

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

**Seventy-Fifth Session
April 2, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:53 p.m. on Thursday, April 2, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/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 Harry Mortenson, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

Assemblywoman Heidi S. Gansert (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Jerry Claborn, Clark County Assembly District No. 19
Assemblywoman Peggy Pierce, Clark County Assembly District No. 3
Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

Larry Sokol, representing the National Popular Vote, Lafayette, California
Danny Thompson, representing the Nevada State AFL-CIO, Henderson, Nevada
Patricia Axelrod, Director, the Desert Storm Think Tank and Veterans' Advocate, Reno, Nevada
Matt Griffin, Deputy for Elections, Office of the Secretary of State
Gail Tuzzolo, representing the Nevada State AFL-CIO, Las Vegas, Nevada
David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada
John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada
Dennis Johnson, Private Citizen, Carson City, Nevada
Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada
Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada
Rebecca Gasca, representing the American Civil Liberties Union of Nevada, Reno, Nevada
Larry Lomax, Registrar of Voters, Clark County, Las Vegas, Nevada
Alan Glover, Clerk/Recorder, Carson City, Nevada
Barry Smith, Director, Nevada Press Association, Carson City, Nevada

Chair Koivisto:

[Roll was called. Committee rules and protocol were explained.] We will start with Assembly Bill 413.

Assembly Bill 413: Enacts the Agreement Among the States to Elect the President by National Popular Vote. (BDR 24-822)

Assemblyman Jerry Claborn, Clark County Assembly District No. 19:

This bill is an act relating to elections and enacting an agreement among the states to elect the President by national popular vote. I am going to turn this over to Mr. Sokol, who is an expert on this matter.

Larry Sokol, representing the National Popular Vote, Lafayette, California:

Since 2007, the national popular vote movement has seen tremendous strides. When I was here in 2007, the national popular vote proposal had passed four or five legislative chambers. It has now passed 25 different legislative chambers in 16 states. It has more than 1,100 legislative sponsors and supporters across the country, and has been enacted into law in four states—Hawaii, Illinois, Maryland, and New Jersey. Just within the last month, we passed the Colorado House, the Oregon House, the Washington Senate for a second time, and it is scheduled for action within the next several weeks in any number of other states. To this point, the bill has been introduced in 49 of the 50 states.

What the national popular vote proposal seeks to do is implement a direct national popular vote for President. Our goal is to have a system for electing the President in place so the candidate who gets the most votes in all 50 states and the District of Columbia is guaranteed to get elected President. As we all were reminded in 2000, that is not necessarily the case. In 2000, Al Gore received more popular votes, but lost in the Electoral College. The same situation almost happened again in 2004. If a mere 2,000 votes in Ohio had swung from President Bush to Senator Kerry, Senator Kerry would have won the Electoral College, despite losing the popular vote by 3,500,000.

We feel a national popular vote is something that is long overdue and is something that is overwhelmingly supported by the vast majority of citizens in the United States, and has been for approximately 70 years. Gallup has been asking people about a national popular vote since the 1940s, and the idea routinely polls above 70 percent. Our organization conducted a poll in Nevada several months ago, and 72 percent of the people polled, with strong majorities across every demographic, were in favor. That has been the result in every state where the question has been asked.

The reasons for a national popular vote are many. The first, as I referenced, was the fact that, right now, there is no guarantee that the candidate who gets the most votes will necessarily win the election. Another aspect is that the current presidential system and the winner-take-all rule essentially

disenfranchises two-thirds of the country by making them "safe" states or "fly over" states. Candidates do not pay any attention to them because the result is a forgone conclusion. For example, everyone knows that the Republican nominee in 2012 is going to carry the state of Texas, and that the Democratic candidate, more than likely, is going to carry the state of Rhode Island.

Two-thirds of the country fall into that category—they are either safely Democratic or safely Republican. Because of the winner-take-all rule, wherein the candidate who receives the plurality of the votes in a given state receives all of that state's electoral votes, once a state becomes safely Democratic or safely Republican, candidates from both sides ignore that state. Essentially, the result is that voters in that state have their voices and interest in presidential campaigns deemed irrelevant by both parties. We are not blaming the presidential candidates for doing that. They are trying to win an election. It is the system that is flawed, and it is the system that we are trying to change.

To demonstrate how overwhelming the concentration of resources is, in both 2008 and 2004, the two major party candidates allocated 98 percent of their resources to just 16 states. This was 98 percent of all the money they spent. It was where they advertised, where they polled, where they visited, where they did local grassroots events, and where they did party-building. Clearly, if you were not one of those so-called "battleground" or "swing" states, you were irrelevant to the process.

I will briefly review how we can get to a national popular vote through actions by the Nevada Legislature and legislatures across the country. The federal *Constitution* provides that states are the ultimate determiners of how their electoral votes will be cast. The winner-take-all rule I referenced earlier is not in the federal *Constitution*; it is completely statutory. As a matter of fact, in the first presidential election, only three states used the winner-take-all rule. Someone in the past ran a bill through the Nevada Legislature that the Governor signed that said that Nevada would be a winner-take-all state.

Our proposal changes Nevada statute, in combination with other states, through the use of an interstate compact. The compact states that Nevada's electoral votes, and the electoral votes of all of the states that ratify the compact, will go to the candidate who receives the most votes in all 50 states and the District of Columbia. This compact does not go into effect and will not be triggered until enough states have signed on to it that their combined electoral votes total 270 or more—a majority of the Electoral College. So, until the compact receives ratification by states whose total electoral votes are 270, the compact does not

go into effect. Once that last state ratifies it and puts the total over 270, the compact goes into effect, and it guarantees that the candidate who gets the most votes in all 50 states will get all of the electoral votes from the compacting states, which, by definition, is more than enough electoral votes to be elected President. As a result, we will have a national popular vote.

Assemblyman Munford:

You said the candidates only concentrate their campaigns in certain states, and you are trying to gather support for this proposed bill in enough states. If the popular vote was won by one of the candidates in all the states that have signed on to this, and the states totaled 270 electoral votes, then that candidate would be elected President of the United States?

Larry Sokol:

Yes, the compact guarantees that whichever candidate gets the most votes in all 50 states will get sufficient electoral votes to get elected. That is an important distinction. The compact says it is the candidate who gets the most votes in all 50 states, so even states that have not ratified the compact are not harmed by it. For example, if the states of Ohio and Florida do not ratify the compact, when coming up with a national popular vote total, all the individual votes in Ohio and Florida get counted toward the national popular vote, but their electoral votes would still go to whomever won the state of Florida or Ohio.

Assemblyman Munford:

The candidates probably would not campaign in those states that do not sign on or ratify this compact, because you would be counting the total number of popular votes. Is that true?

Larry Sokol:

No. The compact says it is the candidate who gets the most votes in all 50 states. So once the compact has reached 270 and gone into effect, it is irrelevant which states have signed or not signed it, because it is the candidate who gets the most votes in all 50 states. All the compact says is that those states will make certain their electoral votes go to the candidate who gets the most votes in all 50 states.

Chair Koivisto:

Just for clarification, this is perfectly constitutional since the federal *Constitution* gives to the states the power to set up their elections and award their votes?

Larry Sokol:

Correct. The *Constitution* is explicit. It says that states have the exclusive and plenary authority to award their electoral votes however they choose. It is a requirement that states determine how their electoral votes are going to be cast. The federal *Constitution* provides no specificity whatsoever, and most states have used a variety of methods over the course of their histories. The winner-take-all rule I referenced before, and that is in use in 48 of the 50 states, took hold in the twentieth century. Through the nineteenth century, many states used different mechanisms. Some state legislatures appointed their presidential electors. Sometimes presidential electors were directly elected themselves. The popular vote really did not become a standard method for states to base their electoral votes on until the 1880s.

Assemblyman Hambrick:

In the proposal, do you mean the winner in the majority of the 50 states?

Larry Sokol:

The candidate who receives the most popular votes in all 50 states is guaranteed to get elected President. Whether or not a candidate wins or loses a particular state becomes secondary to the total number of votes that he or she receives. Let us look at the state of Kansas. Democratic candidates rarely, if ever, campaign in Kansas because they know with the winner-take-all rule it does not matter to them whether they get 35 percent of the vote, 40 percent of the vote, or 45 percent of the vote. They are going to lose all of Kansas' electoral votes, because of the winner-take-all rule. Under our proposal, a Democratic candidate is likely to spend time campaigning in Kansas or Texas, and a Republican candidate is going to spend time campaigning in California or New York or Rhode Island, because, rather than losing a state 60/40, if the candidate loses a state 55/45, that makes a significant difference.

For the first time, every vote across the country in any state becomes as valuable as any other vote, and that is currently not the case. A vote in Ohio, or Wisconsin, or Florida, or New Mexico, or one of the handful of other battleground states is much more important and sought after by candidates of both parties than a vote in Utah or Wyoming.

Assemblyman Hambrick:

Could you explain your interpretation of the framers' intent in developing the Electoral College to begin with? What has changed?

Larry Sokol:

The Electoral College has never operated the way the framers intended. The framers had intended that the best and the brightest, the presidential electors, would sit down in a room together and determine who the best person to be President was. At the time the Founding Fathers wrote the *Constitution*, they thought that the presidential electors would collectively decide who the best white, male, property owner was to be President. But the Electoral College has never operated that way. It has never been a deliberative body. Once President Washington decided not to accept a third term, the Electoral College quickly became a tool of states and of political parties and ceased to be a deliberative body.

There are any number of interpretations about the framers' intent for the Electoral College. Some historians maintain that part of it was to protect small states—to make certain small states had a voice in the election of the President. More scholars believe it was tied up with slavery. Many people believe that a majority of the Founding Fathers actually never believed that the Electoral College would come to a definitive conclusion, and as a result, the selection of the President would get thrown into the House of Representatives, which is currently what happens. If no one receives a majority in the Electoral College, the selection of the President goes to the House of Representatives. Many people at the time thought that was what would happen, and, frankly, that was their goal. What is clear though is, from a mechanical, structural, or intellectual standpoint, the Electoral College has never operated the way the Founding Fathers had intended.

Assemblyman Cobb:

I am sure it was accidental, but you left Nevada off that list of important battleground states that get a lot of attention right now. I would add us to the list and use that to lay the groundwork for my question as to why we would ever want to change that. Let us say there is a candidate who is vehemently against Nevada. This candidate proposes burying all nuclear waste in Nevada. Ninety percent of the state votes against this candidate, but that candidate wins the popular vote by 1 percent nationwide. You are suggesting that we should enact this law that would essentially disenfranchise our voters and elect someone who would go against our wishes?

Larry Sokol:

I would take a different interpretation. I would say that Nevada's voters are not disenfranchised; their voices were heard as their votes were counted, but the 90 percent who voted for the losing candidate happened to be in the minority. We are attempting to put a system into place where the President is elected in

the same way as every other elected office in the country—the candidate who receives the most votes in the jurisdiction is elected. As I mentioned earlier, we have introduced the bill in 49 states, and no one has given us an example of any other elected office anywhere in the country at a local, state, or federal level, where you can receive the most votes and still lose, except for the Leader of the Free World.

Assemblyman Cobb:

That is correct and is as the system was originally set up. And the way it works now, that is the example to be used. Again, to clarify, you are saying that if the other states want to gang up on Nevada and bury nuclear waste here against our will, for instance, we should just say that our votes do not matter?

Larry Sokol:

No, I disagree. Your votes did matter, your votes were heard, but they just happened to be in the minority. Presidential campaigns and the issues of consequence that are discussed now in presidential campaigns are issues that are relevant to the battleground states. So should the voters of Oregon be completely irrelevant to the issues that matter to Oregonians and be completely ignored by presidential candidates because they do not have to campaign in that state? Instead, the issues that completely dominate a presidential campaign are those in Ohio, Florida, Pennsylvania, and Wisconsin.

The reason I did not include Nevada on the list is because, while Nevada has been a battleground state, the amount of attention it receives pales in comparison to the big battleground states. Granted, Nevada receives more attention than a state of equal electoral votes such as Idaho or Wyoming, but it still pales in comparison to other battleground states.

Assemblyman Munford:

Many people are confused about how the Electoral College works. If they do not understand that procedure, it is very difficult for them to understand how the electoral votes are counted. Most of the information about this process can be found in the Eleventh Amendment to the *Constitution*. That explains how the President is elected.

People just need to understand that a state gets the same number of electoral votes as it has representatives in Congress, so Nevada has five representatives and we have five electoral votes. California has the most electoral votes. California has 56 representatives, so it has 56 electoral votes. That, basically, tells you how the candidates are going to arrange and organize their campaigns—it will be according to the states that have the most electoral votes.

Larry Sokol:

I would agree that the overwhelming majority of the public does not understand the Electoral College process, and as we saw from the reaction in 2000, I think the majority of people in the country actually think we already have a popular vote.

In terms of your other point, people ask whether the candidates will spend all their time and money in California, New York, and Texas and ignore the rest of the country. This is completely speculative, because no campaign has ever been run under a national popular vote, but what is likely to happen is that candidates are going to spend their money much more proportionally. Under our proposal, every vote is equal. A vote in Nebraska is as equal as a vote in Ohio, which is as equal as a vote in New York, which is as equal as a vote in Idaho. Why would a candidate spend more money trying to get someone to vote for him in California rather than Idaho if, ultimately, the value of each of those votes is equal?

Yes, in terms of raw numbers, are they going to spend more money in California or in Texas than they will in Nevada? Of course, they will, but on a per-voter, per capita basis, more than likely the spending the candidates do will be relatively equal because that is the most intelligent use of their resources.

Assemblyman Munford:

I completely understand your concept and what you are trying to do. I think it has some merit if you want the popular vote to be the ultimate deciding factor.

Chair Koivisto:

Currently, in one of the 48 states that award all their electoral votes to one candidate, if one candidate got 49.3 percent of the votes and another candidate got 49.7 percent, the person getting 49.7 percent would get all of the electoral votes for the state, so 49.3 percent of the voters would not be counted.

Larry Sokol:

That is not only correct, it actually understates the problem. Let us look at Florida in 2000. With the winner-take-all rule, President Bush won by 537 votes and as a result received all of Florida's electoral votes. It is not just the fact that those people who voted for Al Gore were irrelevant. Their votes actually got counted for George Bush, because of the winner-take-all rule. If you are a Democrat in Kansas, your vote in 2008 got counted for John McCain. If you are a McCain supporter in Vermont, your vote got counted for Obama in 2008. The real root of the problem is the winner-take-all rule.

Assemblyman Settlemeyer:

Could you explain Article 1, Section 10, Clause 3, where the *U.S. Constitution* says that "No State shall, without the Consent of the Congress, ... enter into any Agreement or Compact with another State" That is what we are doing; we are entering into a compact, but the framers indicated that should not be allowed because of the threat of fracturing the Union. How does this legislation play into that?

Larry Sokol:

The *Constitution* allows for states to enter into interstate compacts with the consent of Congress. That consent of Congress can take many forms and can happen at any time during the compact process. It does not have to happen at the front end; it can happen during the process or at the back end. What is interesting is that subsequent court rulings have determined that Congress only has to consent to compacts to the extent that the compact impinges upon federal authority. For example, interstate lottery compacts do not have to be approved by Congress, because they do not impinge upon federal authority.

It is our very strong belief that our compact does not impinge upon federal authority because the *Constitution* says the awarding of electoral votes is a complete and plenary power of the states. However, at some point in the future, we will be submitting the compact to Congress for consent.

Assemblyman Ohrenschall:

There is another dimension to this beyond presidential campaigns allotting resources to key states. In the current system, with the Electoral College representing land and not really population, the citizenry in each state can either get to meet the national candidates or not. When a friend and I were young Democrats, we were very active. That friend now lives in Texas, but in this last election he did not get involved or become active because he knew it was a forgone conclusion that Texas was going to go to the Republican candidate. I think it hurts a lot of our fellow citizens in the non-swing states. In Nevada last year, we were lucky because we saw both candidates and had an exciting election because we were a key swing state. I think the current system hurts our fellow citizens in non-swing states and their ability to participate.

Assemblyman Segerblom:

Once you enter the compact, can you leave it?

Larry Sokol:

As with any interstate compact, the compact contains not only the trigger mechanism I spoke of earlier, but also allows a state to get out of the compact.

It is a state statute, and like any state statute if a subsequent Legislature wants to repeal the compact and back out of it, they can. There is one proviso: Any state is forbidden to get out of the compact in the six months preceding the swearing-in of a new President, for example, from July 20 through January 20 of the past presidential campaign. This would avoid any kind of electoral mischief that might occur and also make sure the candidates know the rules of the campaign during the campaign. So during the other three and a half years, a state could withdraw from the compact should it choose. If the compact falls below the 270-vote threshold, the compact would not be in effect.

Assemblyman Segerblom:

So, we cannot wait to see how we do and then decide whether we want to pull out?

Larry Sokol:

That is exactly why the compact is written that way.

Assemblyman Cobb:

You mentioned one thing that was not entirely accurate. Right now, there is only a winner-take-all if you are in a state that handles it that way, but not every state does that. We already have the opportunity to correct that if we wish so Nevadans would not need to give up their opinions and their votes. For instance, Maine allocates electoral votes using the popular vote as well as by congressional district. I think that is an important point to make. We already do have some authority and latitude to enact those changes.

Larry Sokol:

Yes, I was not accurate when I stated that 48 states use the winner-take-all rule. There are two states—Maine and Nebraska—that use the congressional district method. The legislator who was responsible for Maine becoming a congressional-district allocation state is now the chief sponsor of our proposal in the State of Maine.

It is exactly the flexibility states have to change the way they allocate their electoral votes that we are taking advantage of in this process. One nice thing about the compact is that no state is on the hook until enough states have signed onto it that it will go into effect. The downside of a state changing its method of allocating its electoral votes on its own is that it may or may not have a significant impact on whether or not it receives any more or less attention. For example, if Texas were to go to a congressional-district system, that is not likely to result in the vast majority of Texans receiving any additional attention from presidential campaigns. It is the collective nature of the

compact, we think, that is one of the best aspects of it in that it affects everyone and everyone benefits from it. There is no negative impact on anyone.

Danny Thompson, representing the Nevada State AFL-CIO, Henderson, Nevada:
I am here today to speak in favor of this bill. The vast majority of voters believe that the presidential contest is winner-take-all right now. The majority of private citizens do not understand the Electoral College. They believe, just as Mr. Munford said, that it is winner-take-all. Regarding the compact, you have the authority, except for the six-month period, to pull out of the compact.

This past election, Nevada did see an abnormal presence from the presidential candidates, but that was because the Democratic Party chose Nevada as an early caucus state. In fact, I think the first presidential debate of the season was held in Carson City, Nevada. Clearly, this bill better reflects what most people believe, which is winner-take-all. I support it and would urge you to do the same.

Chair Koivisto:

Are there any questions from the Committee? [There was no response.] We have others who have signed in to support this bill.

Patricia Alexrod, Director, the Desert Storm Think Tank and Veterans' Advocate, Reno, Nevada:

I conduct the Desert Storm Think Tank and Veterans' Advocate, and voter registration is one of my duties. As I approach people to register them to vote, I oftentimes hear, and most frequently from young people, "What is the sense of voting? The Electoral College is going to make the decision anyway. My vote means nothing." If any of you have ever done voter registration, you have heard that comment.

I believe it is crucial for this bill to pass. It is crucial to the future of our democracy. Our democracy is contingent and dependent upon voters exercising their rights and beginning that process by registering to vote. I cannot understand why anyone would vote against this bill. Certainly, the days of the Electoral College are outmoded and long gone. We no longer reserve the vote for white, male, moneyed men who own property.

Each person should know that his or her vote does count. The Electoral College is poorly understood and misunderstood. Knowing full well the low voter turnout in this state as well as the low percentage of people who are registered

to vote in this state, the passage of this bill will act as an argument for people to register to vote and to vote.

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

I want to voice the Secretary's support for this measure. The principal reason for his support is the fundamental fairness involved with ensuring that the candidate who receives the most votes from the American citizenry is the one who is elected to the Presidency of the United States.

Gail Tuzzolo, representing the Nevada State AFL-CIO, Las Vegas, Nevada:

I think Danny Thompson said it all, but we feel passionately about this issue. Every voter should be represented when the votes are counted for the President of the United States. Even though this is a national issue, our citizens can feel that their vote is important when they vote for President.

Chair Koivisto:

Several people are signed up in opposition.

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:

I am here in opposition to this bill. This change will not give Nevada any more importance in national elections than it has now. A big factor in how people campaign for President is how much it costs. You can go to New York and Chicago and get more popular votes than in New Mexico, Nevada, Utah, Arizona, Oregon, and Idaho. The way the electoral process works now gives the little states, and we are one of them, some counterweight to the big states. Things of interest to people in Chicago and New York can sometimes be in opposition to the things of interest in Nevada, such as owning land.

If a candidate is going to spend his money wisely, he is not going to spend a whole bunch of time going between Reno and Las Vegas. He is going to spend time going from the northern part of Chicago to the southern part of Chicago. So, particularly for Nevada, this is a very bad idea.

John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada:

I see this as doing an "end around" the *Constitution*. The proper way to do this would be by constitutional amendment ratified by the states. The way it stands now, if no one received a majority of the electoral vote, the decision would go to the House of Representatives, so California would outvote Nevada.

In my political career, I have registered people to vote for over 40 years in two different states, and I have never heard anyone say they do not vote because of the Electoral College. Maybe they say that in Las Vegas, but they sure do not say that any place I have ever been.

Dennis Johnson, Private Citizen, Carson City, Nevada:

I am here to strongly oppose not only the wording but the intent of A.B. 413. I urge you to vote "no" on A.B. 413. I want Nevada's electoral votes to represent the vote of the people of Nevada and not of some eastern city or state. It appears that the sole purpose of A.B. 413 is to circumvent our *Constitution*. From the earliest discussions of the manner in which the President of the United States should be elected during the Constitutional Convention in July of 1787, the framers of our *Constitution* strongly balked at the idea of using the popular vote for that purpose. Based upon the recorded votes of the delegates to the Convention, the concerns were many, not the least of those concerns being that larger states would combine and vote for whomever they liked and that the smaller states would suffer.

Assembly Bill 413 appears as nothing more than a segment in a string of legislative bills submitted across the country that are, and were, a knee-jerk reaction and response to the Presidential Election of 2000. I doubt that there is anyone in the room who cannot recall the acidic media reports in the many months that followed the election. There are some still uninformed individuals who hold the false belief that that election was not properly conducted.

In looking over the course of history, those eight-plus years have shown many times over that the process was abject confusion, but the election was proper. All of those who have the honor of being elected to their respective Legislatures swear to uphold the *Constitution of the United States*. Our *Constitution* contains the powers and the limits of powers, not only of the federal government, but of the states as well. James Madison declared that the powers delegated by the proposed *Constitution* to the federal government were few and defined. Those remaining to the state governments were numerous and indefinite, but the power delegated to the federal government to control the election of the President is clearly set forth.

I, for one, do not want the large number of residents in New York City, Chicago, Los Angeles, or any other large, metropolitan area, determining how my state's electoral votes should be cast. What explanation would you give to your constituents in Nevada if they voted for a candidate by a very large margin only to have our state's vote count for someone else?

What does passage of this bill tell the residents of Nevada other than, "Vote, but your vote has the possibility of being symbolic." When the members of the Committee and all members of our Legislature were elected by their districts, they were elected to promote the best interests of their respective districts. Those votes were cast based on what the residents thought important. The respective members were not elected to their offices with the idea that if another member was elected by a higher number of voters, their own member would vote the way the other district wanted. It works regardless of which party has control of the individual legislative Houses. Again, I strongly urge you to vote "no" on A.B. 413.

Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:

We oppose A.B. 413. I went to a government website and found a lot of really good information concerning the Electoral College system. Every high school should print this information for its students. The information explains if one candidate does not win the 270 electoral votes or if there is a tie, that the Twelfth Amendment kicks in and that the House of Representatives would then decide. In rare instances, an electoral voter will defect and not vote for his or her state's winning candidate, although I could not find any such occasion listed on this website.

Phyllis Schlafly had some very interesting columns about the Electoral College. She talked about how Abraham Lincoln, a third-party candidate, won less than 40 percent of the popular vote and relied on his Electoral College majority for his authority. Elimination of the Electoral College would make approximately 25 states and their voters irrelevant. In November of 2000, Phyllis Schlafly wrote, "... as a last resort, the [Electoral College] keeps the meddling fingers of Congress out of the election process. The Electoral College is the only function of our national government that is performed outside of Washington, D.C. ... No Senator, Representative, or other federal official is permitted to be an elector in the Electoral College."

Somewhere, I heard there were Members of Congress involved in the group putting this forth. I do not know whether that is true, but I would like to know. If it is true, that is one of the reasons we have an Electoral College—to keep Congress from meddling and fooling around with our election process.

Chair Koivisto:

The electors are not bound by the votes cast in their state. They can cast their electoral votes for whomever they wish.

Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:

When Benjamin Franklin was asked by someone what form of government he had given the United States, Mr. Franklin replied, "A republic; if you can keep it." When we pledge allegiance to the flag, we say, "...and to the Republic for which it stands...." Although we are in the habit of calling ourselves a democracy, we really are not a democracy. We are not a democracy because our founders understood the inherent problems in a democracy. A democracy essentially is mob rule or a "mobocracy" because the majority, without regard for the rights of the minority, can completely obliterate them and ignore any rights the minority might have.

This happened in the history of my religion when the State of Missouri passed the "extermination order." Those people were forced out in the dead of winter, and many of them died because the majority in Missouri did not happen to like that particular religion.

The reason we have an Electoral College is because of the great compromise when the *Constitution* was organized. The great compromise allowed the small states to have equal representation in the Senate, and the large states had population representation in the House of Representatives. The Electoral College is based on that same formula which protects the small states so that they are not overrun by states with greater populations.

As we all are aware, Nevada was a battleground state during the last election, and our current President even came to Elko. If we just relied on Nevada's popular vote, we would probably never see another presidential candidate. I do not know what would happen under this régime, because in three of the last four presidential elections, the President has not received a majority of the votes that were cast. That is because of the number of third parties. I have not voted for any of the last Presidents because I voted for a minor party candidate. There is no outline of what would happen if the person were only a minority President and did not receive the majority of the popular vote. If Nevada voted for Candidate A and the national popular vote was for candidate B, then Nevada's votes would be irrelevant and its electors would vote for candidate B instead of candidate A, disenfranchising the people in the State of Nevada.

It is very important that this time-tested defense against direct democracy be maintained. A couple of years ago, Secretary of State Heller proposed a bill that would have done away with the winner-take-all rule, and this Legislature rejected that, but that option is still available to you. The Legislature rejected it because without the winner-take-all rule, we further split our electoral votes and become even more meaningless in a presidential election. I believe that would

be what would happen if this measure were adopted. With the separation of powers between the federal and state governments, we often find that the states are the bulwark of our defense. This is why the powers were divided and why there is a balance of power between the states and the federal government. It is unfortunate that the federal government has mostly usurped that power and left you without the power you deserve and that we would like you to have, because we can come here and talk to you. So, we encourage you to reject this measure.

Larry Sokol:

I would like to address two of the issues that have been brought up. One is the notion that the national popular vote is an end run around the *Constitution* and that the right way to enact such a change would be through the constitutional amendment process. Virtually every electoral change of any consequence in U.S. history has come about as a result of state action and not through the constitutional amendment process. There is nothing in the federal *Constitution* that guarantees any of us a right to vote for President. We can vote for President because the State of Nevada has said that we can vote for President. It is in your statutes; it is not in the federal *Constitution*.

That change, allowing people the right to vote for President, did not happen through a constitutional amendment. It happened through state action—elimination of property ownership requirements, poll taxes, and literacy tests, and expansion of the franchise to African-Americans and other minority groups, and to 18-year-olds—all of those started at the state level. Some of those became constitutional amendments, and the best example is women's suffrage. More than 30 states had already enacted women's suffrage prior to the adoption of the Nineteenth Amendment. The Nineteenth Amendment happened as a result of states passing laws granting women the right to vote far in advance of the Nineteenth Amendment's actual passing.

One other aspect I would like to address is this issue that somehow the Electoral College protects small states. That was my understanding, too, when I first got involved with this because that was what we all learned in high school civics classes. While that may or may not have been a consideration, the political realities are that, currently, the Electoral College hurts small states. Twelve of the 13 smallest states, those states with three or four electoral votes, have been completely ignored in presidential campaigns in both 2004 and 2008. Neither party had any presidential visits or spent any money advertising in 12 of the 13 smallest states. The one exception was New Hampshire because it happened to be a closely divided battleground state.

Twenty of the 25 smallest states are completely irrelevant in presidential politics right now because they are safely Democratic or safely Republican.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada, Reno, Nevada:

Our reason for testifying against this bill is based on the principle that each individual is entitled to equal protection under the law and to have their votes equally weighted under that corollary that is enunciated in the one man/one vote principle. Instead of abolishing the Electoral College, this bill allocates votes based on a 50-percent threshold that may have been met across the states. Unfortunately, we do not think this is the best way to accomplish this one man/one vote rule.

It struck me that Assemblyman Cobb's example is a great example of why we would not support this bill. Nevadans have a fundamental right to express their own positions, and we really believe it is unwise, and possibly unlawful, to subject a governmental process to a national referendum that would result in a Nevada choice not necessarily being on behalf of Nevadans.

Chair Koivisto:

We will close the hearing on A.B. 413. Since we have lost quite a few Committee members to other hearings, I will bring this bill back to the Committee, and we will deal with it in a work session. We will now turn to Assembly Bill 435.

Assembly Bill 435: Makes various changes to the provisions governing mechanical voting systems. (BDR 24-463)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:

Thank you for hearing my bill, A.B. 435. None of us will ever forget the aftermath of the election of 2000. Passions were high, and many Americans believed we were facing a constitutional crisis. Whichever side you were rooting for, it seemed implausible that the future of our country hinged on something called a "hanging chad." Policy makers on Capitol Hill were convinced change was needed, particularly in the method by which ballots were designed, cast, and counted. The answer was the Help America Vote Act (HAVA) passed by Congress in October of 2002.

Bolstered by the public discontent of 2002 and the availability of federal dollars, voter-rich states including Florida, California, and Ohio replaced older voting systems with touch screen or scroll wheel electronic voting machines. The newer machines offered flexibility and features the older systems, mostly punch

cards, never could. No more over-votes, the ability to display multiple languages on the same machine, accessibility for a wider range of voters with disabilities, and no more ambiguity when determining a voter's intent. Machines were bought, millions of dollars were spent, votes were cast; controversy ensued.

Not long after their introduction, computer scientists, voter advocacy groups, and others called into question the integrity, security, and accuracy of the next generation of voting machines. By 2003, the calls of computer scientists for further research had blossomed into a movement. Problems at polling places strengthened their arguments, and lawmakers listened. Misprogrammed machines in one North Carolina county failed to record votes, throwing a statewide race into confusion. Statistically improbable numbers of under-votes plagued elections in some Florida counties.

The security of systems was called into question in studies conducted by both the private sector and by government agencies. The dependence on private sector voting machines for expertise was questioned. In a growing list of states, the questions turned to concern, concern gave way to legislation, and legislation led to more changes in the polling places.

By 2007, a second overhaul was underway in some states. The experiment with direct recording electronic machines (DREs) would end abruptly or be phased out. The high profile, bipartisan action to mothball or sell extremely expensive and recently purchased voting technology for cents on the dollar is the leading edge of the migration back to paper. In 2008, fewer jurisdictions and fewer registered voters used electronic voting equipment than in the previous election. Nearly 10 million fewer registered voters used electronic voting equipment compared to just two years before. Elections are mostly organized by counties, and since 2006, 82 counties have changed the way they conduct their elections. They have all gone back to paper.

First, I want to talk about security. There are some who believe all the information on the Internet is by bloggers who, supposedly, we do not trust, and by conspiracy theorists. Today, the information I am bringing you is from the mainstream media, who we supposedly trust, as well as from secretaries of states of other jurisdictions, and information from academics. Many citizen organizations also have been looking at the way we vote since HAVA was passed and we bought all these machines.

The Help America Vote Act privatized our voting and our elections. The folks who are running our elections and who will testify in opposition to this bill are

elected people who are elected to run our elections. Unfortunately, they do not anymore. The software in the voting machines we use across the country is proprietary. Most of our elected officials cannot access the software that runs our machines. It is owned by the companies that own the machines, and they do not let us look at the software. So, we have privatized our election system, and let me remind you that private corporations' allegiances are to their shareholders. They have a fiduciary responsibility and that is the only responsibility they have. They do not have a responsibility to you and me, the voters. They have no responsibility to democracy; they have no responsibility to this nation; they have a responsibility to make money for their shareholders.

The corporations controlling our elections have long histories of unethical and deceitful, even illegal, behavior. A member of the federal Election Commission stated that "Voting machines are different from other things bought by a government. In purchasing voting equipment, elections officials must rely heavily on the integrity, honesty, and the reliability of the vendor selling them this equipment." We have Sequoia voting machines but there have been criminal indictments of key personnel. David Philpot, Sequoia's exclusive agent in Louisiana was convicted of bribery in a 1999 kickback scandal. Phil Foster, a Sequoia salesman, was indicted in 2001 by a grand jury for related crimes, had been granted immunity for his testimony in the scandal, and was not tried. Foster has since risen in the company and at present is serving as the vice president of administration strategies. He served on the Palm Beach County Election Technology Advisory Committee from September 2005 through May 2006, and continues to advise the county's election supervisors.

There are also ethical violations. In November 2002 in New Mexico, Vice President Howard Cramer failed to inform New Mexico officials of a known software bug that tabulated votes incorrectly, the *Albuquerque Tribune* reported. Although 48,000 had voted early on a Sequoia-supplied touch screen computer in six sites in the county, the initial figures given to the commissioners indicated that no race, not even the Governor's, showed a total of more than 36,000 votes. Sequoia admitted that the same error had been encountered in Clark County, Nevada, several weeks earlier, but Sequoia had not informed the election officials in the New Mexico county.

Another ethical violation occurred in November 2006 after Sequoia's electronic poll book system caused chaos in the general election, and Sequoia's Vice President, Howard Cramer, lied to the mayor's panel in an attempt to blame the election commissioners for Sequoia's failure. Cramer attempted to convince the mayor's panel that the software Sequoia had developed for Denver

was not intended for an electronic poll book, but the documents proved that Sequoia had been commissioned to build software precisely for that purpose.

From 1996 through July 2008, dozens of reports of Sequoia equipment failures were reported in news across the United States. A partial list includes such problems as votes dropped in touch screen systems, screen freezes, tabulation errors, vote switching on electronic voting machines, breakdowns on Election Day, contests failing to appear on computer ballots, paper jams, data transfer failures, malfunctioning vote-data cartridges, battery failures, and software that lost votes during tabulation.

Here is something from the *McClatchy Washington Bureau* ([Exhibit C](#)). This is a major newspaper. It goes on about hundreds of millions of dollars in federal funding that have gone to upgrade the nation's voting machines since 2003. It says many states are now scrapping these systems. Seven state governments—Alaska, California, Florida, Iowa, Maryland, New Mexico, and Tennessee—have decided to replace their touch screen electronic machines. While some states have completed the switch, others will not finish replacing the machines until 2010. The federal government spent \$1.2 billion on new voting machines. Optical scanning equipment is becoming the preferred replacement because, unlike touch screens, it preserves each voter's original paper ballot in the event of a recount.

Further in this article it states that computer scientists at several universities, some of whom have been hired to test voting machines for the states in Ohio, California, Connecticut, and New York, reported finding security and performance flaws in virtually every system, spurring the push for a paper audit trail. Earlier this year, Iowa's Legislature joined others in reversing course and voting to use millions of dollars in state money to replace touch screen machines in 78 of the state's 99 counties. The Iowa Secretary of State said that Democrats and Republicans alike overwhelmingly want a paper trail to reconstruct the election.

It seems that the volunteer system for looking at the security in these machines turns out not to have been reliable. The vendors had a part in deciding how the tests went. This was unearthed because of disclosure of an election computer glitch that could drop ballot totals for entire precincts and is stirring new worries that an unofficial laboratory testing system failed for years to detect an array of flaws in \$1.5 billion worth of voting equipment sold nationwide since 2003. So, the entire system for certifying the machines is questionable.

Assemblyman Segerblom:

I think we agree, but does your bill require that we replace the electronic machines with paper ballots?

Assemblywoman Pierce:

Yes. I would need to amend this bill, and I could do it with a conceptual amendment, but the way the rest of the country is going is to a paper ballot that you mark and that is optically scanned at the precinct level. Then, there is an auditing system.

Another report I gave you includes an academic report on security ([Exhibit D](#)). As I said, Central Intelligence Agency (CIA) personnel, academics, and all kinds of cyber scientists have looked at the system and have said all the machines, not just Sequoia, not just Diebold, are hackable, and most people believe they have all been hacked.

Now, let us discuss cost. The annual maintenance costs have skyrocketed over 1,000 percent in just four years. The maintenance cost for the DRE machines, which are what we have, is very high, and in all states the maintenance costs get much, much higher. They pretty much have you once you have bought all this equipment, so you have to continue to get these maintenance agreements. As I said, states are finding that the costs are going through the roof.

I want to point out a recent article ([Exhibit E](#)) in which the Registrar in Washoe County, Dan Burk, compared the cost, to a precinct, between optical scan and DRE. For an election, an optical scan precinct costs \$6,600, and one with DRE costs \$36,000. We are still using HAVA funds, so that is camouflaging the real costs because between elections, you cannot just put these DRE machines in a warehouse. Mr. Burk says the new voting machines are also high-maintenance. They cannot just be stored away and forgotten between elections. They have to be charged monthly, both the little units that activate the voter cards and also the actual voting units themselves. I think the County wound up paying about \$15,000 last year just to charge them, and Mr. Burk stated that it costs about \$65,000 a year just to ship them out to polling places and bring them back.

New York looked at the cost of going with a DRE system or an optical scan system when they looked at buying new voting machines for the entire state. They found that going with the DRE machines was going to cost \$160 million more than going with the optical scan system. There is also information from Florida where the registrar of voters of Dade County says that, in contrast to claims that the use of DREs reduces election costs by eliminating the cost of

printing paper ballots, he estimates lower costs from printing, postage, and office supplies when optical scanners are used. Some of the other costs of DREs often not anticipated by county officials include:

- Costs for secure and environmentally controlled storage for the machines when they are not in use;
- Energy costs for keeping the backup batteries charged between elections;
- Labor costs for security when machines are stored at polling places before an election;
- Hardware maintenance and repairs and software upgrades for each of the machines, whereas optical scanners require much less maintenance and fewer repairs;
- Labor costs for hiring additional workers, for example, San Diego doubled the number of poll workers when it switched to DREs;
- Poll worker training, both for longer training sessions and large numbers of poll workers; and
- Massive costs to replace the machines when they age and the technology they employ is no longer maintainable or supported by a vendor.

This "Executive Summary" ([Exhibit F](#)) is part of a report and relates that New Mexico has gone back to paper. After spending more than \$30 million to replace punch card voting, Florida will spend another \$27.8 million to go back to optical scan machines. California did a top-to-bottom review and is curtailing the DRE voting and going to optical scan voting. Ohio is going to optical scan as is Colorado.

I have two videos. One is on the Diebold machines, which we do not have. It has a woman in it, a regular housewife, who was on the Internet one day and found the entire software for the Diebold machines on the Internet. I have another video titled "Uncounted" about Sequoia which may show a machine being hacked. I have tried very hard to stick with academics—the CIA and mainstream media—in making this presentation, because I did not want people to discount this information as coming from conspiracy theorists or to think that no one serious is looking at this issue.

Assemblyman Settlemeyer:

If I am correct, all our systems in the State of Nevada now have a paper backup.

Assemblywoman Pierce:
Right.

Assemblyman Settelmeyer:
Is there some reason we could not just audit those to see if the numbers are different?

Assemblywoman Pierce:
There is evidence that those are not reliable and can be hacked. I do not know anyone who has faith in them. People want a paper ballot, and they want a ballot that can be counted six months or two years later. People just do not have faith in them, and I do not have faith, not after everything I have read and seen.

Why have a terribly expensive machine that no one has any faith in? Why not have the less expensive machine that everyone has faith in? Besides going to an optical screen, Oklahoma bought optical scanners and then kicked the vendor out of the state.

We need to take elections back. Elections need to be run by people who are elected; not by vendors whose fiduciary responsibility is to their shareholders and not to us.

So, everyone who is making a change is going to optical scan paper ballots. The security risks have been well documented. If we do not change course, when the HAVA money runs out, the burden of paying for elections in at least 15 counties in this state will come back to this building. The rural counties will not be able to afford to maintain these DRE machines. They are too expensive, and the maintenance costs are going to rise because these machines are getting old.

The gentleman from the Secretary of State's Office called me today and asked if I had seen the fiscal note on the bill. He said it was \$30 million. Not to put too fine a point on this, but we have spent \$610 trillion to supposedly bring democracy to Iraq. Nevada's share of that is \$5 trillion, and some 50 Nevadans have given their all in the endeavor as well, so \$30 million to secure democracy in the State of Nevada seems like a bargain.

Go home this weekend, sit at your computer, do a Google search on electronic voting machines, and just go anywhere. Follow any link, read anything, just read, read, read for five hours, and you will vote for this bill, because it is all there. Restrict yourself. Do not read anything not authored by anyone who is

not a Ph.D. Do not read anything that is not by someone who is a cyber technologist. Do not read the blogs; just read what secretaries of state have said. For instance, the Colorado Secretary of State said that the Sequoia optical scan devices used to count paper ballots passed, but the electronic voting machines failed due to a variety of security risks, including that the system is not password protected and has exposed controls, potentially giving voters unauthorized access, and that it lacks an audit trail to detect security violations.

The Secretary of State of Ohio did a big study called "EVEREST" (the Evaluation and Validation of Election-Related Equipment, Standards and Testing). Ohio tested systems for risks to voter security, system performance including load capacity, configuration to currently certified system specifications, operations, and internal controls. To put it into everyday terms, the tools needed to compromise an accurate vote could be as simple as tampering with a paper audit trail connector or using a magnet and a personal digital assistant.

If you do not vote for this bill, the people sitting here in two years are going to. Maybe this is a new subject to some of you, but this is the trend. This is where we are going. If you wait for two years, you must remember that nothing gets cheaper. We have about \$3.5 million in HAVA funds left. If you do not vote for this and you want to kick the can down the road for two years, fine, but I strongly suggest that the Secretary of State not throw that \$3.5 million down the Sequoia rat hole, because in two years, we are going to want that money.

It has been amazing for me to look at this situation. I want my elections to be secure. I ask that you give this some real consideration. I will bring you a conceptual amendment tomorrow that will basically say "optical scan, paper ballots that voters mark themselves counted at the precinct level." I also need to look at the question concerning how people with disabilities vote, because that is an important part of this.

Assemblyman Ohrenschall:

Right now, in Nevada, do we have procedures in place for independent testing of the accuracy of the machines and the vote tabulation software by a disinterested third party? Other states are doing that.

Chair Koivisto:

Mr. Ohrenschall, that is probably a question for the elections experts when they come up to testify.

Assemblywoman Pierce:

Yes, they are here and should answer that.

Assemblyman Hambrick:

I was one of three certifiers for three elections in a row. I am a Republican. There was a Democrat and a non-interested third party. In each of the three election cycles, the third party was also a Democrat and a member of the AFL-CIO. We tested the machines prior to the primary, after the primary, prior to the general election, and after the general election. These were random tests on these machines. I have faith in the system. I most likely will not be voting in favor of this bill, unless other testimony can change my mind, because I have seen the system, I have tested the system, and I have a fair amount of confidence because I have seen the way Clark County conducts elections.

Assemblyman Cobb:

I was in Iraq during the lead-up to their elections, and we did not spend \$600 trillion on that issue.

Assemblywoman Pierce:

No, on the war.

Assemblyman Cobb:

We did not spend \$600 trillion on the war, either. The issue I wanted to address was alluded to by Assemblyman Settlemeyer when he said that we already have printed records in those voting stations. It prints and tells the voter exactly what it is going to record. The voter can view it, so there is no way to tamper with it unless you are suggesting that someone is going to steal the printer rolls. That suggestion would go back to the basic question of what would stop someone from stealing the ballot box full of written votes that you are suggesting we move back to. Given current technology, it seems this would be unnecessary. I will allow the individuals who handle the elections for us right now, the experts who are uniformly against the bill, to describe how tough it is to actually hack a system. If I wanted to perpetrate a fraud against an election, I would much prefer written ballots over some type of computer system. You could just pick up the ballot box and run off with it or stuff it. If they are persuasive in their arguments about how tough it would be to walk into a crowded polling place and start hacking into a computer, would not fraud be a lot easier with written ballots as opposed to these computer systems?

Assemblywoman Pierce:

You do not hack the machine while people are voting: You can put a virus into the machine that flips the vote beforehand, or there are all kinds of ways to hack these machines. We live in a world where 17-year-olds occasionally hack into the Pentagon. I believe the information I gave you mentions that a

DRE machine with a paper roll on it was hacked, and the vote that came out of the machine was not the same as what was on the paper.

As I said, computers get hacked all the time. A year ago, I discovered someone from Istanbul was taking money out of my account. This is our democracy. If someone from Istanbul gets my money, that is a lot less scary to me than the idea that someone can hack an election. Our democracy is too important to turn it over to private industry. It is too important to take a chance.

John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada:

I do not have a Ph.D. but I do have a B.S. in electrical engineering, and I have a fairly good working knowledge of software, firmware, and particularly how they work with machines. It is possible that when the software and firmware are loaded up for the election, they could be loaded in such a way that everything works fine. But there is a card reader that is inserted when you vote. That machine could be programmed such that when it sees that card reader and sees certain bits of data, it could flip things around. If that were done to all the machines, it would be possible to put only one card into the group used by all the voters, and at the end of the day, possibly one machine would be affected. It is possible to hack into these machines.

Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:

I am very pleased to say that I objected to the State of Nevada participating in HAVA, and encouraged voting against it because I felt that Nevada's election process was superior to what was being imposed on us by the federal government.

Something not well understood is the paper printout we have. We heard testimony by the county clerks that it was unreliable and not used for recounts—that it was not really a backup to the system and that they depended on the electronic voting. If that is different, I would like to know, because that was previous testimony as I heard it.

So, we do not have a paper ballot for recount in the State of Nevada now that we have gone to these kinds of machines, and that concerns me. There was a discussion at the U.S. Election Assistance Commission by CIA cyber security expert Steve Stigall that mentioned the background of the Sequoia machines. He stated that "this nation's largest voting machine company, controlling 20 percent of the vote cast here, uses software that is still owned by Smartmantic, the Venezuelan firm associated with Hugo Chavez." It also mentions that this is an international security threat.

A CIA expert has said that electronic voting machines are just computers. They have memories, firmware, and software built into the hardware of the machine to tell it what to do. The most interesting thing is not only can it be networked, but it also can be interrogated from the outside. It is a computer. That is essentially what it is, and because it is a computer, it carries with it all the vulnerabilities that a computer has. We have serious concerns, and have had them for many years. We are very pleased that this bill has been brought forward.

In California on August 3, 2007, the Secretary of State, Debra Bowen, withdrew approval, and then granted conditional reapproval of the Sequoia voting machine optical scan and DRE voting machines. Review of the voting machines certified for use in California found significant security weaknesses throughout the Sequoia system and pervasive structural weaknesses which raised serious questions as to whether the Sequoia software could be relied on to protect the integrity of elections.

We are very concerned about the integrity of elections. There are a couple more sentences I would like to quote: "If you want to win an election, just control the voting machines." Stalin understood it well: "It does not matter who casts a vote; it just matters who counts them."

Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:

I am not an expert on computers, but as a citizen of Nevada, I want paper ballots. That is what it comes down to. I want to go back to being able to see it and know a recount can be made using the paper I actually voted on.

Patricia Axelrod, Director, the Desert Storm Think Tank and Veterans' Advocate, Reno, Nevada:

I want to commend and congratulate Ms. Pierce for her effort to bring about election justice for the State of Nevada. In the past, I have sued the Secretary of State as well as the State of Nevada on just this issue—asking only that these machines be independently tested by outside sources such as Princeton University or the University of California.

As has been pointed out, other secretaries of state have found the Sequoia—and we are voting on the AVC Edge with VeriVote printer—machine to be unfit and unsuitable to vote on. As has already been pointed out, the Election Assistance Commission has not certified this machine and, thus far, does not have a plan to certify this machine. That is contrary to Nevada election law which clearly states that any machine that Nevadans are voting on should be certified by the Election Assistance Commission.

My background is as a weapons system analyst. I conduct the Desert Storm Think Tank and Veterans' Advocate, and in the past, I have been awarded a Research and Writing award from the John D. and Catherine T. MacArthur Foundation for my analysis of the electronic battlefield. Therefore, I analyzed the AVC Edge with VeriVote printer, including the operational test and evaluation reports generated by Wyle Laboratories in advance of deployment of this system throughout the State of Nevada and elsewhere.

Through my analysis, I found that the mean time between failure of this machine in some circumstances was as low as one to three hours. I found that it was subject to leakage of condensation. I found that the software was subject to corruption, thereby cutting off part of the votes that were conducted by the testers themselves. I would be pleased to make those portions of the report generated by Wyle Laboratories available to each member of this Committee, but I would request that you ask the Secretary of State to explain those findings generated by Wyle Laboratories which, quite clearly, establish the fact that this machine is prone to machine defect.

Furthermore, there are a couple of points I would like to address. Some have stated that the paper ballot should be adequate for purposes of recount, and therefore, because this machine has a paper ballot, this machine should be trustworthy. We in the election justice movement have a saying concerning that paper ballot: "Garbage in; garbage out." That paper ballot is recording the same mistakes and defects as might be recorded by the machine itself. It is nothing more than a recounting of any defects that may be recorded in the course of voting on this machine. Furthermore, what has not been pointed out is that this machine is subject to electronic sabotage. It would be very easy for someone who is intent upon controlling the outcome of an election or changing the outcome of an election, to come in with a small machine of any sort, including a cell phone, and change the operation of this machine.

While there is an estimate of \$30 million for purposes of changing Nevada to the use of optiscanners, I would remind this Committee that the State of Nevada has already purchased optiscanners, the 400C optiscanner. It is a Sequoia machine, and perhaps, therefore, it should be closely analyzed, but I fail to see how this change from the paper ballot and the use of an optiscanner would cost \$30 million when the machinery is already in place. Furthermore, these machines are still subject to extended warranty. The first warranty was purchased with the machines in 2004 and was extended in 2008. I suggest this could be a win/win situation. Not only could we have an election and voting system that ensures election justice for all, but under the terms of the extended warranty, the State of Nevada could request a full refund of all monies

paid for clearly defective systems. These systems are tamper prone, they are hackable, and they have been deployed throughout the State of Nevada and elsewhere with built-in and well known product defects.

I will close by telling you that I, too, am aware of the testing of these machines in advance of elections. That testing is done on the basis of a predetermined script. Those testing the machines have a script, and there is a predetermined outcome. I witnessed this in other scenarios and saw it take place in the Senate Legislative Operations and Elections Committee in 2007 when Howard Cramer used a predetermined script. Two votes were cast on two different machines. It was a predetermined script, and the nature of the vote included four names. The two Nevada State Senators were told how to vote, and they did so. They pushed the buttons as they were told to do, and low and behold, the outcome was deemed to be accurate.

After I voiced my concerns after that meeting in the presence of the Senate Legislative Operations and Elections Committee, Mr. Cramer said to me, "What will it take to make you go away?" You can interpret that question in any way you choose to, but I believe it is consistent with the conduct of Sequoia voting machines.

Chair Koivisto:

I do not see anyone else signed in who indicated he wished to speak in favor of this bill, so I will ask those who have signed in against the bill to come forward.

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

Speaking from the state's perspective, there is a fiscal note of about \$15 million, but that is not only for equipment. The real impact this bill would have is that it does away with early voting. The State of Nevada right now, and particularly in the larger counties—Clark and Washoe—is not equipped to place 1,500 ballot styles at every polling location throughout Clark County for the two weeks leading up to the general election. It would be impossible to do, so that is part of the fiscal note.

During this past election, there were approximately 3,000 out-of-state attorneys observing Nevada's election process statewide. Among those I spoke with post-election, not one had a negative thing to say about how the State of Nevada conducted its election. In fact, the comments were overwhelmingly supportive. Nevada has probably one of the most successful election systems in the entire country, and that is recognized at the national conferences. Furthermore, Clark County is widely seen as having the best elections in the State of Nevada as well as in the entire country and in the world. The manner

in which Nevadans go to vote is looked up to by many jurisdictions and aspired to by just about every jurisdiction.

In 2008, by volume, we saw more people vote in the State of Nevada than have ever voted before. There was no compromising the system in the State of Nevada. In an election, there has never been a compromise to the system—the DRE Sequoia Voting System—in its application in the United States. Testing circumstances have been alluded to, but what they failed to inform you of was that those were in test environments. There were no poll workers or any of the safeguards that this Legislature has enacted to protect these processes. None of that was in place, and so the test results are analogous to handing someone the key to the bank vault and telling that person you will be leaving the bank for an hour and to try to get into the vault. That is exactly what a lot of these tests are. Not once, has anyone on this Committee seen anyone, who was not a poll worker, standing alone, hands-on with the machine for 45 minutes, or 5 minutes, or 30 seconds, doing anything other than casting a ballot. That is because there are statutory safeguards set up at the polling locations so that none of this would be possible. In fact, it is a violation of the law, and many times it is a criminal violation of the law.

In order for software to be employed in the State of Nevada at the county level, it goes through a couple of different processes. It starts with the vendor. In Nevada, we are an all-Sequoia state. When adopting the system, then-Secretary of State Dean Heller brought in the Nevada Gaming Commission to conduct its own, independent review of the systems. Their conclusion was that the Sequoia Voting System was the proper system to use in the state.

When Sequoia now submits its software, it goes to NIST, the National Institute of Standards and Technology, who tests the software. From NIST it goes to the Election Assistance Commission (EAC). The EAC is the body commissioned by the United States Congress to certify the software. From there, the software goes to the Secretary of State of each individual state, and from there it goes to the counties. Throughout that process, different agencies and different people are involved, and one thing must maintain consistency—the hash code in the software which is about 40 digits of random numbers. That must maintain consistency from the time it leaves the EAC until the time the county clerk opens the software at the county level. That ensures no one has touched that software; the software has not been opened or observed. Nothing has happened to the software between the time the EAC certified it and the time the county clerk opened it.

In 2008, our office formed an unprecedented investigative task force. We referred to it as our fraud task force, and members included the FBI, the U.S. Attorney's Office, the Attorney General's Office, the Las Vegas Metropolitan Police Department, the City of Reno's Police Department, and the Washoe County Sheriff's Department. It was determined by the many different agencies which were involved that, in the event of a nuclear holocaust, those machines would have power and the polling places would stay open on Election Day.

That task force was formed at the beginning of the campaign season, around the end of February, and continued through the general election. There were people at every polling location, observing all the contact at those polling locations, and neither the federal investigator nor our Office found any instances of anyone even attempting to rig machines or compromise the integrity of the election.

The Secretary of State is continually looking at new technology and listening to the people of Nevada—how they desire to vote and the manner in which they have decided to cast their ballots. The Sequoia voting machines and the DRE are what the Secretary of State's Office believes to be the most accurate and reliable way for Nevadans to cast their ballots. With that in mind, the overwhelming majority of Nevadans who contact our office are in support of this. In studies that have been done, generally about 70 to 75 percent of Americans are very confident that their votes are cast accurately with these DRE machines.

Larry Lomax, Registrar of Voters, Clark County, Las Vegas, Nevada:

I would like to clarify some statements; for instance, I am not an elected official, and then describe to you the impact of this bill. Clark County has voted electronically since 1996. We did not start electronic voting when HAVA came into play, nor did HAVA money buy the equipment used in Clark County. Clark County taxpayers bought it. The software we use was obtained from the vendor in 2002. A Sequoia vendor has not had access to that software since 2002. We program our machines; Sequoia does not. We maintain our machines; Sequoia does not. Our maintenance costs have nothing to do with Sequoia. We maintain our own equipment; we program our own machines; Sequoia does not have access to the software. If they were going to rig elections, they needed to have determined in 2002 what was going to happen in 2008. So, right off the bat, a lot of things that have been said are not accurate.

Statements that all voters think machines can be hacked and that all voters do not like the machines are not true based on my observations. The ability to hack a machine requires access. No one who knows anything about computers would deny that. All voting machines we use are stand-alone. No voting machine is ever on a network. Our software is never on a network. Our tabulation software is in an enclosed vault, and nothing goes outside that vault.

On election night, you get your results about every 20 minutes; although, during this past presidential election, it was about every 45 minutes, because we stop tabulating, create a summary disk, take it outside the vault, and then plug it into a computer network. That is to be sure no one can hack into our tabulation system. Statements that voting machines can be hacked by cell phones or anything of that nature are absolutely ridiculous and do not deserve additional comment.

If you spend time on the Internet, a lot of what you will read is either taken out of context, is human error or misreported, is superficially analyzed by someone, or is a situation that is not realistic. Yes, it is true that if I give my machine to a computer scientist and let him have it for a month—this was done in California and they had a copy of the software—he can probably figure out how to hack into that machine. No one has access to our equipment, ever. We have all sorts of security procedures in place. I do not think I have ever given a tour of our facility to anyone and had them leave thinking they were going to be able to gain access or break into any of our machines. I do want to assure you that the machines are secure, and that a lot of what you have heard are subjective statements that simply do not reflect the facts.

Let me discuss what will happen in this bill. On Tuesday, I heard the Chair state that she was sick and tired of seeing Nevada on the bottom of every list. Well, this is one list Nevada is at the top of. What Matt Griffin said earlier is absolutely true. We had about 2,000 out-of-state lawyers from California in Nevada observing our elections last November, and when they left, their comments included, "Why isn't California doing this? Why don't we vote like this? This is the way voting ought to be done everywhere."

If you change, you will be going from what we currently have, to what is called an optical scan system with precinct readers, as Assemblywoman Pierce discussed. There would be a one-time cost in Clark County of approximately \$7.5 million to buy the equipment. The cost is primarily to buy what are called precinct scanners. After the voter fills out an optical scan ballot, the voter feeds the ballot into the reader. The reader makes sure the voter did not over vote a contest, which means vote for two candidates, or make some other

mistakes. It is a safety mechanism. Those cost about \$6,600 each. Those are computers and they read the ballots. If voting machines can be hacked, the readers can be hacked, and I really do not understand the difference between a voting machine with a paper trail that the voter has verified and a paper ballot, but I will leave that up to you.

We estimate that there would be an additional increase in cost per election of about \$2.5 million, although you could probably subtract \$500,000 because we would no longer be doing early voting, as Matt Griffin stated. The reason we can currently do early voting is that all the ballot styles can be loaded onto the voting machines, and they can be placed in supermarkets and all the other places where we now have them so any voter's ballot can be brought up. I cannot put 900 versions of paper ballots into a supermarket, or anywhere else for that matter.

As has been stated, California's Secretary of State has pretty much done away with electronic voting except for the disabled, and is requiring the use of paper ballots. Correspondingly, California has therefore done away with early voting in any meaningful sense. A voter can still go to the clerk's office and vote, and I suppose we could still do that in Clark County.

Let me point out, in the 2008 elections, 391,000 people voted early. If you do away with early voting, about 400,000 more people are going to be voting on Election Day, or are going to have to vote absentee. We had 210,000 people vote on Election Day in 2008. If this change were made, I estimate that about half the early voters would probably vote on Election Day and half would vote absentee from that point on. So, it will double the number of Election Day voters. We currently have 350 polling places. We think we would have to increase that number by about 100. There would be an increased staffing cost with that, and it is going to be a slower process. In the last election, we had a little over 50,000 absentee ballots. We would probably have 250,000 absentee ballots, so there is a lot of absentee-ballot processing equipment we would have to buy as well as increased expenses for staffing and processing that number of mail ballots.

If you believe in the integrity of electronic voting, which I know I do, the machine records everything accurately. It does not allow the voter to over vote. It tells you if you under voted, and it tells you again on the review screen. It prints a paper record for review. If you made a mistake, you have another chance to correct it. The machine will add it up quickly and accurately, and that is why we get you quick and accurate results on election night. Whether or not the skeptics believe it, you in Clark County get exactly what the voters

reflected on their ballots by about 10 p.m. or 11 p.m. on election night, and it is accurate and tested.

The system that is not accurate is the absentee ballot system. When you fill out an absentee ballot, no one is proofing your ballot. You are at home, filling it out, making your marks, putting it in an envelope, and mailing it in to us. Historically, 1 percent of all ballots mailed in to us are going to be rejected immediately because the voter is going to fail to sign it or the signature is not going to match. It is also going to be rejected if you write your name on the inside of your ballot. So, in the last election, we rejected about 540 out of 50,000 absentee ballots. If we have 250,000 absentee ballots, about 2,500 voters are going to have their ballots tossed out because those ballots are not filled out correctly and no one is around to help them.

The error rate on absentee ballots is significant. I invite any of you to work with us on any election and process absentee ballots. Voters consistently over vote, so when the ballots are absentee, those contests will not be counted. Voters also make mistakes and fail to follow our instructions on how to correct them. If we cannot tell how to duplicate it, the voter will lose his vote in that case. If you do not think this happens a lot, think about what is going on in Minnesota right now, which is a state that uses paper, optical scan ballots. The election was in November, and they are still arguing about who won and who lost and how the paper ballots should be interpreted. Yes, you have a paper record, but what was the voter trying to tell you on that paper record? So, it is not the cure-all a lot of people think it is.

I know I trust our machines. I know our machines are accurate. I know, because I am on the inside. I think the issue with a lot of people, and for whatever reason, is that they do not trust government. Whether you go to an optical scan system or some other kind of system, they are not going to be happy. As someone mentioned earlier, all of us here know how to "hack" a paper ballot because we know how to use an eraser. None of us sitting here, including me, know how we would "hack" one of our voting machines should we even get access to it, because there are all sorts of safeguards in place.

I am not going to spend a lot of time countering every argument that was made, but, if you go with this bill, you are going to need more polling places. Initially, it is going to cost a lot of money. I want to emphasize that the voting machines in Clark County were paid for with about \$20 million of taxpayers' money and not with HAVA funds. The vendor has no access to the machines. We do our own maintenance. If you switch, there will be an initial cost of about \$7.5 million and then an ongoing cost of about \$2.5 million for increased

printing every election from there on, because the big advantage of electronic voting is that you do not have to print those ballots.

Assemblyman Mortenson:

I want to confirm your statement that every one of these machines is stand-alone. There is no network connection or wireless connection between them, so even if one machine is hacked, it would only be one machine out of all Clark County has.

Larry Lomax:

What you have said is true. They are all stand-alone; we do not use wireless. Assuming you could get access to a machine, you would only have access to one machine.

Assemblyman Ohrenschall:

I agree with Mr. Lomax. Whatever system we have, the problem is that some people do not have faith in the system. Maybe we need to make more of an effort to give people more faith. I have two questions: Does Nevada have an independent technical oversight committee looking over the hardware, software, and security issues? And, does Nevada conduct random audits of the machines to make certain the code is accurate and consistent throughout all the machines?

Matt Griffin:

Yes, we do have a technical oversight committee. It is comprised of the state's information technology (IT) departments, as well as those of the counties that have them. They meet during election years, sometimes on a monthly and sometimes on a bimonthly basis, to review all the issues in Nevada as well as any national issues that might be pertinent to the state.

With respect to the random audit of the machines, depending on the size of the county, counties are statutorily required to audit a certain number of machines randomly prior to every election, and post-election.

Alan Glover, Clerk/Recorder, Carson City, Nevada:

We have had Sequoia as our vendor for at least 20 years. We had Sequoia when we used punch cards, and we have them now with the touch screen system. We have always used their software to count votes. I have never seen any problems with them at all. As with relationships with any vendor, you always have discussions with them, and I have found them to be an honorable company. I have faith in their software and in how these machines work.

We have had six elections on touch screens. We test the machines before the election, and we test them afterwards. The testers are an independent group made up of Democrats, Republicans, and non-partisans. They take the rolls, count the votes by hand, and check that number with what the computer shows. Every election those numbers match every time. They are 100 percent accurate, and that is the advantage of touch screen voting. You do not get the problems like they are having in Minnesota.

We did an informal poll of Carson City voters, and 80-plus percent of the people polled really liked the machines. About 10 percent did not care one way or the other, and only 4 percent really did not trust the machines. Addressing Mr. Ohrenschall's point, we have done a lot of outreach in this area. There is a certain group of people who cannot be made happy. They simply do not trust the system. They all seem to own a computer, and they are all on the Internet. There is a ton of information on the Internet. We looked at that information a lot because we were concerned, too. If we had any concerns about the software and how it performed, we, the county clerks, would have been screaming to the Secretary of State, because we are elected officials, too. Our necks are on the line, and we do not want anything to go wrong with it. In the process of reviewing all the material, we looked at all the companies, and there were certain companies we did not want to deal with because we did not think they were as good as Sequoia.

As someone who has been in the business for 20 years, I have a lot of confidence in the system and my constituents do too. I would like to stay with touch screen voting, because it is a wonderful way to vote.

Assemblyman Hambrick:

Mr. Glover, I just found out that the state helps many of the other counties with their election expenses. When HAVA funds stop, what are the fiscal implications for Carson City and northern Nevada?

Alan Glover:

Once the HAVA funds have been expended, most of the counties do not have the funds to pay for the maintenance agreements on those machines, so that is going to be very significant. We are exploring some possibilities with the Secretary of State. Perhaps their IT department could perform some of the maintenance. I do not want to be totally dependent on the vendor to do everything for us. As a lot of people have testified, I would like someone else to be able to assist us and see what the best deal is. The proponent of this bill and others are correct. We will be back looking for money from the Legislature

to help with this process, but we probably would need money for any voting system we had.

Chair Koivisto:

Are there other questions from this panel? [There was no response.] No one else is signed in who wants to testify either for or against. Rebecca Gasca has signed in as neutral and wants to testify.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada, Reno, Nevada:

The American Civil Liberties Union (ACLU) is here to testify neutrally on this bill. Our organization does not take a stance one way or the other when it comes to the touch screen voting machines or the optical scan machines as long as the optical scan machinery being used is at the precinct level. What the ACLU is concerned about is that whatever technology the state decides to use, it is accurately counting votes, ensuring voter privacy, verifying the votes so that the voter can make corrections at the time to properly reflect his intent; and that it prohibits over voting, notifies under voting, and things of that nature.

I thought it pertinent to testify because I wanted to clarify that the ACLU would be against the use of central-voting optical scans. As Mr. Lomax testified, those machines are particularly vulnerable because the votes are tabulated later and a voter cannot actually verify the intent of his vote. At the precinct level, however, the optical scans are used, the voter himself puts the ballot into the machine and has it tabulated, and the voter can check to make certain the vote is indeed cast as he intended and go on his way. There is definitely a difference between the use of central optical scans versus precinct optical scans, and if the state decides to go with the use of precinct optical scans, we urge you to fully fund it so that it will constitutionally support those criteria I laid out earlier.

Assemblyman Hambrick:

Are you concerned with the fact we may have to lose early voting which might affect turnout?

Rebecca Gasca:

That is an interesting point. Clearly, there is no perfect technology. Computers are used throughout the process. This bill would provide that a recount would be done manually, which would take up state resources. In the event that early voting was not possible, certainly that would cause concern. I am not in Mr. Lomax's position, but he has very creative ways to address early voting such as portable machinery that can be used by voters in different areas. I am

not a voting professional, so I do not know if it would be possible to use that same type of system with precinct voting. It could be explored.

Chair Koivisto:

No one else is signed in who wishes to speak on this bill. Ms. Pierce, do you wish to make a closing remark?

Assemblywoman Pierce:

It was never my intention to end early voting. There is no reason you cannot do early voting with the system I described. It is true, with that system, that living on the west side of Las Vegas, I probably would not be able to go to the Galleria in Henderson to vote, but that is not much of a sacrifice. There would be a way to early vote. That is just a red herring.

I appreciate the amount of time these gentlemen have been in the voting business, but I would remind everyone that the gentleman who just destroyed American International Group (AIG) had been in the banking business for a long time, too.

Chair Koivisto:

I am going to close the hearing on A.B. 435 and open the hearing on Assembly Bill 442.

Assembly Bill 442: Revises provisions concerning lobbying. (BDR 31-176)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

I serve as the Chair of the Government Affairs Committee, and during the interim when state and local governments were choosing lobbyists, I watched to see whether there were contracts, who the lobbyists would be, whether they were getting paid to lobby, and how it would benefit the public. The most consistent statement I heard in all the committee minutes I read was, "This is going to be a tough session; we have to hire the big guns." I am on a mission to find out who the "big guns" are.

I noticed a number of things along the way. Some of the state boards use fees and licenses, which are approved by this Legislature, and they hire lobbyists, and I think that is inappropriate. As a state or local agency, you cannot come to me and say you do not have enough money to do your job, and then hire a lobbyist at a very expensive rate. That is done on the local level as well as on the state level.

In researching this topic, I found several states that do not allow lobbyists at all. Four states have passed legislation in at least one House that would prohibit lobbyists in the future—either state or local. I have outlined each state's criteria for you ([Exhibit G](#)). Several states have nothing referring to lobbyists in their statutes, which was very interesting.

One state I found interesting was Montana, which requires full disclosure of public expenditures on federal lobbying. I found Utah's definitions very interesting, because they were very explicit concerning what lobbyists do and what their roles are.

In the next few pages of the handout you will see every state or local entity that does lobbying in Nevada. I called every one of these places trying to get information, and it was very hard to get. I applaud the entities that gave it to me, but quite a few different agencies did not supply any information. I called as a constituent and asked what each paid their local government lobbyist. "Why do you want that information? Who are you? What is this about?" were the questions I was asked. I said that I was a taxpayer and that I thought the information should be provided to me. That did not go over very well, and I did not get very far with it. So my point is, as a taxpayer I think the information has to be available. We need the definition of a "big gun," and I think that you should have to tell me, the taxpayer, how much you are spending on lobbying.

When I realized how much money our local folks spend lobbying the federal government, I am really irritated that I cannot get information, for instance about the Virginia Graeme Baker Pool and Spa Safety Act that passed. We are paying quite a bit of money, so we should have some access. The state pays for two federal lobbyists, and I have yet to find out what they bring to the table. I do not even know who they are, for that matter.

I do not think now is the time to get rid of local government lobbyists, nor do I think it is the time to get rid of state lobbyists, but, in the future—absolutely. Other states are moving toward limiting lobbying, such as California, Colorado, and Montana. South Carolina opens its doors wide open and does not want to limit lobbying.

I would like to give everyone time to digest it, but the piece we need right now is some accountability measures. If I am a constituent, I ought to be able to get that information. I do not want only legislators to get that information. That is wrong. I always call as a constituent, because my next door neighbor has to call like that, and it should be a public process.

If you will turn to the back pages, these are suggestions for an amendment. My intent was never to get rid of the everyday person who is lobbying in this building because we would like to see more of that. It was my intent to get some accountability throughout the system. You can see quarterly reports listed. There are some lobbyists in this building who are here between 10 a.m. and 2 p.m., and I want those same hours for that same paycheck. I do not know how else to say it.

For taxpayers, if we require quarterly reports, it would be helpful if they were posted on that governmental entities' website. I talked to the Secretary of State because one of my colleagues noted that we, as legislators, have to report the money we received, the expenditures we made, and there is a reporting time frame. I do not think you should be in this building campaigning for someone else, because each one of us in this building has rules to abide by. We are not to take campaign contributions 30 days before or after the legislative session; we are not allowed to campaign for anyone. I just want to be certain there are no lobbyists who are going down that road.

There needs to be monthly reporting. I watch all of the local government hearings, and it is amazing how the stories change depending upon which local entity is being spoken to. The stories also change by the time we hear them here in the State Legislature. I very seldom see reports on what the lobbyists actually did. What bills are they tracking, what happened to them, and where are they in the system? That is all knowledge constituents would enjoy having, too.

Contracts between state and federal governments must be separate. I do not care if the same lobbyist gets both contracts, but if a lobbyist contracts with state or local government to represent them at the Legislature, that lobbyist should be here in Carson City. If that individual is in Washington, D.C., that should be a totally separate thing. We currently find a lot of lobbyists trying to be in both places at the same time.

Seventeen states do not allow the university system to have any lobbyists. Those states rely on their alumni. I do not know if we are ready to do that, but I do not understand how those contracts are awarded, so I would like to see them awarded in public hearings before the Board of Regents.

Those are my suggested amendments, and I would love to propose them to the Committee in a mock-up. We have to start somewhere to change the reporting system for the lobbyists hired by our state and local governments.

Chair Koivisto:

A couple of years ago I think the university system made a ruling that each institution would not have its own lobbyist. The system would have only approved lobbyists, but I am not sure what that approval process was. I think they probably were vetted by the Chancellor and the Regents.

Assemblywoman Kirkpatrick:

I am not sure, either, because I could not discover anything about that process. I looked and called, but could not get anywhere. So, unless someone tells me differently, what is wrong with having it before a public hearing like all the other contracts?

Chair Koivisto:

Are there questions from the Committee?

Assemblyman Settlemeyer:

What about legislators hiring lobbyists to lobby bills for them?

Assemblywoman Kirkpatrick:

Please, do not tell me that happens in this building. I have not heard of that, but, of course, I do not think that should happen. That may be something we need to address to be certain it does not happen. A reporting system would allow lobbyists to list their potential conflicts so the public would be aware of them.

Assemblywoman Smith:

I do not see the school districts mentioned. Do you intend to include them?

Assemblywoman Kirkpatrick:

I did include them and I did make phone inquiries. Currently, this information includes only contract lobbyists. I know Clark County does not have any contract lobbyists. They only use employees.

Assemblywoman Smith:

They do not this session, but they have in the past.

Assemblywoman Kirkpatrick:

Correct, and this was the contract for this legislative session. These are public dollars.

Assemblywoman Smith:

I agree. I just wondered if you wanted to add them to your list on the back page. I wondered if they would fit into the same criteria as higher education because they are not a state agency nor are they local government.

Assemblywoman Kirkpatrick:

I have listed "other state entities" starting with the Carson City Library. I did go down to the Nevada State College ...

Assemblywoman Smith:

I was looking at the list of ideas on the very back page, and thought you could probably include school districts with higher education.

Assemblywoman Kirkpatrick:

I can do that.

Assemblyman Munford:

Are you saying that local government lobbyists are also paid for lobbying, above and beyond their salaries? Are they being paid twice?

Assemblywoman Kirkpatrick:

No, each state and local entity has employees, staff members, who come before us. I am talking about contract lobbyists; the people who get a contract and utilize staff members as well. I just want to be certain they are working the same hours that we are. I am not trying to get rid of these contract lobbyists. I do not think this is the session to be getting rid of lobbyists, but they need to be accountable and work the hours we work.

Chair Koivisto:

Are there any further questions from Committee members? [There was no response.] We have several people signed up in support of this bill.

John Wagner, State Vice Chairman, Independent American Party of Nevada, Carson City, Nevada:

We have not seen the changes to this bill that have been proposed, but we were in favor of the bill as it was presented. I have a problem with lobbyists testifying that they represent a certain city. Well, they really do not. They represent the board of supervisors of that city. That lobbyist is paid a pretty good sum, and it is paid every year—not just when the Legislature is in session. One of these lobbyists represents several counties in the state. I do not know how much money her husband makes, but I have seen the house she lives in

and it rivals the Governor's Mansion, so it must pay pretty well. Government should not be lobbying government to get more money.

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:

It seems obvious to me. When lobbyists come here, generally speaking, they are begging for funds and to increase spending. One principle of economics states that the private sector creates wealth but the government sector creates nothing. It gets wealth by taxes—taking money away from people by force and redistributing it. We are then paying to have specialized individuals come in here and ask the government to extract more money from us. I really doubt whether many people in the state know this is going on. If an employee of an agency comes in and asks for more money, that employee is being paid whatever his salary is, and I do not have a problem with that. On the other hand, now you are paying someone whose specialty is being a lobbyist, and I bet they are making more than those wage earners who work for the government itself. This seems like a real stab in the back to the people of Nevada. We think this is a good bill and should be passed.

Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:

We support this bill. The concept that taxpayers should not be paying for lobbyists who often are lobbying against their interests is important.

Chair Koivisto:

Thank you. It is all about transparency.

Barry Smith, Director, Nevada Press Association, Carson City, Nevada:

Everything I would have said has been covered. I am in support of this bill, but I want to clarify: I think you should work lobbyist hours. Lobbyists should not work your hours.

Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:

I am an unpaid citizen lobbyist, and it is sometimes disheartening to come here. I pay my own way, my own food and clothes. I do not have a lot of money to work with and must earn that money to come here and lobby. Now, there are people working for my government who are getting paid to come here and possibly speak against what I am talking about. Basically, my money is paying them to be here to speak against me, which is really annoying. So, I am in support of this bill as it was written. It would be very helpful in the long run for all of us.

Chair Koivisto:

One person signed in against this but is no longer here, and the only other person who signed in against this bill is Rebecca Gasca.

Rebecca Gasca, representing the American Civil Liberties Union of Nevada, Reno, Nevada:

I have provided written testimony for you to peruse ([Exhibit H](#)) which also includes a proposed amendment. I want to make it clear that we are only against a certain portion of this bill insofar as it would prohibit an individual from getting involved in the legislative process just by virtue of being an employee of one of those organizations listed. The language as it has been drafted, we think, poses some constitutional limitations that would affect the First Amendment. The language we are proposing would clarify that it would not prohibit a person from participating in any lobbying, as long as the lobbying was not involved with the person's direct duties as a governmental employee.

For example, if a prosecutor wanted to contribute to the district attorney's association, and the district attorney's association wanted to hire a lobbyist to lobby on behalf of all prosecutors, that should not fall under the purview of the bill and should not be prohibited. The language we suggested would just take care of that.

Assemblyman Cobb:

I think the concept is that we do not want paid lobbyists outside of the people who actually work for the different entities, whether they are state or local. So, would it be more appropriate, if you are going to bring an amendment—and I would have to go back and check the bill itself to compare if it is actually necessary—just to refer to paid lobbyists as opposed to going so far as to say that you should be able to hire whomever you want under some type of First Amendment right?

Rebecca Gasca:

The sponsor of this bill had several suggestions for you today. I have not seen any of those, however, so I am working off the original language of the bill. I understand the intent is to be more transparent and to let constituents know, which, of course, the ACLU would support. The government has the right to limit where and how budgets are being spent, and, to the extent possible, we certainly support making things more transparent. But if members of a group who happen to be employed by the government want to hire an outside lobbyist who is not paid by the government, then that should not be limited. That is all I am seeking to address with the language here.

Chair Koivisto:

Are there other questions from the Committee? [There was no response.] If you can put together some kind of mock-up for us, we can work on this in a work session. I am going to close the hearing on A.B. 442. Do we have anything else to come before the Committee? Seeing nothing, we are adjourned [at 6:53 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: April 2, 2009

Time of Meeting: 3:53 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 435	C	Assemblywoman Peggy Pierce	Newspaper reports
A.B. 435	D	Assemblywoman Peggy Pierce	Report from the Brennan Center for Justice
A.B. 435	E	Assemblywoman Peggy Pierce	Newspaper report quoting voter registrar Dan Burk
A.B. 435	F	Assemblywoman Peggy Pierce	"Executive Summary"
A.B. 442	G	Assemblywoman Marilyn Kirkpatrick	Handout entitled "Use of State Funds for Lobbying"
A.B. 442	H	Rebecca Gasca	Proposed amendment