking to run for the Office of Trustee. See Exhibit #7.

13. On May 15, 2008, Matthew Griffin, Deputy Secretary of State for State of Elections in and for the State of Nevada, filed a challenge to the candidacy of Plimpton. See Exhibit #8.

Count I

14. Petitioner re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 13 *supra*.

15. Section 3 of Article 15 of the Nevada Constitution provides in part that, "No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution."

16. AGO 96-23 provides that any person who took office after January 1997 would be barred from further service after twelve years.

17. At the expiration of his current Term, Plimpton will have served 12 years or more or three four-year terms.

18. Pursuant to the Nevada Constitution and the term limits enacted therein, Plimpton is time-barred from serving additional terms.

Count II

1 19. Petitioner re-alleges and incorporates by reference the allegations
2 contained in paragraphs 1 through 13 *supra*.

3 20. Pursuant to NRS 293.184, any person who knowingly and willfully
4 makes a statement that is not true must not appear on a ballot and is disqualified
5 from holding the office which he seeks.

6 21. In his Declaration of Candidacy, Plimpton swears that he will
7 qualify for the Office of Trustee.

8 22. However, Plimpton has clearly served more than the 12 years
9 allowed under Section 3 of Article 15 of the Nevada Constitution.

10 23. Accordingly, the District Attorney for Pershing County has
11 determined that probable cause exists to Petition this Court for an Order requiring
12 Plimpton or his legal representative to appear and show cause why the challenge
13 against him should not be upheld.
14
15

RELIEF REQUESTED

16 WHEREFORE, Petitioner requests that the Court order the following
17 relief:
18

19 1. Promptly issue an Order to Show Cause directing Plimpton or his
20 legal representative to appear and show cause why the challenge against him
21 should not be upheld;
22

23 2. In the event that the Challenge is upheld, to issue an order that
24 Plimpton shall not appear on the ballot for Trustee in 2008 and that Plimpton is
25
26

disqualified from entering upon the duties of Trustee for the Pershing County

School District; and

3. All other just and proper relief.

DATED this 20th day of May, 2008.

Pershing County District Attorney

By: 

Jim C. Shirley
District Attorney
Bar No. 7909
400 Main Street
P.O. Box 299
Lovelock, Nevada 89419

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EXHIBIT "13"

ROSS MILLER
Secretary of State

STATE OF NEVADA

SCOTT W. ANDERSON
Deputy Secretary
for Commercial Recordings

NICOLE J. LAMBOLEY
Chief Deputy Secretary
of State



MATTHEW M. GRIFFIN
Deputy Secretary
for Elections

CHRIS LEE
Deputy Secretary for
Southern Nevada

KATE THOMAS
Deputy Secretary
for Operations

OFFICE OF THE
SECRETARY OF STATE

May 23, 2008

Tami Rae Spero, County Clerk
Humboldt County
50 W. 5th Street, Suite 207
Winnemucca, NV 89445-3199

RE: Challenge to Candidacy of John H. Milton, III

Dear Tami:

Please be advised that pursuant to NRS 293.182 and the Nevada Constitution Article 15, Section 3, the Secretary of State hereby challenges the candidacy of John H. Milton, III, candidate for the office of County Commissioner Seat B.

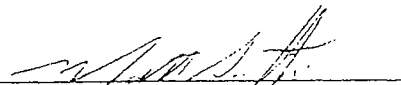
Pursuant to NRS 293.182 (2)(b), attached hereto is my affidavit in support of this challenge, the Official General Election Results for Humboldt County for the years 1996, 2000 and 2004 and the applicable section of Article 15, Sec. 3 of the Nevada Constitution. Also attached are Mr. Milton's Declarations of Candidacy for 1996, 2000, 2004 and 2008.

Should you have any questions, please do not hesitate to contact this office.

Respectfully,

ROSS MILLER
Secretary of State

By: _____


Matthew M. Griffin
Deputy Secretary for Elections

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-4786
Telephone: (775) 684-6768
Fax: (775) 684-3723

COMMERCIAL RECORDINGS
MEYER'S ANNEX OFFICE
202 N. Carson Street
Carson City, Nevada 89701-1201
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Fax: (775) 684-3723

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555 E. Washington Avenue
Las Vegas, Nevada 89101-1090
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Telephone: (702) 486-2440
Fax: (702) 486-2442
CORPORATIONS - Suite 4000
Telephone: (702) 486-2880
Fax: (702) 486-2888

SECURITIES SATELLITE OFFICE
1755 E. Plumb Lane, Suite 231
Reno, Nevada 89502-3691
Telephone: (775) 688-1806
Fax: (775) 688-1858

Case No. _____

Dept. No. _____

**IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA IN AND FOR THE COUNTY OF HUMBOLDT**

THE STATE OF NEVADA, <i>ex rel.</i>)
Russell D. Smith, Humboldt County)
District Attorney,)
)
Petitioner,)
)
v.)
)
JOHN H. MILTON, III, an Individual,)
)
Respondent.)

**PETITION FOR ORDER TO SHOW CAUSE REGARDING THE
VALIDITY OF THE CANDIDACY OF JOHN H. MILTON, III FOR THE
OFFICE OF HUMBOLDT COUNTY COMMISSION, SEAT B.**

**PURSUANT TO NRS 293.182(4), THIS PETITION IS ENTITLED TO
PRIORITY OVER ALL NON-CRIMINAL MATTERS.**

The State of Nevada, by and through the Humboldt County District
Attorney, Russell D. Smith, and pursuant to Nevada Revised Statutes 293.182
brings this action against John H. Milton, III ("Milton")¹ challenging the
candidacy of Milton for Humboldt County Commission, Seat b ("HCC")² and

¹ Mr. John H. Milton, III will be referred to as "Milton" in this pleading. His full name is incorporated by reference wherever the word "Milton" appears in the document.

² The Office of Humboldt County Commission, Seat B will be referred to as "HCC" in this pleading. The full title of the position is incorporated by reference wherever "HCC" appears in the document.

requesting the Court to issue an order to Show Cause directing Milton or his representative to appear and respond to the challenge.

PARTIES

1. Petitioner, State of Nevada, by and through Humboldt County District Attorney, Russell D. Smith, is authorized to bring this action pursuant to NRS 293.182.

2. Respondent Milton is an individual who has filed a Declaration of Candidacy for the Office of HCC and who has served continuously as a HCC since January of 1997, being elected to the position in 1996.

JURISDICTION

3. This Court has jurisdiction pursuant to NRS 293.182(4).

4. The Petition is entitled to priority over all other civil matters of the Court pursuant to NRS 293.182(4).

VENUE

5. Venue is proper pursuant to NRS 13.040 and NRS 293.182(4).

FACTS

6. Milton ran for HCC in 1996 and was elected to the office. *See* Exhibit #1.

7. Milton took office of HCC in January of 1997. *See* Exhibit #2.

8. Milton again ran for Humboldt County Commission in 2000 and was re-elected to the office of HCC. *See* Exhibit #3.

9. Milton took office in January of 2001. *See* Exhibit #4.

10. Milton again ran for HCC in 2004 and was elected to the office. *See Exhibit #5.*
11. Milton took office in January of 2005. *See Exhibit #6.*
12. On or about the 8 Day of May, 2008, Milton filed a Declaration of Candidacy seeking to run for the Office of HCC. *See Exhibit #7.*
13. On May 23, 2008, Matthew Griffin, Deputy Secretary of State for State of Elections in and for the State of Nevada, filed a challenge to the candidacy of Milton. *See Exhibit #8.*

Count I

14. Petitioner re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 13 *supra*.
15. Article 15 Section 3 of the Nevada Constitution provides in part that, "No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution."
16. AGO 96-23 provides that any person who took office after January 1997 would be barred from further service after twelve years. *See Exhibit #9.*
17. At the expiration of his current Term, Milton will have served 12 years or more or three four-year terms.
18. Pursuant to the Nevada Constitution and the term limits enacted therein, Milton is time-barred from serving additional terms.

19. Accordingly, the District Attorney for Humboldt County has determined that probable cause exists to Petition this Court for an Order requiring Milton or his legal representative to appear and show cause why the challenge against her should not be upheld.

RELIEF REQUESTED

WHEREFORE, Petitioner requests that the Court order the following relief:

1. Promptly issue an Order to Show Cause directing Milton or his legal representative to appear and show cause why the challenge against him should not be upheld;
2. In the event that the Challenge is upheld, to issue an order that Milton shall not appear on the ballot for HCC in 2008 and that Milton is disqualified from entering upon the duties of HCC for the Humboldt County Commission, Seat B; and
3. All other just and proper relief.

DATED this ____ day of May, 2008.

Humboldt County District Attorney

By: _____
Russell D. Smith
District Attorney
Bar No. 8891
501 Bridge St.
Winnemucca, Nevada 89445