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Draft

Senate Committee on Government Affairs, Friday, March 14, 2003:

Good morning/afternoon Madame Chairman and members of this Committee, for the record, my name is Antonio Gutierrez, Intern to Senator Dina Titus.

It is absolutely critical that the Legislature take this bill into consideration and assist in enacting it. The federal government in recent years has taken bold steps to curb and circumscribe the actions of publicly elected officials in federal elections when the use of public funds is concerned. The federal government did the right thing by choosing to defend and protect the interests of the people above and beyond those of elected government officials. As Associate Justice to the U.S. Supreme Court Ruth Bader Ginsburg once said, "the interests, well-being, and wishes of the people must supersede those of the government in all circumstances if democracy is to ever blossom."

In *Legal Services Corp. v. Velazquez*, the U.S. Supreme Court deemed the use of public funds in Congressional campaigns unconstitutional unless the people who deposited funds into the accounts were notified first. The Court commented, "when a spending program, especially one that deals with the use of public funds by an elected officer of government without the approval of the people, is not universal but limited, which is the case here since some elected officers are privy to it while others are not, it provides benefits to a restricted number of recipients; such selective spending is unconstitutionally coercive because it encroaches on the people's First Amendment right 'to express' where their money can go and how it can be spent." The Court further explained that federal elected officials who utilize public funds to finance ads in their favor "distort an existing medium of expression [elections]" because they impose their

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ideas upon the people without allowing them the freedom to seek other potential candidates. The Court essentially found the use of public funds to finance ads unconstitutional because it favored some elected officials and disadvantaged others, thereby making elections "one-sided."

If elected officials are permitted to use public funds to finance ads and commercials that feature them, then they are essentially granted a loophole to circumvent and evade campaign finance limitations and campaign contributions reporting requirements. To avoid this dilemma in federal elections, Congress has enacted several laws, intended to protect public funds from being used as campaign contributions as well. The Campaign Reform Act of 2001 prohibits any elected official from using public funds to pay for ads that feature them unless individual citizens deposit funds into an account specifically established to finance such ads. The Campaign Communications Reform Act and the Campaign Expenses Publicity Act further prohibit publicly elected officials from using public funds to finance ads or commercials that feature them by requiring federal elected officials to report any and all funding used to pay for ads in which they are prominently featured and who funded them.

There are currently 11 states across the nation that have already enacted a provision prohibiting the appearance of publicly elected officials in any ads or commercials paid by state or public funds. Please refer to the chart I have provided for a comparison of what states have done to remedy the problem in question. Note that states such as Maryland, New York, and especially Vermont severely restrict the use of public funds by elected officials altogether. As you can very clearly see, Senator Titus' bill, if

enacted, would be in line with but not excessive when compared with what other states have done.

And in those states where extensive data is available, statistics demonstrate that the prohibition of elected officials from using public funds to pay for ads that feature them has significantly increased the confidence and trust of the people in the government, the elections system, and in public officials in general. States that have adopted this provision have also demonstrated less corruption among public officials, higher voter participation, and less complaints by voters of ethical violations against public officials. It is obvious that many positive and desirable results have risen from enacting such a crucial piece of legislation. It is now time for Nevada to act.

There are no current regulations in Nevada, which address the use of public funds that feature political officials up for election. Nevada must now follow the example heralded by the federal government and other states and tighten its laws via the enactment of A.B. 298, as amended.

The use of state funds by publicly elected officials to finance their own political ads bolsters their probability to win reelection, which grants them an automatic advantage and places new candidates seeking public office at a clear disadvantage. Allowing publicly elected officials who are near reelection to use public funds to finance any ad or commercial severely undermines and circumscribes the effectiveness of elections.

If the actions of publicly elected officials (namely utilizing public funds to further their own political goals) stifle the people's freedom of expression by willfully preventing the election of other potential candidates, then elections themselves cease to

serve their intended purpose. The Legislature must level the playing field for all candidates and prevent unfair expenditures of taxpayer dollars.

By enacting A.B. 298, as amended, this Legislature will have delivered an effective message to all those elected officials who wish to utilize public funds for their own political goals that it will not tolerate such misuse of taxpayer dollars.

Legislators

~~Senators~~, I urge you to enact A.B. 298, as amended. It will successfully prevent public funds from being misspent on implicit reelection campaigns and it will also guarantee the maintenance of free, competitive, fair, and clean elections. You as Senators can assure that the taxes the people of the State of Nevada pay into a public fund are not utilized as "extra" campaign contributions by publicly elected officials.

I am most grateful to you all today. Thank you for permitting me the opportunity to speak on this very crucial matter.