

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

**Seventy-Ninth Session  
April 11, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:38 p.m. on Tuesday, April 11, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/79th2017](http://www.leg.state.nv.us/App/NELIS/REL/79th2017).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Olivia Diaz, Chairwoman  
Assemblyman Nelson Araujo, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Shannon Bilbray-Axelrod  
Assemblyman Skip Daly  
Assemblyman John Hambrick  
Assemblyman Ira Hansen  
Assemblyman Richard McArthur  
Assemblywoman Daniele Monroe-Moreno  
Assemblyman James Ohrenschall  
Assemblyman James Oscarson

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Carol Stonefield, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Julianne King, Committee Secretary  
Melissa Loomis, Committee Assistant

Minutes ID: 751



**OTHERS PRESENT:**

Barbara K. Cegavske, Secretary of State  
Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State  
Maureen Schafer, Executive Director, Council for a Better Nevada  
Matt Griffin, representing Michael J. Brown, Barrick Gold, North America; and  
Council for a Better Nevada  
Luanne Cutler, Registrar of Voters, Washoe County  
Susan Merriwether, Clerk-Recorder, Carson City  
Kathy Lewis, Clerk-Treasurer, Douglas County  
Sondra Cosgrove, Chair, Legislative Advocacy Committee, League of Women Voters  
of Nevada  
Maud Naroll, Member, Legislative Advocacy Committee, League of Women Voters  
of Nevada  
Greg Esposito, Private Citizen, Las Vegas, Nevada  
Kermitt L. Waters, Private Citizen, Las Vegas, Nevada  
Bradley Schrager, Attorney, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP,  
Las Vegas, Nevada  
Janine Hansen, State President, Nevada Families for Freedom  
Julie Hereford, representing Nevadans CAN  
John Wagner, Carson City Vice Chairman, Independent American Party  
Les Lee Shell, Director, Office of Risk Management, Department of Finance,  
Clark County

**Chairwoman Diaz:**

[Roll was taken. Committee rules and protocol were explained.] I had intended to start with the work session; however, there are many dynamics and members who have not made it to Committee yet, so we are going to start hearing some of the bills on the agenda. I would like to invite the Secretary of State to the table and open the hearing on Assembly Bill 478. This is a proposal concerning deadlines by which a person may register to vote by mail.

**Assembly Bill 478: Changes the deadline by which a person may register to vote by mail for certain elections. (BDR 24-463)**

**Barbara K. Cegavske, Secretary of State:**

Assembly Bill 478 seeks to bring Nevada into compliance with federal laws as it relates to the deadline to register to vote by mail. Under current state law, the deadline to register to vote by mail is 31 days prior to a primary or a general election. However, the National Voter Registration Act of 1993 (NVRA) says that the deadline imposed by states to register to vote by mail can be no more than 30 days prior to an election.

Assembly Bill 478 simply changes the deadline to register to vote by mail in Nevada to 29 days before a primary or general election. Twenty-nine days was chosen instead of 30 days because thirty days before Election Day is always a Sunday. The United States Post Office is not open on Sundays. By changing the deadline to register to vote by mail to

29 days before a primary or general election, voters will have until the fifth Monday before an election to register to vote by mail. This change will bring Nevada into compliance with the federal law. That is my presentation. Thank you for your consideration of this bill.

**Chairwoman Diaz:**

Are there any questions from the Committee? I see none. If there are no further questions, I will open it up for testimony in support of A.B. 478. Seeing none, is there anyone opposed to A.B. 478? Seeing none, is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing remarks?

**Barbara Cegavske:**

That is probably the shortest bill I have presented in my entire career, but I am very grateful for it. Thank you for listening to us.

**Chairwoman Diaz:**

With that, I will close the hearing on A.B. 478. I will now open the hearing on Assembly Bill 45. This bill relates to voter registration drives, circulating petitions, and financial disclosure statements.

**Assembly Bill 45: Revises provisions relating to public office. (BDR 24-426)**

**Barbara K. Cegavske, Secretary of State:**

I believe this is a very important piece of legislation that will enhance the integrity of the voter registration process in Nevada. My Deputy Secretary for Elections, Wayne Thorley, will walk the Committee through the bill.

**Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State:**

I will be presenting Assembly Bill 45. It is somewhat lengthy; however, many of the provisions in the bill are cleanup in nature. The main portions of A.B. 45 relate to voter registration drives and the qualifications of individuals who participate in a voter registration drive. Section 2 of the bill defines the term voter registration drive. Section 5 authorizes the Secretary of State to adopt regulations regarding the qualifications of people assisting in a voter registration drive. Section 14 prohibits a person assisting in a voter registration drive from: (1) delegating duties to another person; (2) refusing to register a person to vote on account of the person's political party affiliation; (3) knowingly registering persons who are not qualified electors who have filed a false or misleading application or who fail to provide proof of identification and residence; or (4) failing to deliver completed applications to register to vote to county clerks and registrars of voters by certain deadlines.

Based on our experience leading up to the 2016 presidential election, the Secretary of State's Office believes the voter registration drive provisions in this bill are necessary to address the many complaints we received. We received complaints that voter registration drive workers never turned in their forms or turned them in after the deadline. People were given incorrect instructions on how to fill out the form, and there was outright fraud, such as changing information on the form after it had been signed by the voter. Many groups that conduct

voter registration drives in this state do an excellent job, but there are some that do not. In many instances, it comes down to a lack of training and understanding of Nevada's laws. We want people participating in voter registration drives to know what they are talking about when they assist voters and know what their responsibilities are under the law.

The remainder of A.B. 45 is generally cleanup language, so I will quickly go through the remaining sections of the bill. Sections 3, 7, and 33 require major and minor political parties that wish to place candidates on the ballot for president and vice president to file a certificate of nomination with the Office of the Secretary of State by the first Tuesday in August preceding the general election. Section 4 requires a nongovernmental entity that sends a notice to a person indicating that the person is not or may not be registered to vote or requesting the person to register to vote to indicate on the notice that it is not official elections mail from the Secretary of State or a local election official.

Sections 8 through 13 and 15 through 23 update citations to federal election laws that are found in the *Nevada Revised Statutes* (NRS). Sections 24 through 27 clarify that certain people who accept campaign contributions related to a recall election are required to file Contributions and Expenses (C&E) Reports, even if the recall election is not held because the petition for recall is not submitted on time or is legally insufficient. Section 29 authorizes the Secretary of State to adopt regulations regarding the qualifications of people gathering signatures for an initiative or referendum petition. Section 30 allows an authorized person officially to withdraw an initiative or referendum petition after it has been filed with the Secretary of State's Office.

Section 31 requires a person who files an initiative or referendum petition with the Secretary of State's Office to fill out a form with certain information, including: (1) the person's name and signature; (2) the name of any committee for political action formed by the person to advocate for the passage of the initiative or referendum; and (3) the names of not more than three persons who are authorized to withdraw the petition or submit a revised petition. Section 32 moves the date initiative petitions must be submitted for signature verification to the day after the general election if the due date falls on the day of the general election. Section 34 clarifies that a petition for an independent candidate for U.S. President must be filed with the Secretary of State's Office prior to the candidate circulating the petition for signatures.

Section 35 authorizes the Secretary of State to conduct investigations and impose civil penalties on candidates and public officers who do not comply with the statutory requirements applicable to Financial Disclosure Statements. Lastly, section 37 requires that a Financial Disclosure Statement be signed by the candidate or public officer under an oath to God or penalty of perjury. That concludes my overview of A.B. 45. I will now turn it back to Secretary Cegavske for some closing comments.

**Barbara Cegavske:**

We are aware of one amendment that has been submitted by the Council for a Better Nevada, and we are fully supportive of the amendment ([Exhibit C](#)). Maureen Schafer, Executive Director of the Council for a Better Nevada, is in Las Vegas and can provide the Committee information on the amendment. Mr. Thorley and I are available to answer questions from the Committee now or after Ms. Schafer discusses the amendment.

**Chairwoman Diaz:**

We will go to Ms. Schafer to offer the Committee insight on that amendment proposal. After that, we will take questions.

**Maureen Schafer, Executive Director, Council for a Better Nevada:**

I represent a community-based, chief executive officer (CEO) and community leader organization in southern Nevada whose mission is to engage in issues where progress in those matters positively impacts the quality of life for all Nevadans. The Council for a Better Nevada (CBN) pledges its support for [A.B. 45](#) and is deeply engaged in ways to improve the transparency and integrity of the initiative petition process. The Council for a Better Nevada has a long bipartisan history of working with the Legislature and the Secretary of State's Office to strengthen the state's initiative petition process. When the initiative petition approaches the pursuit to create public policy, the CBN believes the process should work with transparency, integrity, and accountability. [Assembly Bill 45](#) contains some measures that offer improvements to the process.

As the Secretary of State has noted, the CBN proposes an amendment to [A.B. 45](#) regarding the categorization of expenditures and expenses in required campaign reports. We all live in an increasingly transparent world, both by accessibility of more clear and concise data and the simultaneous increased demand by the public for more detailed information for faster and more efficient decision making. Specifically, the amendment asks for two provisions in this area. It asks to include in the report the total amount of money the candidate has in their campaign account at the end of the applicable reporting period; secondly, if the candidate or committee uses a debit or credit card for any expenditure, the candidate or entity must report as the payee the entity paid with the credit card, not the credit card company. The date of each transaction is the date the credit card was used—and thus, reported—and not the single date the credit card company was paid.

With respect to campaign reporting, corporations today—which are represented by many of my own CBN members—and the community at large are facing greater pressures for more transparency in their political activities. The available required revenue and expense reports become critical to a donating entity to be able to rely on the safe and appropriate use of their contribution. The proposed amendment to [A.B. 45](#) places increased accountability and transparency measures on reporting, benefitting this escalating corporate area of concern around Nevada's current campaign reporting laws. Furthermore, Nevada's AURORA system, an online election reporting system created by the Secretary of State's Office and the Legislature, is today a very effective method for the submittal and viewing of current election

reports. The recommendations put forward today within the proposed amendment would easily be adopted within the state's AURORA system.

**Chairwoman Diaz:**

At this time, I will open it up for questions from the Committee.

**Assemblyman Ohrenschall:**

Section 29 says, "The Secretary of State may adopt by regulation qualifications for a person to circulate a petition for initiative or referendum." Are you envisioning those qualifications to be for the people who are trying to gather the signatures? If that is so, what kind of qualifications are you considering? Is it a residency qualification? Is it criminal history or an age issue? I am wondering what the Secretary of State's Office is thinking with that.

**Wayne Thorley:**

What we are getting at with this section is training for those who will be in the field actually meeting face-to-face with those who are signing an initiative or referendum petition. What we envision with these regulations is training related to provisions in statute that require public buildings in Nevada to offer a location for petition signature gatherers. There are restrictions in statute related to gathering signatures near polling locations. What we are envisioning is training for those who may be coming in. Many of these groups operate in multiple states, so they move around from various states and gather signatures in many states. It is training on laws specific to Nevada related to the initiative and referendum petition process. What we have run into in the past is that those out in the field did not necessarily understand or know Nevada's law as it relates to gathering and collecting signatures.

**Assemblyman Ohrenschall:**

Would this training be offered by the Secretary of State's Office or by a vendor?

**Wayne Thorley:**

We envision the training would be done by the Secretary of State's Office. These initiative petition signature gatherers operate in multiple counties in the state. We imagine doing the training on a state level through our office and potentially through online training. It is not necessarily face-to-face training, but an online video they could watch and then answer a few quick questions at the end to ensure they actually paid attention to the presentation.

**Assemblyman Ohrenschall:**

That certainly seems a lot more user-friendly than having a bricks-and-mortar-type class. Will this training be a couple of hours or all day? Would there be a fee associated for the people who want to work as signature gatherers?

**Wayne Thorley:**

We do not anticipate a fee related to the training. The idea is not to raise revenue or discourage people from gathering signatures in the state. It is just to provide training. We have not had any discussions on the length of time it would take to complete this training, but we are not envisioning that it would take all day or require a lot of the person's time.

**Assemblyman Ohrenschall:**

In section 30, if someone wants to withdraw their petition for initiative or referendum, can you describe what happens under current law? Let us say section 30 passes, there is an initiative petition, and there is litigation. The judge in the First Judicial District Court says that it needs to be rewritten. If they have to file a notice to withdraw it, it says that no further action may be taken. Let us say there is an error in the initiative that is curable by some wordsmithing. Would they still be able to refile the initiative or would they be prohibited until the next cycle? That is a concern I have.

**Wayne Thorley:**

Sections 30 and 31 were put into the bill because, right now, there is no formal process in law to withdraw an initiative or referendum petition that is filed with the Secretary of State's Office. There have been petitions filed with our office in the past to which we granted a withdrawal when the petition sponsors asked for it. There is no formal mechanism in law to do that. What we wanted to do with sections 30 and 31 was include an official mechanism whereby a person who submitted a referendum or initiative petition with our office could then officially withdraw it.

With section 31 specifically, we wanted information on the group or person supporting or filing the initiative or referendum petition so we knew who was authorized to withdraw the petition at a later date. Now, since we have no formal process, there are concerns about a person not associated with the initiative or referendum petition requesting that it be withdrawn. That is what sections 30 and 31 are trying to do. We are not seeking to prohibit a group from refiling a petition with an amended description of effect. If a judge rules that it violates the single-subject law, we certainly do not want to discourage or prohibit them from refiling an initiative or referendum petition that meets the requirements that the judge has set. That is not the intent of sections 30 and 31. If we need to make an amendment to potentially clean up some of the language, we are open to that.

**Assemblyman Ohrenschall:**

Under current law, you said there is no process to withdraw an initiative. If someone requests an initiative to be withdrawn, would they have to start from scratch or could they try to come back under current law? If this passes into law, and someone files this notice to withdraw the initiative, that petition cannot be resuscitated under this statute. If the same person wants to gather signatures on something similar or even the same, then that would still be permitted. Are you not envisioning that that would be precluded under section 30?

**Wayne Thorley:**

That is correct. We are not attempting to prohibit them from refiling a similar petition. It is just the one petition that they filed at the time that would be withdrawn, and no further action could be taken on that particular petition. If they wanted to refile one on the same subject matter or even the same exact petition at a later date, it would be a new petition that would be filed with our office. They would be able to take action on that one.

**Assemblyman Daly:**

I have a couple of different questions in regard to the new definition for a voter registration drive. I have heard some of the same stories that the Secretary of State's Office has heard, and they are trying to address the issue of people screening who they register to vote and not turning the forms in. By this definition, what other rules might be applied to that? There is a difference between a field registrar who has gone, filed, and taken the training and a volunteer at a voter registration drive who did something inadvertently such as failed to turn a form in because it got lost in the car. The volunteer is potentially subject to a felony. I do not know how to address the bad actors, but I do not want to cast the net so wide that it is catching people who are just trying to volunteer and do the right thing.

You talk about "a person" in other sections, such as 4 and 6. If people send out a notice in a newsletter and they say, hey, we encourage you to register to vote, is that the notice you are talking about? I do not think so. It says if a person does that they have to put this other language into their communication. I am just trying to narrow it down so you hit the people you are trying to hit, and not hit a volunteer or someone who is making an honest mistake. This bill is potentially putting people at risk of committing a felony over something that they did not do.

Let us say someone is distributing this at a voter registration drive for a fraternal organization, and they are only doing a registration drive amongst the organization's members. I think that is different from going to the general public. I do not know if you can address those issues. Those are my concerns around voter registration drives and how wide the net is cast. We will catch the bad guys, but we will catch the good guys too.

**Wayne Thorley:**

I will address your specific question on section 4 that would require nongovernmental entities that send out certain notices to include a disclosure saying it is not official elections mail from the election officials. What the Secretary of State's Office is trying to capture with section 4 is not an advertisement in a magazine that encourages people to register to vote and maybe provides the link to our online voter registration site.

Section 4 is trying to address groups that send targeted mail pieces to people who they believe are either not registered to vote or have moved and were registered at a prior address. They include a voter registration form. What we have found is that the lists these groups use when they send out these mailers is not very accurate. Many people in Nevada who are registered to vote get a piece of mail that says, "Our records indicate that you are not or may not be registered to vote and should really think about registering. By the way, here is a form



that you can fill out and turn in." That causes alarm for registered voters in Nevada. The Secretary of State's Office, but especially the local election officials, get many phone calls from voters who are sometimes angry and sometimes scared because they believe, for whatever reason, that their voter registration has been cancelled, and they are no longer eligible to participate in elections.

**Barbara Cegavske:**

I received one of those notices. I have lived in my home for 28 years, and the form stated that they did not believe I was a registered voter and asked me to fill out the form. That is what started us on that trail in addition to the multiple phone calls we received, because people believed the mailers came from the Secretary of State's Office. You can imagine my surprise when I saw that the mailers said to return them to my office in Carson City and had the Secretary of State's name on them, and we did not put those out. What we are trying to accomplish is to educate those individuals who are sending those out. To Deputy Secretary Wayne Thorley's credit, he corresponded with one of the groups we had multiple problems with, and he got them to correct it. It still is an issue with other groups. This is an issue with the national group that is sending them out and targeting different states and areas. There are many Nevadans who received that notice.

**Assemblyman Daly:**

They are not making their own voter registration form. They are getting that form from the state somewhere. I do not know if the state charges them for it. When people get them in small enough numbers, the forms are given to them. They all have a number. I know every time I receive them, the registrar signs out those numbers and says, "We gave number X to this person." We are able to trace that backward. Does that not happen universally?

**Wayne Thorley:**

Generally, these mailers use the federal form, and not the state form. All state forms must include an application control number on them. The federal forms do not. However, when they are accepted and returned to the local election official, they generally put a number on them. What section 4 is getting at is just a requirement that these groups provide an easily identifiable disclaimer on the mail piece that it does not come from the Secretary of State's Office or the local election officials.

People who encourage voter registration do great work, and we do not want to discourage people from encouraging people to register to vote in Nevada. We appreciate the efforts of all the groups that encourage voter registration. With this particular issue, we just want voters to know that when they get this piece in the mail, it is not official mail from our office. If they believe they are registered to vote, and the mail piece says they are not, they know it is not coming from the Secretary of State's Office or a local election official. It is coming from a third-party, nongovernmental entity. Voters are aware that they may not have accurate information. It will hopefully cut down on the phone calls we receive once these mailers go out.

**Assemblyman Daly:**

Can you speak to the voter registration drive, and someone who is doing that to the general public versus within a group? The Committee knows my regular job. I work for the Laborers' Union Local 169. In our newsletter, we encourage our members to vote. We also have some of our people who go out and try to register our members, but we are not a "registration drive," except with our members. It is a very limited group. We do not go to the general public. You will not see us outside of the Department of Motor Vehicles (DMV) trying to wrangle up unregistered voters. If we did, we would make sure we followed these rules. We know what they are, and we have no interest in violating them.

I do not want to cast a net so wide that it catches someone who makes an inadvertent error. It is just an issue. There are other groups that do the same thing within their membership, so it is not just one issue.

**Wayne Thorley:**

The term "voter registration drive" is defined broadly on purpose to apply to the efforts within, say, a union group that is doing a voter registration drive for a couple of reasons. Every two years the Legislature meets, and laws can change. If a law changes related to voter registration, we want to make sure those engaging in voter registration drives are trained on the changes in the law.

There are other issues. For example, under current state law, if a person has a driver's license, they are required to put their driver's license number on their voter registration application. If they do not have a driver's license, but they have a social security number, they are required to put the last four digits of their social security number on their voter registration application. If they do not have either, they can still register to vote, but they have to submit an affidavit affirming that the person does not have either form of identification. People generally have the last four digits of their social security number memorized, but they do not have their driver's license number memorized. When it comes time to fill out the box that asks for a person's driver's license or social security number, a lot of the time, those who are assisting voters in a voter registration drive just tell voters to put the last four digits of their social security number on the application. That way, the person does not have to get their wallet out and look up their driver's license number. However, state law requires those registering to put their driver's license number on the form if they have one, even if someone has both a driver's license and a social security number. The Secretary of State's Office wants those participating in voter registration drives to be aware of what those laws are. That is why we would want it applied pretty broadly.

**Assemblyman Elliot T. Anderson:**

I wanted to ask about section 35, subsection 1, and the venue provisions. We have this dialed in there in a number of election-related chapters and statutes that create venue positions in the First Judicial District Court. I have a problem with always doing things in one court, especially when 75 percent of the population lives in one county. I think this should be done in a court of competent jurisdiction and phrase it that way. I understand that all the attorneys for the state are in Carson City, but if the state is going to institute a civil action against

people, I do not think that they should be treated any differently than any other defendant in a civil proceeding. The state should not haul people up to Carson City to defend an action when they are living all across the state. Does that make sense?

**Wayne Thorley:**

That makes perfect sense. The language in section 35 was borrowed from language that already exists in Chapter 294A of NRS, which relates to C&E reports. We are not opposed to changing that to a court of competent jurisdiction instead of First Judicial District Court.

**Assemblyman Elliot T. Anderson:**

We need to start thinking about doing that in other chapters to move from one or two departments that determine every single election issue in the state, which is always persuasive when it goes before the Nevada Supreme Court. I think that is something we ought to look at in a number of different areas going forward.

**Assemblywoman Bilbray-Axelrod:**

This is a friendly amendment. I have a couple of concerns with the amendment. In sections 3 and 4 ([Exhibit C](#)), it talks about reporting the amount that the campaign has at the end of the applicable reporting period. As many legislators know, there are still many outstanding balances and invoices coming in. How would that reconcile at the end?

**Matt Griffin, representing Michael J. Brown, Barrick Gold, North America; and Council for a Better Nevada:**

I am here on behalf of Michael J. Brown of Barrick Gold, who is a board member in CBN and assisted in drafting this amendment. To answer your question specifically, the state law has a regulation that provides a cutoff of whether someone has outstanding debt or an obligation they have to pay. It provides a regulation as to whether that should be in the report they are submitting now or the report for the next period. This amendment is not designed to change any of that. If the obligation is required to be reported before the deadline, it would just be calculated in the ending fund balance. If not, it would carry over to the next report. I do not have that regulation off the top of my head, but I can provide it for you.

**Assemblywoman Bilbray-Axelrod:**

In the second part of section 5, it talks about the candidate or committee using a credit or debit card. It was unclear if that would be a campaign credit card or someone's personal card. It spells out that a candidate does not put the statement date, which I do not think anyone does typically. We put the day that we used the card. The last two lines say, "The candidate does not report any payments made directly to the credit card company. Any interest, credit card fees or late payment penalties are reportable expenditure transactions." Can you walk me through the thought behind that?

**Matt Griffin:**

There are two different issues included in here. This was language taken from the state of Oregon. The first part of the question would deal with a credit card issued to the

campaign. Of course, it would be handled separately if it were an individual's. If I am the candidate who is running and I want to use my personal credit card, I can report it the same way I report a loan, whether I want to forgive the loan. I can report it that way. This deals with a campaign credit card issued on behalf of the campaign.

With respect to the second part of the question regarding the interest and credit card fees, that was added in after looking at the issue of credit card charges. What this is designed to go after is a \$30,000 or \$40,000 payment to Visa on a C&E report without any recognition as to who the actual recipients were of that money. That is what this is designed to do. The last part is a separate issue. When you carry balances, there has always been a question under Nevada campaign finance law as to whether those balances and the interest earned on them or the interest you have to pay on them should be reported or not reported if it hits a certain threshold. This just clarifies that if it does hit that threshold, it is reported accordingly as either an expense or a contribution.

**Chairwoman Diaz:**

Are there any further questions from the Committee members? I see none. I will now switch to testimony in support of A.B. 45.

**Luanne Cutler, Registrar of Voters, Washoe County:**

I am here in support of A.B. 45. I wanted to make a couple of comments on a couple of sections that most directly affect the registrar of voters and county clerks. Section 4 discusses the matter of mailings that look to be official mailings from an election department or the Secretary of State's Office that come to Nevada's voters, but they are not. In the last two presidential election cycles, an organization with a return mailing address in Carson City sent thousands of mailings to the voters of Washoe County and others in the state that look very much like official materials from a government agency. Portions of the form that is sent out are pre-filled with information about the voter. Quite often, it is the voter's name or a variation thereof and an address they may not have lived at in ten years. They send these mailings to people who are deceased. I cannot express how many calls we get when these mailings go out. People are thinking they come from us and wonder why we cannot do a better job of keeping the records updated. They look very much like official mailings and they create a problem for us.

The other section I wanted to comment on was in relation to the voter registration drives. I understand Assemblyman Daly's concerns. Unfortunately, we get large numbers of workers from organizations that most likely pay their people to be out in the field registering others. In the last general election, we received literally thousands of forms at the very last minute. Whether they contained valid information or not, we had to go through the process of attempting to validate each one of those forms. There were a great many that were not valid, did not have good information, or were ineligible. It would be helpful to have some sort of accountability from those types of groups. Whether a little training will completely solve the problem remains to be seen, but it is a step in the right direction to try to get some sort of accountability from the groups that bring folks in from outside the state to register

people. We appreciate the Secretary of State's Office bringing forth this bill in order to try to help us with these issues.

**Susan Merriwether, Clerk-Recorder, Carson City:**

These past few elections have been quite the burden on my office regarding phone calls and complaints. People would actually walk into our office with the forms, showing us they received multiple requests to register to vote when they have been registered voters for over ten years. One of the concerns my office tossed around is where these groups are getting these lists of the public. They are not getting voter registration lists from us and comparing them, which I believe would help. I believe the Office of the Secretary of State's bill will help clean up many of the problems, and I fully support it.

**Kathy Lewis, Clerk-Treasurer, Douglas County:**

I am here to support the Secretary of State's bill and echo my colleagues' comments.

**Sondra Cosgrove, Chair, Legislative Advocacy Committee, League of Women Voters of Nevada:**

The League of Women Voters of Nevada supports A.B. 45. We specifically support training all groups who register Nevada voters. We support the requirement that private mailers, which inform voters they are no longer registered to vote, be clearly marked as not coming from county elections departments or the Secretary of State's Office. I also heard from many angry voters who received those mailers. Eligible voters have the right to securely register to vote and to be able to differentiate between official voter registration information and spam mailers. The League of Women Voters of Nevada takes voter registration very seriously. Voter registration is the election process; whereby, we assist eligible voters to gain access to the ballot, so we strongly believe every eligible voter should feel secure that their registration form will be completed correctly and returned properly.

**Maud Naroll, Member, Legislative Advocacy Committee, League of Women Voters of Nevada:**

I am also with the Legislative Advocacy Committee for the League of Women Voters of Nevada. I say ditto to everything Ms. Cosgrove said.

**Chairwoman Diaz:**

We will now go to testimony in opposition.

**Greg Esposito, Private Citizen, Las Vegas, Nevada:**

I own GE Consulting, and we do voter registration drives and initiative petition signature gathering. We are not opposed to A.B. 45 as a whole. There are simply two sections and two sentences that we have a problem with. Section 5 says, "The Secretary of State may adopt by regulation qualifications for a person to assist in a voter registration drive." There is an almost identical sentence regarding people who gather signatures on a petition in section 29. I feel that these two sentences are dangerously broad. It is too wide open.

I would never suggest that Secretary Cegavske would introduce any onerous regulations, but across the country, there are certain secretaries of state who have restricted the way things work as far as voter registration drives and voting. Ten or fifteen years from now, someone may take office who does not approve of the initiative petition process. With these sentences, they could write regulations that could make the process very difficult to move forward with. We have no problems with writing regulations that make people aware of the law. I could probably give the training I give to my signature gatherers to Mr. Thorley, and he could use it to teach signature gatherers the proper way to operate. These two broad sentences are dangerous in what could happen in the future.

**Assemblyman Ohrenschall:**

If one of your signature gatherers or your company violates current law, are there fines that can be imposed?

**Greg Esposito:**

I do not know the answer to that question. I have never been accused of violating the law, so I do not know.

**Assemblyman Ohrenschall:**

Do you try to train your signature gatherers right now under existing law and regulations?

**Greg Esposito:**

I have an extensive training program that I insist every signature gatherer that contracts with me go through. This is for two reasons. First of all, it is a touchy legal issue. For example, I make sure they understand that they may not misrepresent the issue. Every petition has to have the issue written out and a summary at the top of every signature page. I make sure that they understand that they may not misrepresent the issue. If they are caught doing so, they will be released from duty. There is also the very nature of what makes a signature valid. There are a couple of hours of training before I let them go out on the street. It saves me a lot of hassle.

**Assemblyman Hansen:**

One big concern I have had is that in Nevada, because of the single-subject rule, we have made it so difficult to get initiative petitions and referendums on the ballot. In my opinion, it is abused in California, but it is underutilized in some cases in Nevada to get around this body. When you go out and gather signatures, especially when it is to register people to vote, what is the incentive? Why would these companies use fake Secretary of State mailings or forms? Are they paid X amount of dollars for every person that they reregister? What is their motivation to try to appear like the Secretary of State's Office is officially doing this when that is not accurate?

**Greg Esposito:**

Unfortunately, I cannot answer that question, because that is not how I do voter registration drives. I do not do mailings. I do not do bulk mailings that say, "Hey, you are not registered to vote." I stand in front of the person and let them know that if they are not registered

to vote, or if they moved since they last voted, they may need to fill out this form in order to correct their information. I cannot tell you why someone would be disingenuous or put out those bulk mailings.

To answer another question about the initiative petition process, there is compensation for an accurate signature, but not on voter registration. That is illegal. People are not allowed to do a pay-per-voter registration, but there is compensation on an accurate signature on an initiative petition. That is why I am motivated to train my people to get that signature right the first time.

**Assemblyman Hansen:**

I did not know it was against the law to pay people to register others to vote. They can be paid for collecting signatures on an initiative or referendum, but not to register to vote?

**Greg Esposito:**

If I understand the law correctly, someone is not allowed to pay what they would call a bounty—if they hand in ten voter registration forms, they get ten dollars. They are not allowed to do that. They can be paid by the hour or the project, but they are not allowed to be paid by voter registration.

**Assemblyman Hansen:**

What I am looking for is the incentive. Why are people trying to fake people into reregistering when they are already registered? There must be some motive there somewhere.

**Kermitt L. Waters, Private Citizen, Las Vegas, Nevada:**

I want to oppose any portion of this that applies to the citizens' initiative. I am in the middle of a federal case right now to knock out the single-subject rule and all the problems that come with it, including description and effect. It has become a nightmare to get a petition on the ballot. Through discovery, I have found out that since Senate Bill 224 of the 73rd Session was passed, there have been 34 initiatives that were content-based. Attorneys understand what I mean when I say content-based. There were 34 initiatives that have been filed since 2005 that were content-based that have been challenged under that statute, because the statute also gives authority to anyone to sue and challenge a single-subject, its would-be description and effect, no matter how frivolous it is, and run them out of time.

There is a constitutional amendment that provides 247 days to get signatures. When someone gets sued, and it goes to district court in Carson City, people in Las Vegas have to come up to Carson City and defend it in court. If they lose it, it is appealed to the Nevada Supreme Court. This bill is a further restriction and restatement of the laws that are currently pending in federal court right now. I would hate for the federal court to rule on this statute, have it come back, and say it is a duplicate of it. It is another restriction on the initiative process.

It is an attempt to cure a problem that does not exist. I have not had any problems with anyone doing anything illegal when I received signatures for the People's Initiative to Stop the Taking of Our Land (PISTOL). I do not know why they are trying to do this, and I agree with Mr. Esposito that giving the Secretary of State unlimited, unrestricted authority to make any regulation is too broad. We do not want to have to fight that. I urge the Committee at least to knock out the portion of this that has to do with the citizens' initiative and referendums. That day is coming shortly.

**Chairwoman Diaz:**

I do not see any questions. Is there anyone else wishing to testify in opposition to A.B. 45? I am not seeing any. Is there anyone wishing to testify in neutral to A.B. 45? Seeing none, I will invite the Secretary of State to come up with her closing comments.

**Barbara Cegavske:**

We want to thank the Committee for hearing us. We are here to answer any questions.

**Chairwoman Diaz:**

We will now close the hearing on A.B. 45. We will go ahead and hear the last bill on the agenda for today. I will invite our colleague, Assemblyman Ohrenschall, to present Assembly Bill 418. Mr. Bradley Schrager is also joining us in Las Vegas. I will open the hearing on Assembly Bill 418. This is a proposal relating to recounting ballots in contested elections. Assemblyman Ohrenschall will present the bill for the Committee's consideration.

**Assembly Bill 418: Revises provisions relating to elections. (BDR 24-750)**

**Assemblyman James Ohrenschall, Assembly District No. 12:**

As Chairwoman Diaz noted, Mr. Bradley Schrager is down at the Grant Sawyer Building in Las Vegas. He is an expert in election law and has been practicing for many years. I am very lucky he is down there to be my lifeline and help me with questions.

The main purpose of Assembly Bill 418 is to eliminate the 5 percent sampling of precincts prior to a full recount. Under existing law, if a recount is sought, an initial recount is done to ballots from 5 percent of the total number of precincts that voted in that election or a minimum of three precincts that voted in that election. If the initial recount shows a discrepancy of at least 1 percent, or 5 votes—whichever is greater—a full recount of all ballots is triggered. Section 3 of A.B. 418 provides instead that all recounts must include a count and inspection of all ballots. Section 3 also provides that paper ballots must be recounted by hand and that all absentee ballots, mail ballots, and the ballots that are contained on a cartridge from a touchscreen machine shall be tabulated in the same manner as originally cast—electronically.

Section 4 revises the grounds upon which an election may be contested. In addition to malfeasance on the part of an election board member or the ineligibility of the winner of an election to hold office, A.B. 418 adds the following: Illegal or improper votes that were cast in sufficient number to raise doubt on the outcome of the election; the defendant or someone



acting on behalf of the defendant gave something of value for the purpose of manipulating the outcome of the election; and a possible malfunction of the device in a manner sufficient to raise doubt as to the outcome of the election. Additionally, existing law provides that ballots and other records relating to an election must be deposited in the vaults of the county clerk and are not subject to inspection by anyone except in the case of a contested election.

Section 2 clarifies that voting records that are printed on paper ballots showing votes cast on mechanical devices are also not subject to inspection unless they are relevant to a contested election.

Finally, there has been some litigation. In North Las Vegas, there was an election that was decided by one vote. Protecting someone's privacy is another big goal in this bill. The new language that is added to Chapter 293 of *Nevada Revised Statutes* (NRS) is in section 1. It says, "No person may be compelled under oath to reveal how he or she voted in any election." While outcomes like the one vote outcome in North Las Vegas are rare, they do happen. Close elections like that can happen, and we want to protect our voters' privacy.

This concludes my presentation. I am happy to answer questions.

**Chairwoman Diaz:**

We will ask Mr. Schrager to give us some comments as to why A.B. 418 is needed. After that, we will open it up for questions from the Committee.

**Bradley Schrager, Attorney, Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP,  
Las Vegas, Nevada:**

I am an election lawyer in Las Vegas. The aim of A.B. 418 is to make fairly technical and nonpartisan upgrades and clarifications in the portion of the NRS that deals with contested or close elections. It is exceptionally important in the end to get elections right. Every aspect of this bill is aimed at improving the ability to get elections right and to recount so elections can be corrected if there were issues, all of which ought to increase the view that Nevada's elections maintain a certain integrity—which is very important. Assemblyman Ohrenschall ran down most of the important aspects of the bill.

Speaking to the elimination of the 5 percent sampling, it is my recollection that two things converge to create our current recount code. It was the recount in the *Bush v. Gore* 531 U.S. 98 (2000) election in 2000 and the advent of electronic voting machines here and elsewhere. In the wake of those two things, many states revisited and tried to remake their recount codes in ways that would be useful, accurate, and maintain a certain integrity.

We did the same thing. The experience of 15 or 17 years' worth of contested elections and recounts is that the 5 percent sampling does not actually achieve anything. It does not get Nevadans any closer to knowing that the election results are accurate. Nevada's counting mechanisms are very accurate as far as how ballots are counted from the electronic voting machines and how the paper ballots are scanned.

The elections being discussed are the ones that are very close. Assemblyman Ohrenschall brought up the 2011 city council race in North Las Vegas that came down to one vote. There have been other elections that have been less than ten votes. There is nothing about choosing 5 percent of the precincts to recount that would be sufficient to capture those 2, 5, or 12 votes that might change the result. It is sort of a random sampling as opposed to a truly useful way of recounting the votes. Even the language regarding what would trigger a full recount after a discrepancy is not very clear. Our manner of recounting votes now with the cartridges or scanning machines makes it pretty simple to run all 100 percent of the votes again in a way that is not much more expensive or time-consuming than the 5 percent of ballots under current law. It is thought that if a losing candidate wants to do so, he or she should be able to request and post a bond for a full recount. After that, he or she has the opportunity under the expanded grounds now listed in section 4 to contest the election. That is really the basis for the bill.

In consultation with the Clark County Registrar of Voters, Mr. Joseph Gloria, it is requested that [A.B. 418](#) revisit the notion that all paper ballots must be recounted by hand. Mr. Gloria points out that in a congressional or statewide election, that could amount to tens of thousands of ballots at the county level. Therefore, it is suggested that an amendment emerge that all ballots must be recounted in the same way they were originally tabulated ([Exhibit D](#)). This means the registrar does not have to hand count each paper ballot but will run them through again in the same manner that the cartridges are run through again to arrive at the second count after the recount.

**Chairwoman Diaz:**

Are there any questions from the Committee?

**Assemblywoman Bilbray-Axelrod:**

I had a question about the amendments. It sounded like Mr. Schrager indicated that the Clark County amendment is friendly. Moreover, there is a Washoe County amendment ([Exhibit E](#)). There was also a fiscal note. Could you address those issues?

**Assemblyman Ohrenschall:**

I have yet to see the amendment. I am certainly willing to work with Clark County and try to make it friendly if it is not friendly now. As to the fiscal note, I saw a small fiscal note that was online. Neither of them seems particularly large.

**Chairwoman Diaz:**

I am bringing up a fiscal note that was submitted by Washoe County for [A.B. 418](#) ([Exhibit F](#)). It is an estimate for the hand counting of ballots. We really will not know until there is a contested race, so it is not as if this is something that is going to happen. If it were to happen, it gives some insight as to how much money they have to pay per person; how many people are involved; and the estimated cost. Mr. Schrager, did you have a conversation with anyone from Washoe County?

**Bradley Schrager:**

I did not have a conversation with anyone from Washoe County, but I did with Clark County. If I could piece those two together, it seems to me that the fiscal note submitted by Washoe County would be for having to hand count every paper ballot. That is exactly the concern that I think will be addressed by the Clark County Registrar's amendment, so under the amended bill, neither Washoe County nor Clark County would have to recount every paper ballot by hand. It should wipe out the fiscal note as well.

**Assemblyman Ohrenschall:**

Washoe County's fiscal note over the biennium is projected to be \$24,000. The other local governments are all at zero, as is the Secretary of State. I agree with Mr. Schrager that if that Clark County amendment were processed by the Committee, it would address that.

**Chairwoman Diaz:**

Are there any other questions?

**Assemblyman Daly:**

In section 4, subsection 2(c), line 19, it says, "illegal or improper." Can you explain to me what we have been missing? The only thing I can think of is that a person was in the wrong district or something like that. What were you trying to hit on with the word "improper?"

**Assemblyman Ohrenschall:**

As I understand "improper," that would be someone who was erroneously allowed to vote in a voting district that they are not allowed to vote in. That vote may have been counted or tabulated for the total amount.

**Bradley Schrager:**

I think "improper" was meant to expand the universe of possible challenges that someone could make to a set of votes in an election. A vote could be improper, meaning it should not have been cast in that race on that ballot, for whatever reason. It was not necessarily illegal; there was no illegal intent; there was no misdemeanor or crime. It can sometimes happen because, even within a particular precinct, someone is allowed to vote for whatever reason, and they should have voted across at the other machine or at the other table. There are many reasons why a vote could be improper but not necessarily illegal. This is meant to encompass all of that for the benefit of someone challenging an election and gathering evidence as to why the result should be different from what was announced on election night.

**Chairwoman Diaz:**

Do you agree with that interpretation, Mr. Powers?

**Kevin Powers, Committee Counsel:**

Yes, I believe that is the intent of the language. One example could be if someone marked their ballot in one particular race for two candidates when they are only supposed to mark one. By marking for two candidates, their ballot would be improper. It would not be illegal. Maybe they did that mistakenly or inadvertently. That would be an improper ballot because

you could not choose which candidate was actually chosen. It would be an improper ballot, not an illegal ballot, but it would not be counted.

**Chairwoman Diaz:**

Are there any questions? [There were none.]

**Assemblyman Ohrenschall:**

Thank you for hearing this bill. I will certainly look at that amendment from Clark County.

**Chairwoman Diaz:**

I look forward to seeing this bill worked on so everyone is happy with the final outcome. Is there anyone wishing to testify in support of A.B. 418? [There was no one.] Is there anyone wishing to testify in opposition to A.B. 418?

**Janine Hansen, State President, Nevada Families for Freedom:**

I am not sure opposition is the right place for me, because I support most of the bill. I had a couple of concerns. I think the idea of not having the 5 percent recount instead of using the whole recount is a very good idea. I certainly support that.

One of the things I have been concerned about for a long time is when voters vote on electronic voting machines. There is a paper record that is initiated, but it has no force in law. It does not mean anything. I believe that most voters believe that that is a record of their vote when, in actuality, under the state law, it does not have any meaning. That was initiated under former Secretary of State Dean Heller, because people were so uncomfortable that there was no backup for a vote on an electronic voting machine. I think that should be clarified. It is deceptive for voters to believe that there is a paper backup of the electronic voting machine when there actually is not. It is not utilized in law for recounts or anything else.

I believe that is true in this bill. On page 4, line 5, it says, "Paper ballots must be recounted by hand. Ballots which were cast using a mechanical voting system . . . ." All of the following is marked out until line 16, where it says, ". . . must be recounted in the same manner in which the ballots were originally tabulated." In other words, it would be recounted through the electronic count. There is no use in a recount for the actual paper record. I think that is somewhat deceptive to voters, because they believe that their vote is also recorded in a paper record. I would like that to be clarified. I think it would be good if those paper records could be used as part of the recount.

One other concern I had in the bill is on page 5, line 33. It marks out "possible" in the line, "That there was a possible malfunction of any voting device . . . ." How does someone know until they have actually done a recount or checked whether there was a malfunction? It might only be a possible malfunction until they have actually checked it. I think the word "possible" needs to be maintained there, so it does not call into question the integrity of the whole voting system. You have to start somewhere, and you would probably start with the fact that there is a possible malfunction. The people outside the actual system,

the county clerk, would not have access to knowing if it was an actual malfunction unless they were the voter, and they saw it malfunction while they were there. That might be a possibility. Other people challenging for a recount or other things would not know that. They would only know it was a possible malfunction.

Those are my two concerns. I still have concerns about the paper record. It ought to be part of the recount, and it ought to have legal standing. Otherwise, why do we have it? We need to eliminate it, because it is deceptive.

**Julie Hereford, representing Nevadans CAN:**

I am not opposing the bill. I want to echo what Ms. Hansen said. I just have another clarification. I would like to see if anyone can help. It is the last point Ms. Hansen made about striking the "possible" malfunction of any voting device. Even with the "possible" back in there, I am wondering who has the right to check the possible malfunction of any voting device. For instance, if I am a candidate and I would like to challenge the outcome of the election result, will I be allowed to check the possible malfunction of any voting device? Can only the election department or a judge authorize that?

**Chairwoman Diaz:**

I do not know the answer to that question, but maybe someone from the Secretary of State's Office would have the answer to that question.

**Wayne Thorley, Deputy Secretary for Elections, Office of the Secretary of State:**

Can you please restate the question?

**Chairwoman Diaz:**

Ms. Hereford, can you please restate your question? I think the essence of the question was who would be ultimately responsible for looking into the malfunction of the voting machines.

**Julie Hereford:**

I agree with Ms. Hansen's question that we should not take the "possible malfunction" out. The follow-up question to that is, even if we add the "possible" back into the malfunction, if I am a candidate, and I would like to recount or contest my election result, would I be allowed to check the possible malfunction of the voting device? Do I need to obtain a court order? Is the election department going to perform that function in front of the contesting candidate?

**Wayne Thorley:**

In section 4, subsection 2, paragraphs (a) through (f), that is just setting forth the reasons that a person may file a contest of an election. Ultimately, if an election contest is filed and a judge determines that there is merit to that contest, the judge may require the election official or someone else to inspect the machine as part of the court proceedings.

Just so everyone knows, our voting equipment and all the components undergo rigorous testing, both before and immediately after the election. We do a pre-election logic

and accuracy testing (LAT) certification. We test the tabulation equipment 24 hours before an election and within 24 hours after an election. We do post-LAT. That is done by a certification board. The results of the pre-LAT and post-LAT mean they are done and that all the machines function properly. That is signed off by that board. There is a very rigorous process that goes into making sure that our equipment functions properly.

**Chairwoman Diaz:**

Thank you, Mr. Thorley. Are there any further comments?

**Julie Hereford:**

This section says ". . . possible malfunction of any voting device . . ." As perfect as the Secretary of State's Office likes to think the voting machines are, there are also possible malfunctions. My question was whether the candidate is allowed to be part of the inspection after a possible malfunction was detected.

**Kevin Powers:**

An election contest is an action filed in court challenging the results of the election. It can be filed by a candidate or any registered voter in the political subdivision where the challenge is being made. Like any other court action, the plaintiff—in that case, the voter or the candidate—would have the burden to prove that there was an irregularity in the election based on the grounds set forth in section 4 of the bill, which amends NRS 293.410. Like any other civil action, the plaintiff candidate would have the opportunity to engage in discovery and inspect the machines and take deposition testimony. There would be an opportunity for the candidate as a plaintiff in a civil action to use the ordinary principles and practices of discovery to obtain the information necessary to build their case that there was an irregularity in the election and the election results should be nullified.

**Assemblyman Hansen:**

Are the paper ballots the samples that voters get after they vote? A voter hits a button, and it shows how they voted. Is that considered a legally binding document? If someone came and challenged an election by saying they voted for Kevin Powers, but the ballot shows they voted for Richard McArthur, I can show that it says your name on it. Is that a legally binding instrument?

**Kevin Powers:**

I think that maybe the election officials or the Secretary of State's Office may want to weigh in on this. As the law currently exists, the language is that during a recount, the ballots have to be recounted in the same manner in which the ballots were originally tabulated. If they were tabulated using a mechanical voting device, that is how they are recounted. The paper ballots generated by that mechanical voting device are not used in a recount. They are only using the mechanical voting device in the same manner to recount those documents.

**Assemblyman Ohrenschall:**

I had a similar question to Assemblyman Hansen's. I had to discuss it with Mr. Schragger. Perhaps Mr. Schragger can comment on this.

**Bradley Schrager:**

One thing we may be overlooking is section 2, subsection 5 of A.B. 418. Mr. Powers is exactly right. At the moment, when ballots are recounted, they are recounted the same way as on election night. Therefore, the receipts and records attached to the voting machines are not included. Those are there to assure the voter that his or her vote is being recorded properly. However, for the first time in Nevada law, subsection 5 of section 2 of this bill will allow a judge to order the parties to be allowed to inspect those receipts as part of the lawsuit underpinning a challenge to election results during an election contest. For the first time, it will be possible for those receipts to have legal value in an election contest. That should be good news for Ms. Hansen. I think it is good news, generally, for the integrity of Nevada's elections.

**Assemblyman Ohrenschall:**

Prior to my discussion with Mr. Schrager about this bill and the current state of Nevada law, I was under the assumption that if someone had the resources, they could seek an actual hand count of those paper printouts. This is not currently allowed in Nevada law, but this bill would allow that. We hear a lot about computer malfunctions, cyberattacks, and software not working the way it should. I think in this day and age, many people would take a lot of comfort knowing that there could be an actual hand count if an election was that close and a candidate who felt they were wrongly defeated wanted that. I think that is a huge move forward with this bill, and it should give everyone a lot more comfort.

**Chairwoman Diaz:**

I wanted to clarify that the records printed on paper would not necessarily have to happen. It would only happen in circumstances or situations in which the judge considered it prudent because of an anomaly in that certain election contest. Is that correct? I have many people losing it because they are going to have to recount all of these receipts every single time. I just want to assure them that it is not for every recount, but where it is deemed necessary.

**Bradley Schrager:**

The intent in the bill is for it to be an option in the court case, under an election contest, for the judge to order that those are considered. It would have to be for good cause. It would not be something available to everyone in a recount, or even everyone in an election contest. It would have to be necessary and relevant under the pleading and the evidentiary standards of an election law contest lawsuit.

**Assemblyman Daly:**

I just wanted to make sure one thing was clear on the record with regard to Assemblyman Hansen saying that someone may say they voted for this candidate, and the piece of paper showed they did not. The ballot does not show who voted for whom. You are just going to be able to count how many votes were for each candidate, and it would be matched up to the computer data. This is the only thing you would be able to see. How anyone voted is not going to be able to be determined by that. It is not on the piece of paper. There are no numbers. If there were 100 votes on the paper, you would count that there were 100 votes on the computer to see if the number of votes on the paper matches the

number of votes on the computer. You would not be able to tell how anyone voted. I did not want anyone to think that you could, because you cannot.

**Assemblyman Ohrenschall:**

I think that any recount, whether mechanical or a hand recount, preserves the voter's anonymity. This bill tries to ensure we go the extra mile to protect the voter's anonymity.

**Assemblyman Hambrick:**

If there is a challenge, who pays for it? If an individual challenges an election and brings it to the county government, would the individual who is challenging it be liable for the expenses, or would that cost go back on to the county government? I think that would be improper. If there is a challenger, I would hope that the challenger would be required to put up a bond of some type to go forward with the cost of the recount.

**Assemblyman Ohrenschall:**

*Nevada Revised Statutes* (NRS) 293.405 discusses the cost of the recount. It talks about a bond being deposited by the person who is asking for the recount. However, pursuant to NRS 293.405, subsection 2, there is a refund if the person who demanded the recount prevails. The sum deposited with the Secretary of State's Office, county clerk, or city clerk must be refunded to that person. The cost of the recount would be paid for by the taxpayers of that jurisdiction if it was successful. If it is not, then it is the candidate demanding the recount who must deposit a sum.

**Wayne Thorley:**

In a recount, the person asking for the recount is required to make a deposit of the estimated cost of the recount. If the cost of the recount turns out to be less than that, they are refunded their money. If they are successful in their recount, they would also be refunded. In the instance of a contested election, which is different than a recount, an election contest would be similar to any other civil proceedings in which the parties would be permitted to retain counsel, if they wish. At the end of the proceeding, there could be an opportunity for the judge to grant fees to the prevailing party. It would be like any other civil proceeding brought against the jurisdiction.

**Chairwoman Diaz:**

We are going to switch to testimony in the neutral position.

**Luanne Cutler, Registrar of Voters, Washoe County:**

We are testifying in the neutral position, especially with the suggested amendment from Clark County. I participated in the Ensign-Reid recount in Washoe County in 1998 whereby we counted all of the ballots by hand. It took days, and we were literally recruiting people off the street to make that happen. It really results in chaos, and there is no question a machine is going to be more accurate than a human being, because judgement comes into play when talking about humans. We are very much in support of that amendment.



I wanted to mention something regarding prior testimony about the voter-verified paper audit trail (VVPAT) paper. This is a tool to assure the voter that what they are choosing on the screen is what is being recorded by the machine. It is not completely true, however, that the paper holds no weight. I am not 100 percent sure what it means legally, but there is a required audit that we do with those VVPAT rolls. We bring the certification board back in, and we compare the votes on a certain number of paper rolls to what is recorded off of the cartridge in the back of the machine to make sure that they match up, so we know there are no anomalies. I think that is an important point that everyone needs to be made aware of. We are neutral with the suggested amendment.

**Susan Merriwether, Clerk-Recorder, Carson City:**

I would like to indicate that I support Clark County's and Washoe County's amendments to the bill. Regarding the paper trail that the voters verify when they are voting, there are many people in Carson City who will look at the paper and think they are getting a receipt from the machine. We have all of our workers trained to know that it is used for an audit. We compare what is on the paper to the voting machine. We do not do that with each one; we do a random sample. It is to verify that the machines are working and counting the votes properly. We do the pre-LAT and post-LAT, so it is just another way. I also wanted to mention that one of the vendors at the demonstration in the State Capitol on April 26 uses VeriFone paper. You will be able to see the new equipment and how they verify on the paper rolls.

**John Wagner, Carson City Vice Chairman, Independent American Party:**

I signed in as being in favor of the bill, but after hearing all the testimony, I probably should have signed in as neutral. I like the idea of putting back the word "possible." How is someone supposed to prove there is a malfunction if they do not say they suspect there is one? There has to be some suspicion in order for anyone to be able to take a look at it. There is no way for a private individual who is voting to say that it is defective. How can they prove it?

As far as machines being hacked, years ago, we had floppy disks. A friend of mine in the United Kingdom put a program on a computer called Drain. It was a cute, little program. When he powered it up, it said that water had been detected in floppy drive A. It would start to spin the drive, and he could hear a drain. It would then say that the drain is now clear, and it is rebooting his system. It would erase the file and the procedure to do this, and then restore the thing as normal and do a normal boot up. You would never know. You could find it if you knew what you were doing; otherwise, it erased the record of it.

It caused a great panic in the United Kingdom, because they are about eight hours ahead of us. By the time they found out what happened, they lost a day's worth of work. We are all aware of WikiLeaks and other things. It is very possible for them to print the same thing on the screen and the paper. What does it put on the disk? It can be completely different. Something can be loaded in there at the very start to make it good for the first 100 votes, and then suddenly, switch it back again. This is all possible, but not by me, because I do not have

that kind of programming experience. I know enough about computers to know that it could be done.

**Chairwoman Diaz:**

Is there anyone else wishing to testify in neutral on A.B. 418?

**Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County:**

I apologize. Mr. Gloria is not here today, so I am standing in for him. I apologize to Assemblyman Ohrenschall. We reached out to the Vice Chair and Mr. Schrager, but we left him out of the loop. That amendment was submitted, and we wish for you to consider it ([Exhibit D](#)).

**Wayne Thorley:**

With the Clark County amendment, we have no issues with this bill, which is similar to the testimony provided by the local election officials. I would like to add a few more comments about the VVPAT and the function it serves. As it says in its name, it is an audit tool that allows us to take the electronic vote off a random sample of machines and compare it to the printed record after every election. We believe we have great procedures and securities on the machine, but if someone was able to change the electronic vote through malicious means, we would have that audit trail that we compare it to.

Since we have had the VVPAT printers and have been doing this random sample audit, we have never once found a discrepancy between the electronic vote and the paper vote. There are instances when the electronic voting machine will completely malfunction and the electronic vote may be lost. In those instances, the current regulation lets us use the VVPAT, the printed record of the votes, as the actual ballots cast for tabulation purposes. It also serves that purpose in rare instances when we lose the electronic vote. There are multiple redundancies built into these machines. The vote is stored in at least three separate locations. They are very robust, so we have the ability to get the vote off the machine in the case of any sort of malfunction.

**Chairwoman Diaz:**

I do not see anyone else wishing to testify in the neutral position, so we will invite the bill sponsor to provide his closing remarks.

**Assemblyman Ohrenschall:**

I apologize. I had not seen the two amendments from Washoe County and Clark County, but they are friendly. I think some of the concerns some of the others brought up can be addressed if the Committee might consider another amendment. I think preserving someone's anonymity is huge and is what this bill does. Mr. Schrager spoke to allowing that extra security if a court feels there is good reason for a hand recount. It is not in Nevada law now, which I was mistaken about, and it will give voters a lot more comfort. I hope the Committee will consider processing this bill.

**Chairwoman Diaz:**

We look forward to the forthcoming amendment, so we can move the bill. With that, I will close the hearing on A.B. 418. Before I open the work session, I would be remiss if I did not acknowledge former Senator Valerie Wiener. It is great to see you back here after so many years of service. We also have the Nevada Youth Legislature, of which Senator Wiener is a number one supporter.

Our next order of business is to begin the work session. I am going to pull Assembly Concurrent Resolution 7. We still do not have the amendment language where some members would like to see it, so we will continue working on that.

**Assembly Concurrent Resolution 7: Directs the Legislative Commission to conduct an interim study concerning property taxes. (BDR R-1049)**

We will pick up with Assembly Concurrent Resolution 8.

**Assembly Concurrent Resolution 8: Directs the Legislative Commission to create an interim study concerning reports relating to public education. (BDR R-337)**

**Carol Stonefield, Committee Policy Analyst:**

I am with the Research Division of the Legislative Counsel Bureau (LCB). The members have the work session document in their binders (Exhibit G). It is loaded on the Nevada Electronic Legislative Information System (NELIS), and there should be copies at the back of the room. Skipping Assembly Concurrent Resolution 7, the first bill before the Committee is Assembly Concurrent Resolution 8.

This was heard in this Committee on April 4, 2017. It was presented by Mr. Ray Bacon of the Nevada Manufacturers Association on behalf of the Legislative Committee on Education. This concurrent resolution proposes a study of reports to public education. The interim committee, consisting of six legislators, must analyze the reporting requirements relating to accountability, pupils, teachers, administrators, and any other reports required by federal law. They must also analyze strategies to modernize and streamline those reporting requirements, and the manner in which the information in those reports is used. The committee must consult with experts in education reporting and make a report to the 2019 Legislative Session. No amendments were offered.

**Chairwoman Diaz:**

I will entertain a motion to adopt A.C.R. 8.

ASSEMBLYMAN ARAUJO MADE A MOTION TO ADOPT  
ASSEMBLY CONCURRENT RESOLUTION 8.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION WAS ADOPTED UNANIMOUSLY.

Assemblyman Araujo was on the interim Legislative Committee on Education. I think it would be prudent for you to carry it on the floor. You will have that floor assignment. We will go on to Assembly Concurrent Resolution 9.

**Assembly Concurrent Resolution 9: Directs the Legislative Commission to conduct an interim study concerning treating certain traffic and related violations as civil infractions. (BDR R-1064)**

**Carol Stonefield, Committee Policy Analyst:**

Assembly Concurrent Resolution 9 was heard in this Committee on March 30, 2017. It was presented by Assemblyman Yeager. It proposes an interim study concerning certain traffic and related violations. A committee of six legislators must consider the existing laws concerning the violation of traffic laws and laws relating to driver's licenses and to the registration of and insurance for motor vehicles ([Exhibit H](#)).

In conducting the study, the Committee shall consider laws in other states, elements of a system that would treat violations of such laws as civil infractions, and the fiscal effect of treating such violations as civil infractions. Assemblyman Yeager submitted a conceptual amendment. There is a copy of it behind the bill document. He would suggest revising the membership of the committee to require that one member of the Senate and one member of the Assembly represent areas outside of Clark County, and at least one of those legislators must be from a rural county that is not Clark or Washoe.

**Chairwoman Diaz:**

I will entertain a motion to amend and adopt A.C.R. 9.

ASSEMBLYWOMAN MONROE-MORENO MADE A MOTION TO AMEND AND ADOPT ASSEMBLY CONCURRENT RESOLUTION 9.

ASSEMBLYMAN DALY SECONDED THE MOTION.

THE MOTION WAS ADOPTED UNANIMOUSLY.

I will give the floor statement to Assemblyman Yeager, but I will have Assemblyman Ohrenschall be his back up in case he is not able to have that. We will move on to Assembly Bill 272.

**Assembly Bill 272: Revises provisions relating to elections. (BDR 24-851)**

**Carol Stonefield, Committee Policy Analyst:**

Assembly Bill 272 was heard in this Committee on April 4, 2017. It was presented by Assemblyman Frierson. The bill contains a number of proposals relating to the administration of county and city elections. Each city or county clerk shall establish at least one voting center where any person entitled to vote may do so in person on the day of a primary or general election. Election rosters shall be in electronic form. Voting materials

shall be provided in Mandarin and Cantonese languages. Polls shall close at 9 p.m. on Election Day. County or city clerks shall establish at least one permanent polling place for early voting. Early voting shall be extended until the Sunday before Election Day. A county or city clerk shall establish at least one polling place within the boundaries of an Indian reservation or colony at a location approved by the Indian tribe. The county or city clerk must also establish at least one temporary polling place for early voting as approved by the Indian tribe ([Exhibit I](#)).

Speaker Frierson presented the mock-up, which is behind the bill page. It is proposed amendment 3656. He proposes the following revisions: (1) establishing the voting centers would become permissive; (2) at least one polling place must be designated on an Indian reservation or colony if the tribe submits a request, and deadlines for submitting the request are provided in the amendment; (3) a city or county clerk shall prepare election materials in a language of a minority group. The specific languages of Mandarin and Cantonese are deleted by this amendment. The amendment further provides that a minority group must have been the subject of historical discrimination and unequal educational opportunity; (4) the proposal to extend the opening hours of polls until 9 p.m. is deleted; therefore, the existing 7 p.m. closing time would be returned to the law; and (5) the extension of early voting through the Sunday prior to the election would become permissive. If a clerk chooses to open voting sites on that Sunday, the clerk may establish the hours of operation.

**Chairwoman Diaz:**

I will now entertain a motion to amend and do pass A.B. 272.

ASSEMBLYWOMAN BILBRAY-AXELROD MOVED TO AMEND AND DO PASS ASSEMBLY BILL 272.

ASSEMBLYWOMAN MONROE-MORENO SECONDED THE MOTION.

**Chairwoman Diaz:**

Is there any discussion on the motion?

**Assemblyman Oscarson:**

In light of the amendments that make it permissive, I am going to support this in Committee but reserve my right to change my vote on the floor if there are any other changes, or I need to do so.

**Assemblyman Hansen:**

In light of the amendments, I will do the same. I will support it, but I am not totally sure what is in it now. It sounds much better with it being permissive. I was a strong no on the original bill. This seems like it has been worked out. Does anyone know if the clerks have been consulted? They were in opposition to a lot of it.

**Chairwoman Diaz:**

My understanding is that Assemblyman Frierson worked with the clerks and their concerns in the amendment language that is being provided. They are nodding their heads yes in the audience.

[Chairwoman Diaz designated ([Exhibit J](#)) as presented but not discussed. It will be made part of the record.]

**Assemblyman Hambrick:**

I ditto the comments of my colleagues.

**Chairwoman Diaz:**

I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMAN McARTHUR VOTED NO.)

I will assign the floor statement to myself unless Assemblyman Frierson wants to have it himself. We will move on to Assembly Bill 392.

**Assembly Bill 392: Revises provisions concerning certain communications relating to elections. (BDR 23-85)**

**Carol Stonefield, Committee Policy Analyst:**

Assembly Bill 392 was heard in this Committee on April 4, 2017. It was presented by Assemblyman Oscarson. The bill concerns the use of official stationery from a state or local governmental entity for purposes relating to elections. One portion of the bill proposes to amend the Nevada Ethics in Government Law to prohibit the use of official stationery for purposes of expressing support for or opposition to a candidate, a political action committee, a political party, or a ballot question. Further, official stationery cannot be used to solicit contributions for any political purpose. The other portion of the bill amends campaign practices to provide that if a communication is published in support of or in opposition to a candidate, and it includes the name of a governmental entity, the communication must disclose that it was not published by the governmental entity. There is a mock-up proposed by the sponsor. It is behind the bill page ([Exhibit K](#)). The mock-up proposes to delete section 1 from the bill, which would have amended the Ethics in Government Law. It clarifies that if a communication includes contact information, the communication must disclose that it was not published by the governmental entity. The amendment further provides definitions for contact information and further defines governmental entity.

**Assemblyman Elliot T. Anderson:**

I have a question for Committee counsel, Mr. Powers. I am looking at the amendment to the definition of a "governmental entity," in section 2, subsection 2(b). It includes "public officer." I believe that is a defined term in *Nevada Revised Statutes* (NRS) 294A. It occurred to me that that would potentially loop in any campaign literature that legislators do on behalf of themselves. I wanted to check and see if our existing disclosures that say

it is paid for by our committee would be sufficient to satisfy subsection 1 of section 2 as it is proposed to be amended.

**Kevin Powers, Committee Counsel:**

I will start by clarifying that this provision of the bill that applies to a public officer is intended to ensure that if a public officer was engaged in this type of communication, that disclosure must indicate that the communication is not on behalf of the governmental entity. They are supporting or opposing a candidate on behalf of themselves, not on behalf of the governmental entity of which they are a public officer.

Second, if the disclosure that is required in campaign communications now under NRS Chapter 294A is sufficiently drafted to make it clear that the communication was not published by a governmental entity, it would qualify with regard to this section. I know the disclosure in NRS 294A deals with indicating that the campaign material was paid for by a campaign committee. That would be sufficient to indicate that it was not being published on behalf of the governmental entity.

**Assemblyman Hansen:**

I have an example from a race. An Assembly candidate from Reno got a letter endorsing him from the Governor. He used that extensively in his brochures and so forth, saying, Join Governor Brian Sandoval in supporting candidate A, B, or C. Under this law, what would the requirements be for that individual to use that communication from the Governor?

**Kevin Powers:**

The candidate would have to indicate that the communication he is sending out is not a communication from that governmental entity. It would have to include some disclosure saying that this communication is not being published by the State of Nevada and, therefore, is not being published by a governmental entity. It would have to include some disclosure revealing that it was not a governmental entity that was sending this particular letter.

**Assemblyman Hansen:**

In other words, let us say I received a letter from Governor Sandoval saying that he endorses Ira Hansen for Assembly District No. 32. I then turn around and want to use that, and it is on his official letterhead. What do I have to put on my mailer or email blast to make sure that I do not get either the Governor or myself in trouble?

**Kevin Powers:**

This can be clarified in the regulations with the Secretary of State's Office, but I think the simplest way to approach this is that the disclosure says, This letter was not published by the State of Nevada.

**Assemblyman Hansen:**

I could endorse a candidate or an individual on my official letterhead, but that individual would have to put a disclaimer that this was not officially published by the State of Nevada on the reuse of that?

**Kevin Powers:**

The starting point is that if you are using your official letterhead that includes the name, address, or other contact information of a governmental entity, and it is a communication that is published in support of or in opposition to a candidate, you would have to indicate that your letter supporting that candidate is not coming from the State of Nevada. If another candidate reused that letter, they would have to indicate in their letter that it was not coming from the State of Nevada.

**Chairwoman Diaz:**

Mr. Powers, would it not be more prudent to stay away from using governmental letterhead and titles and endorse them in another manner? Is that not a more prudent move given this change to the statute and the law? I am trying to figure out why we would want to continue to put things on our governmental letterhead versus doing it in another way that this is trying to limit.

**Kevin Powers:**

I think the key is that the triggering mechanism is if the communication includes the name and address or other contact information of a governmental entity. A letterhead, almost by necessity, has the name, address, and contact information of a governmental entity. By using that letterhead, you are probably going to fall into the triggering provision that would make the requirements of this section apply. To answer your question, if you do not use official letterhead or otherwise indicate the name, address, or other contact information of a governmental entity, then you would not have to make any disclosure.

**Assemblyman Hansen:**

This is a lot broader than that in the amendment. This says any communication that includes any of the contact information at all. If I sent out an email that is officially from Ira Hansen who, by this definition, is a public officer, and I include in that email return contact information, would I not be violating this section if I did not include a disclaimer in something as simple as an email?

**Kevin Powers:**

It is quite possible that if you are using the name of a governmental entity, which includes a public officer, and any contact information, you have to indicate a disclosure that says the publication or communication is not from the State of Nevada.

**Assemblyman Hansen:**

That means, because I am a public officer, that every single thing I do, every act of communication that includes some form of contact information would have to have a disclaimer.



**Kevin Powers:**

It has to fall within the scope of the provision. It has to be a communication published in support of or in opposition to a candidate. That is part of the triggering mechanism. That is the underlying theme. It is not any communication; only a communication that meets that threshold.

**Assemblyman Hansen:**

That is way too broad for my taste.

**Assemblyman Elliot T. Anderson:**

When I am sending out emails that relate to campaign activity, I make it a habit to use my campaign account, which has that disclaimer on it. I think that going forward, that would be prudent to keep that in your signature block. Keeping those things segregated is generally a good idea. As long as that disclaimer is appropriate, it should not significantly change business as usual related to campaign activity, which was my concern. This bill covers that.

**Chairwoman Diaz:**

The amendment language addresses your concerns?

**Assemblyman Elliot T. Anderson:**

It does, in addition to Mr. Powers' explanation that the disclosure we already use would comply with this.

**Chairwoman Diaz:**

Is there any further discussion? [There was none.] I will entertain a motion to amend and do pass Assembly Bill 392.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 392.

ASSEMBLYMAN ELLIOT T. ANDERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DALY, HANSEN, AND  
McARTHUR VOTED NO.)

I will have Assemblyman Oscarson give the floor statement for his own measure. We will move on to Assembly Joint Resolution 11.

**Assembly Joint Resolution 11: Urges Congress to ensure that the Intermountain West Corridor does not bypass Mineral County. (BDR R-561)**

**Carol Stonefield, Committee Policy Analyst:**

The last bill before the Committee today is Assembly Joint Resolution 11. It was heard in this Committee on March 30, 2017. It was presented by Assemblyman Hansen. The resolution urges Congress to ensure that the Intermountain West Corridor will follow the existing U.S. Highway 95 corridor through Mineral County. It should be noted that in December 2015, Congress passed the Fixing America's Surface Transportation Act, which designates the Intermountain West Corridor as following the route of Highway 95 north from Las Vegas to Interstate 80 ([Exhibit L](#)). There were no amendments.

**Chairwoman Diaz:**

I will entertain a motion to do pass Assembly Joint Resolution 11.

ASSEMBLYMAN OHRENSCHALL MADE A MOTION TO DO PASS  
ASSEMBLY JOINT RESOLUTION 11.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Hansen will have the floor statement.

With that, I will close the work session and open it up for public comment. Seeing none, this meeting is adjourned [at 3:41 p.m.].

RESPECTFULLY SUBMITTED:

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Julianne King  
Committee Secretary

APPROVED BY:

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Assemblywoman Olivia Diaz, Chairwoman

DATE: \_\_\_\_\_

## EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a proposed amendment to [Assembly Bill 45](#), presented by Maureen Schafer, Executive Director, Council for a Better Nevada.

[Exhibit D](#) is a proposed amendment to [Assembly Bill 418](#), submitted by Les Lee Shell, Director, Office of Risk Management, Department of Finance, Clark County.

[Exhibit E](#) is a proposed amendment to [Assembly Bill 418](#), submitted by Deanna Spikula, Assistant Registrar, Washoe County.

[Exhibit F](#) is a document titled "AB 418 Washoe County Fiscal Note," submitted by Deanna Spikula, Assistant Registrar, Washoe County.

[Exhibit G](#) is a Work Session Document for [Assembly Concurrent Resolution 8](#), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit H](#) is a Work Session Document for [Assembly Concurrent Resolution 9](#), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit I](#) is a Work Session Document for [Assembly Bill 272](#), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit J](#) is a proposed amendment to [Assembly Bill 272](#), dated April 6, 2017, prepared and submitted by Susan Merriwether, Clerk-Recorder, Carson City.

[Exhibit K](#) is a Work Session Document for [Assembly Bill 392](#), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit L](#) is a Work Session Document for [Assembly Joint Resolution 11](#), presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.