

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fourth Session
March 27, 2007**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:55 p.m., on Tuesday, March 27, 2007, 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; and to Stanford University, 432 McClatchy Hall, Stanford, California. 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/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen Koivisto, Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman Ed Goedhart
Assemblyman Ruben Kihuen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James Settlemeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Harry Mortenson, Vice Chair (excused)



GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Trisha Moore, Committee Assistant

OTHERS PRESENT:

Anita Hara, Member, Washoe County Democratic Party Election Reform Working Group
Gail Pratt, Member, Washoe County Democratic Party Election Reform Working Group
Hal Taylor, Member, Washoe County Democratic Party Election Reform Working Group
Alan Glover, Carson City Clerk-Recorder; representing the Nevada Association of County Clerks
Matt Griffin, Deputy for Elections, Office of the Secretary of State
Jon Krosnick, Professor of Political Science, Communication, and Psychology, Stanford University, Stanford, California
Joseph Turco, ACLU (American Civil Liberties Union) of Nevada
Lynn Chapman, State Vice President, Nevada Eagle Forum
Gary Peck, Executive Director, ACLU of Nevada
Chris Giunchigliani, Private Citizen; Member, Clark County Commission, Las Vegas, Nevada
Craig Walton, President, Nevada Center for Political Ethics
Patrick Hearn, Executive Director, Commission on Ethics

Chair Koivisto:

[Roll called.] We will start with Assembly Bill 328.

Assembly Bill 328: Makes various changes relating to elections. (BDR 24-1045)

Assemblywoman Debbie Smith, Assembly District No. 30:

This bill was brought forward by a hardworking group of citizens from Washoe County who came up with some very solid and broad-based ideas for the election process, based on experiences from the last couple of election cycles. Their ideas are not partisan and concern improvements to our election

process. They also have some amendments to present that I agree with. The Secretary of State also has an amendment that I am in agreement with as well.

Anita Hara, Member, Washoe County Democratic Party Election Reform Working Group:

We are a grassroots group consisting of citizens, voters, poll watchers, poll workers, candidates, and others who were concerned about the results of the 2004 elections in Washoe County. The experience for many people in 2004 was very difficult. There were long lines, people were at the wrong locations, and there was an inability to contact the Registrar's Office. Our group looked at the problems encountered, studied them, and worked with Registrar Dan Burke to come up with improvements and make recommendations. Our group approached this from a local level, but we believe these provisions can be implemented on a statewide level and would help every voter.

To the County and Mr. Burke's credit, the 2006 General Election went very well. We believe a lot of that improvement was due to the changes implemented because of our input. There is still much work to do and the bill in front of you is a continuation of that process. It contains three proposed changes:

- A provision to authorize the polling manager to deputize officers on election day in cases of emergency;
- A provision that will clarify the authority of the Secretary of State and the Attorney General or the district attorneys to prosecute election violations; and,
- A provision to streamline the absentee voter designation and eliminate the need to reapply each election for those who qualify.

There are, however, a couple of changes that need to be made to the bill ([Exhibit C](#)). Gail Pratt will speak of the first proposed amendment.

Gail Pratt, Member, Washoe County Democratic Party Election Reform Working Group:

My concern is the need to deputize alternative people. [Spoke from prepared text ([Exhibit D](#)).]

Hal Taylor, Member, Washoe County Democratic Election Reform Working Group; Attorney, Reno, Nevada:

Regarding Section 2 on page 2 of the bill, there was some concern with regards to exactly who could prosecute violations of state law relating to elections. I think it is a non-issue. The district attorney of the county in which an alleged violation occurs has the authority to prosecute any violation of state law;

likewise, the Attorney General's Office has that authority. The intent was to make it clear that while the Secretary of State's Office would have primary responsibility for dealing with these issues, it could delegate either to the Attorney General's Office or, where appropriate, the district attorney's office. Those offices are, in fact, appropriate for enforcement of state law.

As put into the bill, authority was also given to those two offices to enforce federal law and I have suggested that, while there is a delegation to the Secretary of State's Office to enforce federal law, without a specific delegation with regards to enforcing federal law, I do not think the Attorney General's Office or the district attorney's office may do that unless it is something contained within the particular statute. Therefore, you have before you a proposed amendment to clarify this ([Exhibit C](#)). It is the second one on that single sheet and would change the language to say the Attorney General and the district attorneys of this State may exercise jurisdiction to investigate and prosecute a person who violates a provision of Title 24 of *Nevada Revised Statutes* (NRS) and any other provision of state law. It removes the phrase "and federal" but adds the language, "and, upon referral by the Secretary of State, of federal law;" relating to elections in the State. There may be a time the Secretary of State's Office would find it appropriate to delegate enforcement of a federal law, in which case that delegation would be appropriate.

I believe this is an accurate statement of the law. I do not think Section 1 of NRS 293.124 makes the Secretary of State's Office the only office that can prosecute state violations. This simply clarifies that to be the case; however, it is anticipated that the Secretary of State's Office will be the lead prosecutorial office with regards to any allegations of violation of election law.

Anita Hara:

Sections 5 through 7 and 10 through 13 are requests to make the permanent absentee ballot status available to voters who currently qualify. This is a "no voter left behind" idea to facilitate voting by historically disenfranchised groups such as the elderly, the disabled, and the infirm. We request the bill be amended. If you turn to page 4, Section 5, subsection 2; and page 9, Section 11, subsection 2, the language that states, "A registered voter who is (a) at least 65 years of age; or (b) Has a physical disability or condition that substantially impairs his ability to go to the polling place" should be returned to the document. It was not the intention of the drafters of this bill to eliminate that requirement. We merely want to streamline the process for those who currently qualify. There is an extra step that they must follow with every election. They have to send in a request for an absentee ballot, which creates

extra work, and there is an extra cost attached to that. We believe that should be streamlined by being eliminated, which would allow people who already qualify to have a permanent absentee ballot status.

Hal Taylor:

There is a fourth provision. On page 7, the language at line 39 addresses the issue of allegations that have sometimes been made that people securing registration applications have not always submitted those applications to the county clerk or registrar. This new language provides that if someone knowingly and willfully fails to timely submit these applications, that would be a class E misdemeanor. The language that came out of the Legislative Counsel Bureau is a little different than what we submitted. Note that this is "knowingly and willfully," so someone must purposely do this. An individual who has a family emergency, for instance, and fails to timely submit the application is not knowingly and willfully violating the law.

Chair Koivisto:

Do you have the amendment you just spoke about in writing?

Hal Taylor:

No. I think it will be in subsection 4 or 5 of NRS 293.504, or in subsection 13 of NRS 293.5235.

Chair Koivisto:

Please put it in writing so we can see how it would look.

Hal Taylor:

We will do that, and I want to make absolutely sure that subsection 13 is the one we also want.

Assemblyman Conklin:

This idea of absentee ballots for all subsequent elections comes up every legislative session. Every legislative session it dies because of the fear there will be extra ballots for people who have passed on or moved away. If we truly are going to move forward with this section, perhaps absentee ballots could be available every election until the voter misses one. At that time, the voter must reapply because there is no telling why that individual failed to vote. Every time you pass out a ballot, someone has an opportunity to vote, but there is also an opportunity for fraud. There should be some qualifier so there are no extra ballots out there.

Hal Taylor:

The clerks already have processes in place by which they purge voter rolls. These are not merely with regards to absentee ballots but also relate to people they have not seen for two or three elections, so they have experience with taking people off the rolls who should no longer be there.

Obviously, there is a concern regarding fraud—grandma may have an absentee ballot but is she really the person who is filling out the ballot—and that is a problem we may never get a 100 percent solution to. What we are doing is balancing the interests of people for whom, whether because of age, infirmity, or disability, going down to the county registrar or clerk's office really is a difficult task. It would be nice if those people did not have to continue to make that trek. That must be balanced against the concerns you have expressed. We actually think this may end up saving the local clerks and registrars because those people will not be registering every year. You have raised valid concerns, but I think they can be addressed by the county clerk in an appropriate way.

Assemblywoman Kirkpatrick:

I am trying to visualize having only one person at a polling site. In Clark County, I have never seen just one person at a polling site. I heard you say no one was at the polling site when people were ready to start voting?

Gail Pratt:

There is a new electronic procedure involving an intake desk which voters must pass through to be signed in. There is a computer at the intake desk that requires someone who is trained to operate. The person who had volunteered to man the intake desk that day did not show up. There were other volunteers that day doing the books, but to get to that step, the voter had to go through the intake person. There was only one intake person because of the size of this polling place. I was assistant poll manager, and our site in Reno did not warrant two people, so we had one desk, one computer, and one person. When that person did not show up, there was no one to do that job and our polling manager, going by the book, said we could not open the poll because we did not have an intake person. Only one individual had been authorized and deputized to do that job. When she did not show up, there was no one else to do that job. If the rules were changed, the poll manager could legally and officially look around and ask who, among the other volunteers, was computer literate and qualified to take over that job. We drew someone from among the people who had been deputized. This may be a fine point, but that is the way the law is currently written and we would like to see it straightened out. It was a matter of doing something or the poll would not open.

Assemblywoman Kirkpatrick:

In Clark County, I have always seen at least two people with that computer in front of them. I guess smaller polling sites here were part of the problem.

Gail Pratt:

Yes, we had only one.

Chair Koivisto:

To clarify, there is an intake person, the assistant poll manager, and the poll manager. Are there only three people at a polling site, or are there others?

Gail Pratt:

Other people were there; they were volunteers assigned to other duties. We are not all electronic up here, so we still use those big books that everyone signs in order to get a ticket to vote. If you go up to the intake person at the front desk and you are in the computer, then you can come in, get your ballot, and vote. There were other volunteers; I believe there were nine, three at each desk. There were enough people to take care of the books and I drew from that pool of people who had been deputized by our poll manager, but no one else had specifically been trained to do the intake position. If this bill passes, the poll manager would feel comfortable deputizing someone for a new position.

Assemblyman Cobb:

This would allow for permanent absentee ballot status, is that correct?

Anita Hara:

Yes, that is correct, but we would be returning to the requirements that someone be 65 years of age and disabled.

Assemblyman Cobb:

I was looking at the definition of disability. Are you going to bring a further amendment to define this as a permanent disability? If an individual breaks his leg, he is allowed to apply for an absentee ballot. As this is written, do you want that individual to be able to request a permanent absentee ballot status?

Anita Hara:

I believe it applies to permanent disabilities at this point. There is also the ability to get an absentee ballot if you have a temporary disability.

Assemblyman Cobb:

I understand that, but I am looking at both the amendment and the bill itself. You have added language on page 4 of the bill at Section 5, subsection 2(b)

that suggests that anyone who qualifies under subsection 2 may request an absentee ballot. When you add back in the language, "has a physical disability," it does not say a permanent one, just a physical disability. The example might be an individual who had a skiing accident and applied for permanent status under this current language but did not need the permanent status.

Anita Hara:

I do see your point. This was the original language of the bill. Do you have an issue with that?

Assemblyman Cobb:

Right now, our system is based on the fact that you must show good cause for why you would need an absentee ballot in the first place as opposed to going to a voting location, or early voting.

Hal Taylor:

You have raised an excellent point, and what we should do is take a look at the language. Perhaps it is a matter of saying, "a continuing physical disability" to exercise this permanent absentee ballot if the disabling condition still applies. We had not discussed this, but we have to look at it.

Chair Koivisto:

Any other questions from the Committee? [No response.] I think we are at a point where we will wait for you to bring back the full amendment so we can see what we are doing, but I think this is a fairly simple fix. If we can get this back, we could put it on a work session on April 3, next week.

Let us go to the public testimony on A. B. 328.

Alan Glover, Carson City Clerk-Recorder; representing the Nevada Association of County Clerks:

We are in support of A.B. 328. Speaking of Sections 1 and 2, it would be helpful for the clerks if people could be deputized and brought on at the last minute. We do not have to do that very often, but in the rare occasion when that occurs and someone is ill or unable to get to the polls, that would be quite helpful. We certainly are in support of both the district attorneys and the Attorney General being able to prosecute violations of the election law.

Let me clear up one area about absentee requests and voting. Anyone can apply for an absentee ballot. You do not have to be 65 or disabled. What we are looking for is some relief in that area ([Exhibit E](#)). If we are going to create

permanent absentee voters, we would like some ability to check with these people, perhaps send them a card and make sure they have not moved, particularly if they did not vote in the last election. There is no point sending an absentee ballot to someone for the general election if it comes back as undeliverable when sent out for the primary election. It is much less expensive to take in the request because they come into our office; we scan them in and a keystroke puts them into the primary and general elections.

It costs about \$5 to send an absentee ballot to someone. We find it rather frustrating when people apply for an absentee ballot, then bring it in to us during early voting saying they were unaware that they could early vote. Sometimes they want to cancel their absentee ballot out, which we let them do, and then they vote on one of the voting machines. That is why we are asking that you delete the language on page 8, lines 43 and 44 where it talks about a line on the voter registration application "on which the voter may indicate that the voter submits a request for a permanent absent ballot." If that question, "Do you want a permanent absentee ballot?" is on the application, they will check that box. Many of our voters have come here from other states, for instance California, where they wait two or three hours in line before they can vote; and they do tend to vote absentee. Almost 50 percent of the people in California are voting that way now.

You may want to restrict permanent absentee voters to those who are 65 years old and/or disabled. We do not check to see whether they are disabled or not. If they tell us they are disabled, we send them an absentee ballot. We do know their age, but do not check that either. I find a lot of younger people who move here put in for absentee ballots, when it would be easier and less expensive if they came down and early voted. We encourage early voting in Carson as compared to absentee balloting. One of the problems with absentee balloting is that you have turned your ballot, your vote, over to a third party, the United States Post Office. Sometimes we get the ballots back from them and sometimes we do not.

Overall, the bill helps us quite a bit. If we could get the ability to send notices to people verifying addresses and whether or not they still want absentee ballots, that would help us a lot.

Assemblyman Conklin:

You have offered this amendment on your letterhead stationery; has this been run by all the clerks?

Alan Glover:

This amendment is from the Association.

Assemblyman Conklin:

You have mentioned limiting this to people aged 65 and older?

Alan Glover:

Being on the permanent absentee ballot list at 65 and older or disabled would be quite reasonable because those are the people who really should be absentee voting. They are physically not able to come to the polls or to early voting, and we really want those people to vote. That would be one way to do it, as compared to someone simply requesting an absentee ballot because they do not want to take the time to vote in person.

Assemblyman Conklin:

I ask because I have two or three very tiny precincts with from 3 to 15 voters, none with polling locations. They are all absentee ballots. I do not know what their ages or situations are, but my concern is in limiting this to those only 65 and older when there are some people voting absentee legitimately. It may be they automatically receive absentee ballots because they have no polling location.

Alan Glover:

That is correct. Small, mailing precincts automatically get absentee ballots. Those people are taken care of in the statutes.

Assemblywoman Gansert:

For clarification, Section 5, subsection 4 at line 26 mentions requests for absentee ballots being good for "the two primary and general elections immediately following" Does that mean one of each?

Alan Glover:

One of each.

Matt Griffin, Deputy for Elections, Office of the Secretary of State:

I am offering our support for A.B. 328, also the Secretary of State is proposing an amendment to the bill ([Exhibit F](#)). This amendment inserts into NRS (*Nevada Revised Statutes*) 293.755 an additional subsection (b) into Section 1. The difference between paragraphs (a) and (b) is that paragraph (a) addresses a person who attempts to interfere with a mechanical voting device to affect the ballot cast by a particular person. The proposed amendment would address what the Secretary of State feels would be one of the most egregious

situations. We are requesting it be a category A felony for those unique situations in which, as the criminal law defines it, there is the specific intent by a person, for instance someone at a software company, to tamper with the results of elections. In other words, their actions constitute an attempt to interfere with the results of that particular election, not just the results of a particular vote that is being cast.

There is some public perception that the potential for election results to be altered exists. Whether that is true or not is not necessarily why I am here to speak today. Moreover, this provides some level of security to the voting public that if there is this type of tampering with an election, then it would be dealt with in the strictest fashion accorded under Nevada law, which would be a category A felony, which is punishable by life with the possibility of parole after five years.

Chair Koivisto:

Would this be added at the end of the bill?

Matt Griffin:

Correct.

Assemblyman Goedhart:

Should item (b) be addressed in the Judiciary Committee or, because it has to do with elections, does it have to come through this Committee?

Matt Griffin:

It would be most properly dealt with here. While it is a penal enforcement of an election law violation, it is no less a violation of the election law and is within the purview of this Committee.

Assemblyman Ohrenschall:

I understand California has software that randomly tests the reliability of the counting software. Is Nevada doing anything like that?

Matt Griffin:

Nevada does do extensive procedures to ensure that the software is up and running correctly. We do as much as we can think of to ensure there is no tampering with the results of elections, but that is not to say that it is not still a possibility. The Secretary of State's position is that, while we have never seen this occur in the State of Nevada, we do everything we can at the state and county level to ensure it does not occur. Just as a deterrent factor if it does occur, these are the penalties one would face and a command from the

Legislature that one would be dealt with using the strictest standard afforded under criminal law.

Chair Koivisto:

I am closing the hearing on A.B. 328, and even though there are some people here who want to testify, we need to take this testimony on Assembly Bill 372 while we still have our video connection.

Assembly Bill 372: Revises the order in which the names of candidates for an office must appear on the ballot. (BDR 24-790)

Assemblyman Segerblom:

For those candidates whose last names start with the letter K and above, this bill will be great news to you. This bill changes the way names are listed on the ballot, which is alphabetical order. At the beginning of every year, the Secretary of State would randomize the alphabet, create a new alphabet, and names would appear on the ballot based on that new alphabet.

There really is a constitutional question regarding what is called the "primacy factor" and Dr. Krosnick, our expert, will testify about this in detail. It is known and documented that people, when they pick something, will pick the first thing in any list. If your name is at the top of a ballot, you will get a 1 percent or more edge. That happens even if there are just two names, but it primarily occurs when there are a lot of names. This would provide an equity factor. In my opinion, our current system is going to be considered unconstitutional if anyone brings a constitutional challenge to it, which may happen very soon. Do we wait until that happens or do we address it now? I urge people to address it now.

I have distributed copies of a *New York Times* article plus another journal article entitled, "An Unrecognized Need for Ballot Reform" ([Exhibit G](#)).

Jon Krosnick, Professor of Political Science, Communication, and Psychology, Stanford University, Stanford, California:

My group has been involved in research for fifteen years studying elections and voting around America. I congratulate you for thinking about this issue. It is very forward-thinking of you to take this up and get ahead of the potential for needing to deal with it in the future.

I have been a researcher in social sciences for 25 years, and during that time I have been studying how voters decide whether to vote in elections or not, and how they go about voting. I am currently the Director of the American National

Elections Study, the country's largest survey study of voters, funded by the National Science Foundation. One of our agendas over the years has been looking at how ballots are designed and how the design of ballots can influence the outcomes of elections. What we discovered in 1990, as the result of a law suit that made its way to the Supreme Court of Ohio, is the notion of a primacy effect in elections.

The primacy effect is quite simple. If you want to get a seat in the movie theater this evening and you want to have a choice in where you sit, you are better off being first in line to get that seat. That is also true in elections. Being listed first on a ballot gets candidates about 2 percent more votes on average. In the analyses we have done on hundreds of races in California, Ohio, North Dakota, and New Hampshire, we found in 85 percent of the races we looked at, that the candidate listed first got more votes than he or she would have received if listed later on the ballot. That is an overwhelming trend. If there was no advantage to being listed first, you would expect a 50/50 distribution; people would do better when listed first about half the time, and less well when listed first about half the time. Instead, what we find is 85 percent of the time candidates do better when listed first.

Why worry about this if the effect is only 2 percent on average? The effect in some presidential races has been as large as 4, 5, or 6 percentage points in some states. More importantly, races are decided in America by very slim margins. In a typical political race, if you are listed first and I am listed second, you will get an extra 2 percentage points on average; I will lose 2 percentage points on average; and as a result, there will be a 4-percentage-point gap simply because you are listed first. As you know, over the last 30 years the number of Republicans in America has steadily been increasing and the number of Democrats in America has steadily been decreasing, so right now, those two parties are about the same size. That means that everywhere we will see more and more close races, and a 4-percentage-point gap created simply by name order can make a very real difference.

You might wonder why somebody would bother going to the voting booth, standing in line perhaps, and simply voting for the first name they see. Why would they not vote for a candidate they genuinely support? Our work has pointed to two different explanations. One is that there are some people who feel compelled to vote in order to be good citizens. It is obvious that, to be a good American requires that one cast a ballot on election day, even if the individual lacks information about the candidates. They find themselves in the voting booth, they have to make some choice, and they may do so simply by grabbing the first name they see in some or all of the races.

In other cases, someone may go to the voting booth very interested in casting a vote for a candidate running for President of the United States, but sees other races listed on the ballot about which they know nothing. They misunderstand that they need not vote in those other races. They may misperceive that, in order for their vote for President to count, they have to vote in every other race, and without any real preference, they grab the first name they see.

The last explanation we have seen is the notion of ambivalence. You can imagine a voter walking into a voting booth who is deeply torn about which of two competing candidates to choose. Under pressure to get out of the booth, that person grabs the first name he sees in order to complete the process.

Whatever the reason, we have seen lots of evidence over and over again that this happens. It happens most often in races that are not widely publicized with repeated news stories; it happens more when an incumbent is not running for reelection, so more candidates are not especially familiar to voters; it happens especially in races in which the party affiliation of the candidates are not listed on the ballot; and it happens in races higher up on the ballot, closer to the top. Voters feel comfortable not voting in races at the bottom of the ballot, but they feel more pressure to vote in races at the top and that causes those name order effects to occur there.

The New Hampshire Supreme Court recently overturned that state's name ordering law because they decided it was unconstitutional by affording a particular advantage to particular candidates. New Hampshire is now moving to a procedure that will not afford a bias to particular candidates, and they will be joining six other states that now rotate candidate names from precinct to precinct, or from assembly district to assembly district, so that every candidate appears first about an equal number of times in the state. There are 12 other states that use one random order, generated by the secretary of state or the counties, to list all the candidates or the parties according to a random alphabet. That one random order is sometimes generated election by election, sometimes year by year. Those 12 states would be ones you would be joining if you adopt the proposal in front of you today.

There is a tremendous amount of variation across states in this country about name ordering procedures. It is one of the most striking ways that you can see different states coming to different conclusions about the right way to conduct elections. My personal opinion as a political scientist is that it has never been more important than now for Americans to be able to believe in the fairness of their elections. Even an issue as small as the order of candidate names being handled intelligently to promote fairness on the ballot strikes me as a nice

device for Legislative Bodies such as yours to communicate to their constituencies that they care about the fairness and accuracy of elections.

Assemblyman Conklin:

The New Hampshire Supreme Court ruled it was unconstitutional because it is biased against some candidates. They put in principle a random act of bias because, under your principle, there is always going to be bias toward whoever is listed first. There are a couple of states mentioned in testimony that have found this unconstitutional. Under what principle have they found it unconstitutional? Has it been against their own state constitution; or has it been found unconstitutional against the federal *Constitution*? If it has been found unconstitutional against the federal *Constitution*, what precedent has been set by the United States Supreme Court to indicate that would be a valid action?

Jon Krosnick:

I share your view and believe the fairest way to conduct elections with regard to name ordering is to do what Ohio does, and what California does in statewide races, which is to rotate name order from precinct to precinct. That way, about equal numbers of voters see each candidate listed first. If you use a single random alphabet, it moves toward fairness because no longer is the order determined by last names, but on the other hand, it is determined by a flip of the coin.

The second question you asked really requires a legal scholar rather than a social scientist, so I will hold back answering the specifics of your question. From my conversations with legal experts on election law here at Stanford, there are two ways to think about rights being violated in elections. There are the rights of the voters and the rights of the candidates. My understanding from these conversations is that voters' rights are not a basis for objecting to name ordering laws. Voters have the opportunity to vote for any candidate they want to when they walk into the voting booth no matter what order the names are in. This issue is not one that involves voters' rights being violated, but it has been one whereby courts have considered candidates' rights to be violated if they are not given equal opportunities to be listed first on the ballot.

I cannot tell you at the moment whether the Supreme Court's decision in New Hampshire was about violating the state's constitution or the federal *Constitution*. There was a big legal harangue in California in the 1970s when this issue came up. It was considered very seriously and led to the State of California deciding to rotate names. Those would be examples of cases to look

at and I would be happy to refer you to documents on those cases, if you are interested.

Assemblyman Conklin:

I would appreciate that.

Assemblyman Cobb:

You mentioned the idea of primacy. In the studies you have done, is there any advantage to being last on the ballot?

Jon Krosnick:

We thought that would be a possibility. These kinds of name order effects are not true only in elections. People taste testing ice creams or beers for consumer research tend to like the first beer or ice cream they taste. In survey research, we also find that when people are reading a paper questionnaire, they tend to pick the first thing they see, but when they hear questions over the telephone orally, they are inclined to select the last option they hear. That is what we would call a recency effect. It turns out recency effects do happen, but they happen mostly in oral presentation situations. Of course, that does not happen in voting booths because people are reading. That leads us to expect primacy effects and, as I said, in 85 percent of the races we have looked at, the primacy effect happens.

Assemblyman Cobb:

In California, is every ballot printed randomly, or do they have the same process described here in this bill?

Jon Krosnick:

In statewide California races, the law is that a random alphabet is generated, just as in the bill you are considering. That random alphabet is used to order the names in the first precinct in the upper left hand corner of the state, the northwest corner of the state. Then, moving east and south through the assembly districts in the state, the name order is rotated. The first candidate is moved to the bottom in the second assembly district, and the person at the top in that assembly district is moved to the bottom in the third assembly district. That rotation occurs all the way down to the eightieth assembly district and it puts each candidate first in about an equal number of assembly districts.

In the vast majority of races run in California, the procedure is exactly like you are considering now, that is the secretary of state generates a single random alphabet that is used for all races across the state. The only difference, as I understand it, between what you are considering and what California does, is

your proposal to draw one random alphabet per year. In California, a new random alphabet is drawn for every election.

Assemblyman Cobb:

The process you describe for statewide elections in California provides a lot more randomness to the ballots versus this process which still has the inequalities you have been describing. They are just set up in a different fashion, correct?

Jon Krosnick:

That is correct.

Assemblyman Segerblom:

We have totally electronic voting machines in Nevada. It would seem to me in that case you could have randomized alphabets in every precinct. Is that your understanding?

Jon Krosnick:

Yes, that is true, and in fact, in two counties in Ohio in 2004, that is exactly what was done. There was a rotation of names from voter to voter so each voter who walked in saw a newly randomized order of the candidates. That has a bit of a disadvantage, and the disadvantage is that for you as Legislators or other observers of the election procedure, you cannot, after the election, easily verify that the name rotation was done properly. If you program your machines to display a particular name order in each county or in each precinct, that order is held constant for all voters in that precinct, but it is changed from precinct to precinct. That allows you and elections officials to be absolutely sure that the name ordering is done properly. There is an advantage to that in accountability.

Assemblywoman Kirkpatrick:

What would be the purpose of sample ballots if you randomized the voting machines? I would think that would cause a huge fiscal note, and I am speaking as a "K" who is usually in the middle of five candidates. I think that would cause a huge problem.

Assemblyman Segerblom:

That would be a question for Mr. Glover as to how expensive that would be to print different sample ballots for each voter. Are you aware of how they do that, Dr. Krosnick, for the sample ballots they send in the mail?

Jon Krosnick:

Yes, that issue is an interesting one that has come up in discussions in other states. There is the concern that voters who bring a sample ballot with them into the voting booth must recognize that the order of the candidate names on their sample ballot may not match the order of the candidate names on the screen they are looking at. That can introduce problems. It is important to make a careful decision about the order of names to place on the sample ballot. Ideally, if you have one name order per county, or one name order per precinct, you would print different versions of the sample ballot and have them go to people matching what they will see in the voting booth. That has not been deemed essential. In Ohio, sample ballots are not tailored to each precinct. One sample ballot is distributed in the same format for all voters. It will not match what happens in the voting booth.

Assemblyman Cobb:

That would be a horrible situation in Nevada. We have so many initiatives every time we have an election that we strongly encourage people to use the sample ballots and fill them out ahead of time. If they do that they will not clog the lines by hunting and pecking and trying to figure out what the order is.

Do you have any idea how much it would cost to create all these different systems you described, or should we ask a registrar who might be more familiar with the Nevada system?

Jon Krosnick:

From my vantage point, it is hard to imagine there would be considerable costs involved in the rotating of name order in the precincts themselves, but certainly, generating different versions of sample ballots would involve additional printing costs. I cannot imagine those costs would be too dramatic, but I am not an expert.

Assemblyman Conklin:

Having several clients who are printers, I can tell you that every time you have to change the plate, and the plate has to be changed every time you change the candidate listing on the ballot, the price rises. Plus, every time you mail it, you have to make sure everyone in the same precinct gets the same ballot. I would say the cost of printing would go up exponentially, as opposed to what a minor adjustment would cost. Knowing what I know about printing, it would probably be substantial.

Chair Koivisto:

Thank you. We appreciate your help.

Joseph Turco, ACLU of Nevada:

We support this bill. It is not about pitting the Arberrys and Allens against the Webers and the Womacks, because everyone has an interest here as both voter and candidate. The rights of voters and the rights of candidates do not lend themselves to neat separation, says one of the Supreme Court cases. The cases I have reviewed suggest that a plaintiff could probably prevail in this regard based on experts such as the one who just testified. The empirical and statistical data show the preference we have been talking about. In some instances it is called the "donkey" vote. It is that vote when someone comes in and picks the first candidate and walks out. They probably are not that interested in politics.

With that data and kind of expert evidence, and given the closeness of races in some places, you see these cases going the plaintiff's way. The federal cases I have seen focus on the candidate where the latter-alphabet candidates are denied equal protection of the law when the government keeps the alphabetical system going. Nonfederal cases seem to focus on the voter. The right to vote is fundamental but diluting or somehow skewing that vote, even if it is only 1 to 2 percent, means that a city or state needs to show a compelling city or state interest for keeping the alphabetical system. Usually they cannot; not in any cases I have seen.

Any method, rotation or lottery, that tends to give everybody a fair shot at the donkey vote tends to be the fair way to go. Lawyers and nonlawyers alike could read through these cases and make their own decisions. I think if you do that and you are focused on fairness, you will probably support the bill, as we do.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

We are very proud and excited to be able to support A.B. 372. I think this is a great idea and long overdue.

Alan Glover, Carson City Clerk-Recorder; representing the Nevada Association of County Clerks:

Two issues have been discussed here today. Assembly Bill 372 is randomization of names, but the mention of rotation has occupied quite a bit of the discussion today. Like any court case, you could have dueling expert witnesses. There is the Caltech/MIT voting technology project that had a working paper that came to some of the same conclusions, but the gist I received from it was that there was not enough information to really make a claim or prove in court that this affects an election. They came up with quite a different conclusion though, saying that the last name and the first name had

equal value. My point is that there are differences of opinion on this topic. Some of them have been through court and it is not that clear-cut.

The clerks around the nation, and that includes the clerks in California and other states that have a rotation, are adamantly opposed to it. It is one of the major problems in an election. When you have rotation it causes so many problems and court challenges if there is an error made in the rotation. The cost, as Mr. Conklin said, is unbelievable. Carson City spent around \$30,000 printing our absentee ballots last time. We print by voting district, the two Assembly seats and the two Senate seats, so our ballot layout is very simple and probably one of the easiest in the State. Clark County has approximately 400 ballot styles. Washoe County also has several hundred. Douglas County, because of their general improvement districts, also has numerous ballot styles. Every time you change that ballot style with the printer there is a cost. If a fiscal note was done on rotation, you would find it staggering. If you printed all the absentee ballots in random order, you would give back that 2 percent advantage the professor claimed someone listed at the top of the ballot would have.

Being a "G" on the ballot, I have opponents above me most of the time. However, voters always seem to find my name on the ballot because I have done fairly well against several people listed ahead of me. This bill is candidate-friendly, obviously, but I am not convinced it is voter-friendly. We voted for 145 years using the alpha system. People in this State are used to doing that. With long lists of names, voters go down through the lists, find their candidate's name, and vote. A change will generate complaints on election day.

On a technical matter, and I have spoken with Mr. Griffin from the Secretary of State's Office about this, if you decide to process randomization this is a good bill. I would keep page 1, then on page 2, line 1, after it says, "with the provisions of subsection 2," take everything else out of the bill. That language is regulation concerning how vigorously the Secretary of State shakes the numbers up and picks them out and is something that should be done in regulation. IBM has a program we have used for years in the courts to randomly pick names for juries. It has been to court and been proven. You press a button and it comes out with random letters. I think the other part is rather old fashioned and might lead to lawsuits. I would hate to see Secretary Miller be sued because he, in the opinion of a candidate, did not "vigorously" shake but only "moderately" shook the numbers in the container. If you are going to have randomization, just say so and indicate that the Secretary of State will adopt regulations on how to do it. It is not as straightforward as you think, but my name does not come at the end of the

alphabet, either. We will be more than happy to work with you, as long as you are doing straight randomization and not rotation.

Assemblyman Settelmeyer:

Fourteen states currently use a rotating system. There was a case out of California called *Gould v. Grubb* [14 Cal.3d 661 (1975)] that is actually in violation of the Equal Protection Clause of the *United States Constitution*. It dealt with a different issue, they let the incumbents automatically be first, then the rest were listed alphabetically. If this process were implemented, would it take more time to tally ballots at the end of the day?

Alan Glover:

No, I do not think it would take time at the end, it would take time up front. We have to proof every plate that comes to us. The fewer things we have to do before an election, the better off we are. I have made mistakes proofing ballots. We left a Supreme Court Justice off one time. We are looking to keep it as simple as possible. It does cause problems right at the time we are proofing and getting ready to run the election.

Gary Peck, Executive Director, ACLU of Nevada:

While obviously the fiscal impact of any particular scheme has to be of concern to members of your Committee and to the Legislature more generally, and while I understand concerns about administrative inconveniences that may burden people such as registrars of voters, I think the paramount interest the Legislature and officials have is ensuring that we have a constitutionally sound, fair election process that inspires public confidence. Any balancing act ought to make that the paramount interest and hence, I would urge, certainly, randomization should be supported and, with respect to the idea of rotations, if the fiscal impact is one that is of concern to the Legislature, then let us try to figure out how much that will cost so it can be balanced against that paramount interest in fairness and integrity of elections. Elections, after all, should be the most important business of this Legislature.

Chair Koivisto:

I do not see anyone else signed up to speak on A.B. 372 so we will close the hearing on A.B. 372 and bring it back to the Committee. We will open the hearing on Assembly Bill 335.

Assembly Bill 335: Makes various changes related to elective offices. (BDR 24-1195)

Assemblyman Marcus Conklin, Assembly District No. 37:

This bill does five major things. The first thing it does is limit fundraising to 12 months prior and 3 months following any general election for all public officials with the exception of Legislators, the Governor, and the Lieutenant Governor. Currently in statute, Legislators have a law that basically says any time we are in session, 30 days prior to and 30 days after, we may not raise funds. Why do we have such a law? We have such a law so the public has confidence that while we are rule-making, we are not accepting donations. It is very clear. It is a public perception on the way we want to do business. No other elected body in this State has such a rule. Every elected body I am aware of, particularly local governments, can collect donations at the same time they are making rules. I am not suggesting that any elected official would use that to their advantage, but certainly, the public perception of such a rule is called into question.

In putting this provision together, I considered two possible avenues. Shall we have an avenue that says you cannot accept a donation 30 days prior or 30 days after you vote on an issue that the person giving the donation had an interest in, or shall we just limit it to a certain time frame during which it is acceptable for a person to raise money not to limit their voting ability? I chose this route because there are two parts to a donation. One is the taking of it as an elected official, and I believe all of us have the best interests in mind when we do so, but there is also the giving of that donation. If we have this policy in place whereby you give it and then someone is not able to vote on an issue, you will have reverse giving. You will have folks potentially giving so as to conflict the elected official out of the vote when they know you are not in support of a bill or measure. I chose this route just to shrink the time frame. All these elected officials are elected for four years or longer, which means for three of those years they are not raising money. The additional impact this has is in their election year when the reporting mechanism for contribution and expense reports is greater. In the year during which you are accepting campaign contributions, the public gathers that data faster and more often, allowing them to determine, if they so choose, between your campaign contributions and your voting behavior. Legislators are not allowed to raise money anytime we are in session, including special sessions. There may be some questions as to whether or not the Governor or Lieutenant Governor follow that. The Lieutenant Governor presides over the Senate and is the deciding vote in case of a tie, which rarely happens but is statistically possible. The Governor has to sign policy as we make it, so both have been included in our statute, which means anytime we are in session they, too, must comply with the standard we have to comply with.

Secondly, this bill seeks to combine financial disclosure and contribution and expenditure reports. It streamlines reporting. You will no longer have to make two different reports and file them at two different locations. You make one, all-encompassing report, and it goes to the same place. Your financial disclosure report is disclosed once per year, except during an election year when you have to file it twice. If you are already elected, you file it at the beginning of the year as you normally would, and then shortly after you file for elective office you have to file again. There has always been concern from folks who ponder ethics that the voting public has a right to know whether your financial situation changed after you decided to run for office and, particularly, during a campaign cycle. This measure is designed to streamline and make our lives a little bit easier but also give the voting public, or any public, greater knowledge about the changing realities of our lives during an election cycle, particularly as it pertains to gifts and contributions.

Items three and four deal with the definition of a gift in the ethics chapter. The only definition in statute for "gift" is under the lobbyists' law in *Nevada Revised Statutes* (NRS) Chapter 218. The word "gift" is used in ethics law but there is no notation in ethics law to rerefer you to the lobbying statutes, so in ethics law, "gift" remains undefined. This bill would take the definition in Chapter 218 and copy it into ethics law so there is only one definition of "gift." It further amends the definition of gift in both areas to take out the word "entertainment." It also amends into "gift" some terminology pertaining to nonprofits. As elected officials, we get invited to many nonprofit events as dignitaries, and we feel obligated at times to attend. I want to make it clear that those particular events one attends to represent one's constituencies are not considered entertainment—the elected official is actually fulfilling what most people would consider a legislative duty by participating in that type of thing.

The fifth item requires local government entities to enact ordinances and regulations pertaining to lobbying activities at the local level. I am not aware of any local government agency that requires lobbyists to register or report on their activity, whether it is their expenditures or their lobbying activity. Many would consider the Clark County Commission the most powerful elected body in this State, since they encompass all of the regulation and ordinances of the Las Vegas Strip. Not to have some public disclosure of the type of activity that goes on on a daily basis and the lobbying behaviors that may be contrary to public interest, is probably an issue we need to deal with. Item number five requires local governments to address this issue, but it does not tell them exactly how. It just asks them to address it similarly to the way the Nevada Legislature has addressed issues of lobbying in its own Body.

Assemblywoman Gansert:

We have talked before about political fundraisers, but they are not delineated in this bill. All of us get asked to go to fundraisers for other people. How would you categorize that? Also, not all organizations are 501(c)(3)s by definition, so could you address attending something put on by a parents' club or whatever?

Assemblyman Conklin:

Originally, this was drafted as 501(c)(3), but we have not changed the bill yet; however, there are some things to consider. We might consider just using the Chapter 501 in government law but that chapter covers all sorts of things including unions, political organizations, and nonprofits. What we really need to do is include a definition of "charitable" organization so it encompasses that. For certain, we would expect you would go to a caucus fundraiser. For certain we would expect that, if you supported another candidate, you would attend that candidate's fundraiser in spite of the fact he has offered free admittance even though the ticket price is \$50. Those are natural activities even though they are political in nature, but yet not covered as gifts. If you pay for it you will report it on your contribution and expense report. It would be a political activity. This particular section needs to be worked out and the best way to do it would be to give our own definition to "charitable" organization. Maybe it says, "charitable" or "political" organization so that would be included. What is not to be included are things like cruises to Hawaii or things of that nature that would be considered entertainment.

Assemblyman Cobb:

This first section applies to all members of the Legislature, the Governor, and the Lieutenant Governor, correct?

Assemblyman Conklin:

Yes and no. The first section says everyone other than those people have to file 12 months before or 3 months after. Legislators, the Governor, the Governor-elect, the Lieutenant Governor, and the Lieutenant Governor-elect abide by the statute already in existence that governs our fundraising, and that is different. The 12-month rule says you can raise money even though you are in session, but you have additional reporting. For us, it maintains our rule that we can never accept money when we are in session. That is a much higher standard, but to get that standard at the local level was very difficult because they are always in session.

Assemblyman Cobb:

We maintain the current rule which is 30 days prior to session and extending 30 days after we adjourn?

Assemblyman Conklin:

That is correct.

Assemblyman Cobb:

Local officials and such have a new standard which is 12 months before the date of a general election and 3 months after that election, correct?

Assemblyman Conklin:

That is correct.

Assemblyman Cobb:

The concern I have is it could give an advantage to someone who is not an elected official, but is seeking that office. You are telling people they have 12 months during which they can raise money, but someone else could be seeking that office, and that person could technically have three years or more to raise money. If you develop a war chest, people may not give money to another person. Are you worried at all about that advantage?

Assemblyman Conklin:

I do not know that I share that concern. There might be some extreme cases, but, certainly I do not know that a person who is truly evaluating the next election cycle is going to leap out in front, particularly a large donor, until they know exactly who is in the race. A person already in that seat already has an advantage, because he or she is an incumbent. Incumbents have an easier time raising money.

Assemblyman Cobb:

I agree we should not change our requirements, but in Reno we had a situation several years ago in which a non-incumbent raised a lot of money and public interest. Because of that, the incumbent chose not to seek reelection and otherwise would have. This was not in place when that happened, I am just saying it is a possibility and might be something we should think about.

Assemblyman Conklin:

That probably would happen no matter what, if circumstances are right. If the public does not believe you are doing a good job representing them, that is a risk we always run. Also, I request that you evaluate this particular provision of the bill on this standard: What value does the public see in the fact that a local official can no longer raise money when he has no election forthcoming and while he is doing the public's work; versus the fact that maybe some incumbent does raise a little bit less or an opponent raises a little bit more.

Assemblyman Cobb:

I think there is a lot to discuss here. The only thing that comes to mind is the idea of the franking privilege. I do not know what different localities do, but since we have no franking privilege, I am going to rely heavily on campaign funds to be able to communicate with my district during the time I cannot raise money. For us, when the money is gone, it is gone.

Assemblywoman Kirkpatrick:

I think this is a good bill. Local government has to fall within some parameters. The city I live in allows the city council to meet on Wednesday night and on Friday pick up a check for \$10,000. The perception to the public is very skewed: Was their decision made beforehand? Why are they collecting money after? If a planning commissioner decides to run for city council and is collecting money, that person should be held to the same standards. It is perception. We have seen people take the check and you or I, the public, do not know if they said, "Sure, you can count on my vote," or, "Sure, I will consider it." We do not know what the conversation was. We in the Legislature do not have that stress at that time. The locals have a budget for staff, mailers, and so much more than the rest of us who are held to a higher standard. Why should they not be held to that standard? Honestly, if it costs \$2 million to run a commission race and you collect \$3 million, what are you going to do with that other \$1 million for four years? That is realistic. It is quite expensive to run those races, but people are able to raise that kind of money. For a city council race, people are raising anywhere between \$300,000 and \$500,000. If you cannot budget that money to last for a few years, what do you need it for? You have your budget for your mailers and town hall meetings and you have your staff. Honestly, why should they not be held to the higher standard? Mr. Conklin, I support this bill in full. I signed on to it; I think it is good. If nothing else, it is perception and the public will have more trust in their local officials.

Assemblyman Christensen:

Las Vegas and Reno may have their unique circumstances, but what do you hear from the rurals? So many of our colleagues around the country have budgets and staff but we really do not, except during the four months of the legislative session. I represent about 80,000 registered voters, and the only way I can take care of them and send mail during the interim is to use campaign funds. My concern is areas such as Lincoln County and Elko County where those local elected officials may have four-year terms, but do not raise as much campaign money as officials in Clark and Washoe Counties do. Are we putting them at peril? Are we hampering their ability to reach out to their people if they do not have the kind of budget they need to service their constituents?

Assemblyman Conklin:

This bill has been out for almost two weeks and not one of them has come to complain to me about it. I have not heard from a single elected official. I do not know the answer to that, but the bill provides for a 15-month time period—12 months prior to your general election and 3 months after it—so when you finish your election, if you need to retire debt and raise money for what you know will be another 33 months, you can do so for that purpose.

Also, most municipalities, unlike our Body where we all share a small staff of constituent outreach folks, have staff. They have their own staff and their own budgets through their governments to help do that. They are in an entirely different situation than we are. For them it is different, and I ask you to consider that when you evaluate this proposal.

Assemblyman Christensen:

Thank you for that, because I was curious what you had been hearing from other areas. If you do hear anything, I would like to know how they respond.

Assemblyman Conklin, how did you come up with the timeline of 12 months? Was that success stories from other states or areas?

Assemblyman Conklin:

We picked 12 months as a standard that would be a reasonable time frame for which raising money for elected office really takes place. There might be a handful of fundraisers at the end of this year. It will not be anything significant. The real fundraising for our office really begins in the spring of the following year. It is not that we do not do some fundraising, it is just that it is relatively insignificant. Most people are not willing to help with campaigns until they really understand who is running for office. One year was an educated guess as to what made sense. If you stretch it out too long, you might wonder why you had it. You had to balance the time during which you can fundraise versus the time left when no one is fundraising so the public has some understanding that people are not making law and raising money at the same time. I am not suggesting that there is any impropriety. I am suggesting that the public's perception will be different when we are no longer allowed to raise money and vote at the same time. Not us, but in general.

Assemblyman Settelmeyer:

What about the section where you took out the cost of "entertainment" but inserted the cost of attending an event hosted or conducted by a charitable organization. Later on you define charitable organization as being a 501(c)(3). I read where in April 2005, the House of Representative's Ways and Means

Committee obviously had a problem with this because IRS Section 501(c) covers organizations ranging from public charities, which is fine; religious organizations—some people have questions about the separation of church and state; to labor unions; trade associations; social clubs; fraternal organizations; credit unions; cemetery companies; and cooperatives. If we are saying it is wrong to be entertained, why is it okay for a credit union to pay for you to have a trip to Hawaii, but not a bank? Why would it be okay to go visit a labor union organization meeting in Hawaii, but not a corporation? I find it interesting that we are selecting certain people, but if we truly want to address the issue, why do we allow certain entities this exception?

Assemblyman Conklin:

This is not an acceptable definition and it needs work. It is broad and does not necessarily get at the intent of what we mean by a charitable organization. The Chamber of Commerce could have an event designed to raise money for the Chamber of Commerce and invite you to it. Is that legitimate? The Chamber of Commerce is not a 501(c)(3), but I do not know that I would consider that event to be entertainment unless the sole purpose of that event was a \$1,000 ticket to see a big-name entertainer.

Certainly, the alternative is possible. We could exempt all of it. I will attend nothing and be very happy with that. Interest groups that get together and have charitable events will no longer have access to their Legislators as a result. This was an attempt to be reasonable, to take out "entertainment" in its broadest sense. It is not that you cannot be entertained, but now you have to report it as a gift. I am going to a political fundraiser but I got in for free. Was that a gift? Probably not, in my interpretation. A publications company has an annual event to which they invite all of us, saying they would like us to come and see what the students are doing. They will exempt our fees because we are dignitaries and they want us to understand the great things that are going on in the community pertaining to children's publications and the great work our students do in publication. This is just an attempt to be reasonable in terms of defining and further clarifying "gift" and making the standard clearer but more stringent.

Assemblywoman Gansert:

Listening to all the testimony, I have a concern we are creating an uneven playing field for those who are in office versus those who are not in office. Looking at the judicial system, I believe people running for judicial office cannot start fundraising until a certain date. My question is, why do we just apply this to the elected officials versus anyone running for elected office? Whether you are an incumbent or not, you still have the same defined time frame.

Assemblyman Conklin:

Madam Chair, if it is constitutional, I am not opposed to it. It gets at Mr. Cobb's concern. Originally I had intended to include judges in this bill but it cannot be done. They have their own judicial review system.

Assemblywoman Gansert:

I think judges are limited as far as time frames so you would not need to add them. Why do we not do something similar to what they have, because then we would always be on a level playing field whether we are incumbents or not?

Assemblyman Conklin:

I would certainly be open to that.

Assemblyman Goedhart:

I have a question regarding the gift section. On page 6, line 5, it says, "the cost of food or beverages or anything of value from a member of the recipient's immediate family." Are you saying if someone from the immediate family gave you food or beverages, it would not be a gift?

Assemblyman Conklin:

Look at page 4, Section 4, subsection 2. Gift is already defined in the lobbyist statute at NRS (*Nevada Revised Statutes*) 218.908. What you can see is what we have actually changed in that statute. It appears a second time so that the definition of a gift is consistent. Prior to this, what was in statute was something the lobbyists considered a gift, but there had been no definition of "gift" for any public official, so you had differing opinions. It was not defined, and without some link from chapter to chapter, there is no real claim to meaning. The section you pointed out on page 6 is all in bold because it is new to that chapter. The real change and what it means is in Section 4.

Chris Giunchigliani, Private Citizen; Member, Clark County Commission, Las Vegas, Nevada:

Campaign finance reform includes how and when you raise your money to run for office. My reading of A.B. 355 is that it tries to deal with legislative intent, which is uniformity in campaign practices. Too often we treat one party one way and we do not encompass the others. Assemblywoman Gansert mentioned the judges. The judges have established their procedures. There could be some tightening-up there, but there is a beginning and an ending period. There are beginning and ending periods for the Lieutenant Governor, Governor, the Assembly and the Senate. There is no window of opportunity for sheriff, for district attorney, for commissioners, for city council people to restrict when they should be raising money. You do not need to raise money for a

campaign when you are not up for election. That is all this bill is trying to deal with. You have been elected to a term, whatever it may be, and until you are up for that election again, you do not need to solicit campaign contributions.

The bill from last session that was passed by the Assembly had 120 days before an election and 90 days after it to retire the campaign debt. Mr. Conklin chose a 12-month period to be a little bit more flexible. You might want to entertain the idea of a January 1 date to be consistent and easy to understand. Too often our election laws are very difficult to understand and they do not parallel. A definition may be in one statute but nothing that coincides to it in any other statute. That is the intent of bringing in the definition of "gift." I have personally made a pledge. I did not solicit nor did I accept contributions after I began my term on January 2. I have a campaign chest. It is about making sure I have enough money to run the next time, but that is not the purpose of raising dollars when I am elected to a four-year term. I do not have to raise money, nor should I be raising money now, next year, or the year after. Not until I am up for re-election.

The bill is attempting to remove the opportunity for misrepresentation or hanky-panky. Perhaps the legislation may also incorporate not only the restriction on time, but once an office holder is allowed to raise money and is still voting on a regular basis on zoning matters, building permits, business licenses, and gaming and liquor licenses, maybe there could be some language that deals with how to report during that time so the general public feels comfortable with that elected official's actions and that those actions are not tied to a check.

It is very unnerving and worrisome that, on a daily basis in some cases, elected officials make decisions that affect people's lives and turn around ten minutes, a half-hour, or a day later, and accept campaign contributions, especially when they are not up for election. This bill is trying to put a fire wall between voting and the raising of campaign contributions.

I applaud Sections 5 and 7 which allow, encourage, or require, local jurisdictions to establish lobbying reports. I was recently told, "That person does not have to register because he is a consultant." If they talk like lobbyists and they walk like lobbyists and they advocate like lobbyists, then they are lobbyists and they should not be given some other title to get out from underneath having to report and tell who they are talking to. I hope that component stays alive within this piece of legislation because lobbyists are necessary. They are an integral part of politics, but they ought to be disclosing and filing and making it as public as possible.

The issue of trying to parallel the definition of "gift" is key. It exists in the ethics law, but it does not exist in campaign law. Make sure entertainment is deleted, so we do not have that argument; and entertainment was never conceived as being a gift. That was just an interpretation that was made. I have always filed. If I went to an Andre Agassi charity fundraiser, I put it down. If I went to the Rolling Stones, which I did, I disclosed it and got beat up for disclosing what I was not even required to disclose. This will take entertainment out, but it does recognize that, as elected officials, groups and organizations such as the March of Dimes, homeless coordination, and school fundraisers, are events we are expected, or at least asked, to attend to validate and make sure we become familiar with their purposes. The definition needs to be tighter, but it is the right intent, making sure there is no chilling effect on those nonprofits that attempt to solicit our attendance from time to time.

Last session there was some debate on a similar bill that passed out of the Assembly. There was concern that it might result in a stranglehold on some of the smaller groups that do not raise as much money because they must go to these types of functions. I appreciate that, but you know what your budget is and you know what you have in the bank. If you want to pick five functions to attend, and that is what you have the money for, then that is your decision. That is not why people give us campaign contributions, and that is not why the general public wants us to expend our campaign contributions. I urge you to support this with some changes and modifications, and I commend the Committee for the great interest and discussion you had today.

Craig Walton, President, Nevada Center for Public Ethics:

[Spoke in support of A.B. 335 from prepared text and suggested amendments ([Exhibit H](#)).]

Chair Koivisto:

Any questions from the Committee? [No response.]

Chair Koivisto:

Are there any questions the Committee might have for Ms. Jenkins or Mr. Hearn of the Ethics Commission? [There were none.]

Lynn Chapman, State Vice President, Nevada Eagle Forum:

We are not against the entire bill. I ran for office during the last election and received this in the mail ([Exhibit I](#)). I filled out all my disclosures and everything required by law. I raised no money and I spent no money. I filled out all the forms, and then I got this in the mail. As a first-time candidate, I felt the last paragraph of this form to be rather insulting. I felt as though I was being

blackmailed. This is a voluntary form, but if you do not fill it out, the form states what it will do to the individual. I think it is wrong. It is a voluntary disclosure, but I did not raise or spend any money and I did not feel it was necessary. I do not like to fill out forms that are not required by law.

The other concern is page 5, Section 5. Is this going to be required of a paid lobbyist, a non-paid lobbyist, or just citizens? I think this is going to be a big problem and we are very concerned. If citizens decide to go to county commission meetings and talk to their county commissioner, are they going to have to fill out reports? Who is going to be required to complete these reports? We have a problem with that.

Chair Koivisto:

Is there anything else to come before the Committee or anyone else who wishes to testify? [No response] We are adjourned [at 6:31 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Ellen Koivisto, Chair

DATE: ` _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: March 27, 2007

Time of Meeting: 3:45 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
AB 328	C	Anita Hara, Washoe County Democratic Party Election Reform Working Group	Suggested amendments
AB 328	D	Gail Pratt, Washoe County Democratic Party Election Reform Working Group	Prepared text in explanation of a proposed amendment
AB 328	E	Alan Glover, representing the Nevada Assoc. of County Clerks	Suggested amendment
AB 328	F	Matt Griffin, Deputy for Elections, Office of the Secretary of State	Proposed amendment
AB 372	G	Assemblyman Segerblom	Documents in support
AB 335	H	Craig Walton, President, Nevada Center for Public Ethics	Testimony in support and suggested amendments
AB 335	I	Lynn Chapman, State Vice Pres., Nevada Eagle Forum	Copy of letter from the Secretary of State