

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fifth Session
March 27, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 12:48 p.m. on Friday, March 27, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copeney
Senator Dean A. Rhoads
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Warren B. Hardy II (Excused)

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Vicki Folster, Committee Secretary

OTHERS PRESENT:

Lynn Fulstone, Lionel Sawyer & Collins
Morgan Baumgartner, R & R Partners
Robert (Bob) A. Ostrovsky, Nevada Resort Association
Lee Rowland, American Civil Liberties Union of Nevada
Lauren Scott, President, Nevada Intersex and Transgender Rights Organization
Aidyn Woodward
Patrick Patin, President, Nevada Stonewall Democratic Caucus

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Aleta Joan Dupree

Michael Ginsburg, Community Organizer, Progressive Leadership Alliance of Nevada

John Emerson, Retired Pastor Emeritus, First United Methodist Church

Dominick Pizorno

Lynn Chapman, Vice President, Nevada Families; Nevada Eagle Forum

Richard Ziser, Nevada Concerned Citizens; Coalition for the Protection of Marriage

Reverend Neal T. Anderson, Minister, Unitarian Universalist Fellowship of Northern Nevada

Jill Switzer

Paul King

David Gordon, Volunteer Political Co-Chair, Human Rights Campaign—Nevada

John White, Dean and Professor of Law, William S. Boyd School of Law

Pamela Brooks

Jim Richardson, Nevada Faculty Alliance

Kristine Kuzemka

Steve Amend

Denise Barclay

Danny Coyle, Retirees Chapter, American Federation of State, County and Municipalities Employees, Local No. 4041

Elisa Maser, President, CEO, Nevada Advocates for Planned Parenthood Affiliates

John Hunt, Chairman, Clark County Democratic Party

Michael Cabrera, Vice President, Associated Students, University of Nevada, Reno; Chair, Commission on Diversity, University of Nevada, Reno

Beverly Goheen

Robert Townsend, Public Policies Group, Washoe County Democratic Party

June Burton

Joe Edson, Progressive Leadership Alliance of Nevada

Leslie Johnstone, Executive Officer, Public Employees' Benefits Program

April Shonnard

John Wagner, Vice Chairman, Independent American Party

David Kallas, Las Vegas Police Protective Association; Southern Nevada Conference of Police/Sheriffs

Rusty McAllister, Professional Firefighters of Nevada

Tim Tetz, Executive Director, Office of Veterans' Services

Robert L. (Bob) Crowell, Kummer Kaempfer Bonner Renshaw & Ferrario; InterDent Service Corporation; Pacific Dental Services

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John Steinbrun, CEO, InterDent Service Corporation
Steven E. Thorne, Founder and CEO, Pacific Dental Services, Inc.
Cari Callaway-Nelson, D.D.S., Co-Owner, Montecito Town Center Dental Group
L. Thomas (Thom) Miller, D.D.S., Skinner Dental Group
William G. Pappas, D.D.S., President, Board of Dental Examiners of Nevada
Lee Drizin, Esq., Legal Counsel, Board of Dental Examiners of Nevada:
Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada
George Leonakis, D.D.S., General Dentistry
Joe Luevanos, Absolute Dental
Debra Leach, Absolute Dental
Joel Glover, Nevada Dental Association
Doug Guzman, Absolute Dental
Stephen Sill

CHAIR CARLTON:

I now open the meeting with Senate Bill (S.B.) 214.

[SENATE BILL 214](#): Revises provisions governing plans for dental care and prepaid limited health service organizations. (BDR 57-291)

LYNN FULSTONE (Lionel Sawyer & Collins):

In connection with S.B. 214 and to answer Senator Hardy's question, the malpractice provisions for the dentists working with dental health maintenance organizations (HMOs) are the same as for any other dentist or physician ([Exhibit C](#)). They carry malpractice insurance to protect against any sort of malpractice issues.

CHAIR CARLTON:

There were no proposed amendments, and the questions have been answered. Is the Committee comfortable with moving the bill today?

SENATOR COPENING MOVED TO DO PASS S.B. 214.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RHOADS VOTED NO.
SENATOR AMODEI ABSTAINED FROM THE VOTE.)

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CHAIR CARLTON:

We will open the hearing on S.B. 207.

SENATE BILL 207: Revises provisions relating to unlawful discrimination in places of public accommodation. (BDR 54-738)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

Four years ago, the Legislature passed A.B. No. 5 of the 22nd Special Session. The bill revised the existing State policy that declared the right of all people to have access to public accommodations without discrimination. In addition to race, color, religion and natural origin, the Legislature added sexual orientation to that list. Section 2 of S.B. 207 adds sexual orientation to the list of prohibited acts of discrimination in public accommodation. In addition, A.B. No. 5 of the 22nd Special Session authorized the Nevada Equal Rights Commission to investigate cases of discrimination based on sexual orientation in places of public accommodation. The Nevada Equal Rights Commission's authority in these types of discrimination cases was limited to investigation and not enforcement. Section 3 of S.B. 207 authorizes a person who believes he has been discriminated against based on sexual orientation to file complaint with the Commission.

CHAIR CARLTON:

Are there any questions from the Committee?

MORGAN BAUMGARTNER (R & R Partners):

I am appearing on behalf of R & R Partners and Chief Executive Officer, Billy Vassiliadis. I want to thank the Chair and Committee members for bringing this legislation to this Committee and for the guidance and support for this matter. I would like to express thanks to Senator Parks for his support to ensure equal rights for all citizens of the State.

In 2005, the Legislature took an important step in making this type of discrimination against public policy of the State, and we believe S.B. 207 will prohibit the acts in our statutes dealing with public accommodations. In consideration of the Nevada tourist-based economy, it is the perception and reputation of this State that we are open and welcoming to all tourists, visitors and citizens. This bill will make that perception a reality and will make our laws consistent with public policy. We urge your support of S.B. 207.

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ROBERT (BOB) A. OSTROVSKY (Nevada Resort Association):

We would like to rise in support of S.B. 207. Our hotels strongly support this piece of legislation as drafted.

LEE ROWLAND (American Civil Liberties Union of Nevada):

The American Civil Liberties Union (ACLU) has been involved in ensuring that gay, lesbian, bisexual and transgender (GLBT) individuals have the same antidiscrimination protections under the law in the areas of employment and public accommodations. This is a critical bill that will fill one of the holes in current public policy, and we commend the Committee for considering this bill.

In reference to the amendments to include protections based on gender identity or expression submitted by other individuals, the ACLU of Nevada absolutely supports the most inclusive language possible. We do realize that change can be incremental, and if it is the Committee's will to pass it in the current form, we will support it. We encourage all of you to ensure equality for all those who reside and work in Nevada, in particularly GLBT individuals, to ensure fairness and equality under the law.

Additionally, we commend the Nevada Resort Association for supporting the bill and making it clear we will advertise and treat people in a fair way when they come to our State.

CHAIR CARLTON:

Are you proposing an amendment or is that in case one gets proposed?

MS. ROWLAND:

We have been contacted by other organizations who are proposing amendments. We did not want to be redundant, but we do support the amendments and the bill.

LAUREN SCOTT (President, Nevada Intersex and Transgender Rights Organization):
I have provided my written testimony in support of S.B. 207 in its amended form ([Exhibit D](#)).

CHAIR CARLTON:

Has an amendment been distributed? Is there an amendment proposed?

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Ms. SCOTT:
As far as I know, there was.

CHAIR CARLTON:
Has anyone in attendance submitted an amendment?

KELLY S. GREGORY (Committee Policy Analyst):
I am not sure who submitted the amendment, but we do not seem to have a copy here at the desk. Do you know the name of the organization or the individual who submitted the amendment?

Ms. SCOTT:
I do not. As far as I know it was an existing amendment.

CHAIR CARLTON:
An amendment has to be adopted; we are just working off the basic S.B. 207. Your testimony will address what you thought would be in the bill.

Ms. SCOTT:
I was under the assumption we had an amendment, but we do not, so I will go on the record to support the possibility of an amendment.

CHAIR CARLTON:
There is no proposed amendment. Is there someone in the room who was going to propose an amendment?

SENATOR PARKS:
I know there had been circulated a copy of an amendment, and I thought it had been provided to all the Committee members.

Ms. SCOTT:
I am here to support S.B. 207 in its potentially amended form, and have supplied the secretary with my written testimony, [Exhibit D](#).

AIDYN WOODWARD:
I am here to speak in favor of amending S.B. 207 to include protections based on gender identity and/or expression. I am a 22-year-old transgender man and an employee for a well-known stage production on the Las Vegas Strip. My driver's license indicates that I am male. This past December I was celebrating

my 22nd birthday with a group of friends at a local bar. While lawfully entering the men's room, I was followed by a security guard who then violated my right to privacy by peering over the top of the bathroom stall and began to harass me verbally. I immediately complained to the management and explained my right to use the men's room. He expressed no compassion or remorse about my situation and asked us to leave; I was offered no apology.

After leaving the establishment, my friends and I have avowed not to patronize it again. Unfortunately, my story is not unique. Now I, and many other Nevadans like me, live in fear of harassment and discrimination while in public. If the bill is passed without protections based on gender identity and expression, we fear this type of discrimination will continue because it has nothing to do with sexual orientation. I hope the Committee will do the right thing by amending and improving an inclusive bill. What more important civil right protection could there be than the guarantee of basic human dignity while using a public restroom or any other public accommodation?

CHAIR CARLTON:

For clarification, did I miss the amendment? Was it sent to our Committee?

PATRICK PATIN (President, Nevada Stonewall Democratic Caucus):

The amendment was e-mailed to the Committee and to the Committee Secretary on Thursday before the scheduled hearing.

CHAIR CARLTON:

I apologize for the mix-up. Are you actually proposing an amendment?

MR. PATIN:

Yes, Madam Chair.

CHAIR CARLTON:

Okay, please proceed and read it into the record.

MR. PATIN:

The Nevada Stonewall Democratic Caucus introduced a proposal to amend S.B. 207 to add protections to the *Nevada Revised Statutes* (NRS) based on "gender identity or expression" in addition to the sexual-orientation provisions already included in the legislation ([Exhibit E](#)). The Nevada Stonewall Democratic Caucus will fully support this bill as amended.

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CHAIR CARLTON:

Are there any questions from the Committee? Is there anyone else wanting to speak in favor of S.B. 207?

ALETA JOAN DUPREE:

I favor S.B. 207. It is a bill that will increase protections for all people. I would ask the Committee to add this amendment to include gender identity expression. I have also experienced discrimination and harassment in public places. Recently I had my gender questioned by a security guard in a public restroom in a major hotel in Las Vegas. This was in direct conflict with the diversity policy of this particular company. In short, it was a traumatic experience. I encourage the Committee to add the amendment to S.B. 207 so all individuals can live their lives in peace, free from harassment.

MICHAEL GINSBURG (Community Organizer, Progressive Leadership Alliance of Nevada):

I respectfully request that my comments be entered into the record for both S.B. 283 and S.B. 207 in the interest of time ([Exhibit F](#)). The Progressive Leadership Alliance of Nevada supports laws that extend civil rights and civil liberties to all and supports S.B. 283 and S.B. 207.

JOHN EMERSON (Retired Pastor Emeritus, First United Methodist Church):

I have to say that it is a sad commentary of our time that this issue has to come before us for vigorous support. I encourage your support of S.B. 207 and the amendment that was presented here today.

My moral compass tells me this is the right thing to do. The bill can be supported from a moral perspective and also from a constitutional law perspective.

DOMINICK PIZORNO:

Born in Reno, Nevada, under the name of Paige Diane Pizorno, I am transgender, a female-to-male transsexual. I am in support of the amended part of S.B. 207.

In 1995, I moved to San Francisco to transition and had a brutal, humiliating experience. I have suffered humiliating experiences such as being dragged out of a male bathroom. I was groped and strip-searched for gender identity in 2003 and suffer post-traumatic stress as a result. I am unable to hold a job, collect social security disability and have attempted suicide several times.

Because of my experiences, a hate-crimes unit was developed and unfortunately erected in my name; but today there is a place in Berkeley where one can report hate crimes.

Today I felt I should introduce myself and be put on the record that this is vital to all people for equality and protection. I am a human; my friends are human beings, and we deserve the amended part of this bill.

CHAIR CARLTON:

I will now open the meeting to those in opposition of the bill.

LYNN CHAPMAN (Vice President, Nevada Families; Nevada Eagle Forum):

I do not have a problem with the bill understanding that people should be able to go to public buildings, movie theaters or restaurants. What I have a problem with is something that perhaps people have not thought about; it is the criminal element. Remember when the Internet was new? It was developed as a communication tool used to communicate around the world, but then the pedophiles and the predators started using this tool to target our kids. They had a brand-new resource to further their agenda. Now you want to make our children a bigger target, and this is what I am concerned with. If you have bathrooms, locker rooms and fitting rooms open to anybody, we might have a problem. I am concerned with the criminal element hanging around places such as the mall with a bunch of little girls and boys when they go into the bathrooms. That is exactly where the criminal element is going to be able to go in. You are going to make those places accessible to anybody, and I am concerned about that. This has nothing to do with anybody's sexual preference; this has to do with the criminal element. That is going to open the door to them, and that is my concern.

You should be careful of what you are going to put forth with women. I am a woman, and I do not particularly care to have men in my bathroom while I am trying to do my business. I do not want to be there when they are doing theirs; I would like a little privacy, please. A lot of our little girls would feel the same way. There is going to be a problem. Would this include the public buildings at our schools? Are we going to have little boys and little girls in the same locker room taking showers? This opens the door for a lot of problems and we need to put some type of amendment in this bill to exclude places where children are present.

A few years back, I remember there was a gentleman who was caught in the ladies room and was eighty-sixed out, rightly so; he was a rather strange person. I would like the Committee to think about these things and maybe put in some stopgaps. I really do not want to be taking a shower in the locker room and worry about some man who says he is this or that, or he wants to use the ladies room; that is very uncomfortable for us.

SENATOR PARKS:

Ms. Chapman, I have to say that I am grossly upset over the comments you have made. We are talking about individuals. We are not talking about people who are pedophiles. In your statement, you are implying that the persons you are talking about are the same people who have just recently testified here and persons who are gay and lesbian. I am quite offended.

MS. CHAPMAN:

Senator Parks, I started off saying this is the criminal element that I am concerned with. It is going to open the door to the criminal element. I am not talking about people's gender. I am talking about the criminal intent of people out there. Pedophiles and predators are usually heterosexual, and that is who I am talking about. They are going to use that as an excuse. That is who I am zeroing in on. I am concerned about that and about our kids. I was not saying anything about homosexuality, lesbians or anything else. It has to do with the criminal intent of criminals who will use this as an excuse.

SENATOR PARKS:

By virtue of the fact that you are including these groups, you are definitely making a disparaging comment to and in regard to people. There is nothing in this bill that talks about pedophiles and sexual offenders.

MS. CHAPMAN:

Madam Chair, I was just pointing out that this could open the door to them. Because of the way the bill is written, all persons are entitled. That opens the door. It talks about physically containing or contained within any of the established public places.

CHAIR CARLTON:

Are your concerns and objections with the bill or is it the amendment?

MS. CHAPMAN:

Yes, it is with the bill, specifically on section 2, lines 5-7, it specifically says that all persons are entitled, and that opens the door to criminal problems.

RICHARD ZISER (Nevada Concerned Citizens; Coalition for the Protection of Marriage):

My first concern is the definition given of the establishments in section 1, subsection 2, lines 32-34, "any nursery, private school or university or other place of education," and "any day care center," etc. As we look through this policy, there is no exemption for religious beliefs in this bill. I have great concern that people who have differing views based on their religious beliefs have no protection within this law. Senator Parks made reference to A.B. No. 5 of the 22nd Special Session which created the public policy on this issue. It is a little disingenuous that the bill passed when something very similar was heard during a regular session when we were all here to talk about it. However, this bill which you now claim is public policy was done in a special session when not much of anybody was in the State Capital. I do not consider that public policy even though it has been passed. I will speak about public policy when we get to some other legislation.

Because the issue of gender identity or expression has been brought into this bill, I have the same concerns as Lynn Chapman, only in that we have specific facilities for males and females in terms of restroom facilities and others. This has gotten so amazingly out of hand that now we no longer understand the concept of males and females, and now we have gender identity or expression. If you do not mind, I think eventually we will have to define terms as to who can go where based on some biological terms. I will tell you right now we need to be protecting. When I say protecting, I mean the concept of when my wife, my daughter, my granddaughter or any other woman that I know walks into a restroom that says "female" on it, they have the right to expect there will only be females in that facility. If you can define someone who says gender identity, and excuse the biology, but if that person has a penis, he should not be in that (female) facility. I do not want my wife, my daughter or my granddaughters to be put in that kind of position. It is simply not fair. We are talking about rights and being able to feel okay about ourselves. I would hate to see the types of lawsuits that will occur if the types of things that Ms. Chapman referenced would take place. I do not know if there is any way of amending this bill to make it work. I would pray that you consider a "no vote" on this bill because there are some serious consequences to our culture and to our society.

CHAIR CARLTON:

Are there any questions from the Committee? I do not see any other individuals in opposition to the bill.

SENATOR PARKS:

I hope that this Committee will consider S.B. 207 and pass it. I know there are other bills in front of the Legislature this Session that deal with issues, and it is important we continue the effort we started many years ago.

CHAIR CARLTON:

We will close the hearing on S.B. 207. Senator Parks, do you wish to address S.B. 283 next or process them in order?

SENATOR PARKS:

Thank you, Madam Chair, if we could take them out of order and go to S.B. 283 next, that would be appreciated.

SENATE BILL 283: Revises provisions governing the rights of domestic partners.
(BDR 11-1100)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

Today I appear to discuss S.B. 283 which establishes the right of domestic partners. This bill is about fairness. All couples should have legal protections for their relationships. These couples buy homes, have families and in other ways seek to create stable, productive lives. Legal protections for their relationships will provide basic security that other long-term committed couples have. A domestic partnership is a social contract between two persons who have chosen to share one another's lives in an intimate and committed relationship. This bill specifically clarifies that a domestic partnership is not a marriage as defined in section 21 of Article 1 of the Nevada Constitution.

The requirements of a domestic partnership are defined as outlined in section 6, subsection 2 of the bill:

Both persons share a common residence; neither person is married or a member of another domestic partnership with someone else that has not been terminated or dissolved; both persons are not related by blood in a way that would prevent them from being married to each other in this State; both persons are at least

18 years of age; and both persons are competent to consent to the domestic partnership.

Senate Bill 283 establishes the rights and responsibilities of domestic partners. To be valid, a domestic partnership must be filed with the Office of the Secretary of State who will then provide domestic partners with a Certificate of Registered Domestic Partnership upon the payment of the fee established by regulation.

Persons in committed relationships need protection. They are harmed when a relationship lacks legal protections. These include pension rights, tax benefits, employment benefits, lower insurance premiums and much more. Currently, Nevada denies these rights and benefits.

REVEREND NEAL T. ANDERSON (Minister, Unitarian Universalist Fellowship of Northern Nevada):

As a religious leader committed to promoting the well-being, moral and spiritual integrity of persons and society, I support S.B. 283. My testimony titled "Standing on the Side of Love" has been provided to the Committee ([Exhibit G](#)).

SENATOR PARKS:

I also passed out a mock-up of a proposed amendment which has been reviewed by several parties and groups ([Exhibit H](#)).

JILL SWITZER:

I am nearly a lifelong citizen of Nevada, raised in Carson City, and for the last 25 years I have been a dedicated public servant in the area of the criminal justice system in Washoe County. My partner and I have been in a relationship for two years, and together we are proud parents of four sons. We are recognized within our community; however, we lack a legal recognition. Today I want to express my support of S.B. 283 and have provided my written testimony for the record ([Exhibit I](#)).

PAUL KING:

On August 5, 1989, in Phoenix, Arizona, I met a man and fell in love with him. It will be 20 years, and we are still together. We are a very loving happy couple with no children. On May 17, 1991, we were united in a ceremony at Metropolitan Church in Phoenix. We have done everything we know to do to protect one another: wills, power of attorney, all of those sorts of legal

protections. We moved here in 2001 when my partner got a job at Washoe Medical Center. I lost my job two weeks ago, and I am unable to be covered under his health-care insurance. If we were an opposite-sex couple, I do not think that would be an issue. It is a particular hardship in our case. The time and conditions are right in Nevada to try to make sure that all committed loving couples are able to be protected equally under the law.

DAVID GORDON (Volunteer Political Co-Chair, Human Rights Campaign—Nevada): I am testifying as a Nevadan, born and raised in Reno. I live in Reno with Kirk, my partner of ten years. In support of S.B. 283, I have provided my written testimony describing some of the issues we face in trying to be good citizens of Nevada and the costs of securing the same legal protections straight people are afforded ([Exhibit J](#)). When you consider this bill, it is the fair and right thing to afford these rights and responsibilities to the citizens of Nevada. Please do the right thing and support this legislation.

JOHN WHITE (Dean and Professor of Law, William S. Boyd School of Law): Some of you know my predecessor and I at Boyd work diligently with the Public Employees' Benefits Program (PEBP) Board in an effort to attain what came to be known as reciprocal health and employee benefits. The Board eventually voted to support such benefits, but that change seems to have been lost in our current budget distraction. Senate Bill 283 would solve all the problems we sought to address by those changes in employee benefits for State employees and do a lot more. I will confine my comments to that, but I do not mean that by doing so would suggest that the fairness and equality issues related to this bill are any less important.

As a law school, we are in a very competitive environment that is perhaps similar to that experience by other institutions in the State. We seek to recruit well qualified faculty from around the country, and this places certain limitations on our competitiveness if we lack the kinds of benefits that our faculty come to expect. The benefits that would flow from domestic partnerships would help us in three different ways. First, the market for exceptional law professors is extremely competitive and quite limited. Most law professors are drawn from the very top of their classes at a very small number of law schools and have typically worked in a few markets around the country. In those markets at their employers and at their law schools, they experience these benefits and come to expect them. As a consequence, our faculty sees these benefits as a marker of the state that they would live in, the quality of life in that state and the quality

of life at the school itself. We have faculty members who need these benefits and have talked directly about seeking other employment opportunities. Last year we lost a faculty member who cited the lack of these benefits as one of the reasons for departing for a private school in another state.

The second reason these benefits are important is that it is very expensive for our faculty members to live without these benefits. It is unfair to them in certain respects and for me, as an administrator of a law school. It is disruptive of my pay scale and/or the morale of my faculty to try to address these concerns. Finally, the attrition threat is its own difficulty, and it is highlighted, as mentioned by the last speaker. It is quite difficult for us to keep faculty as well as build and hold faculty together particularly with the threat of budget, pay and benefit cuts that faculty are very aware of. The absence of these kinds of benefits is quite troubling to them.

This is something of a tangent from the main point of this bill, but it highlights how this bill would re-situate us and put us in position, as a state, as a particular educational institution and as a community. We could embrace our members and provide them the kind of equal treatment that not only do they expect, but which we ought to give them.

SENATOR SCHNEIDER:

Basically, are you saying our universities are the backbone of our community and really help us on economic development? Without this bill, we are hurting ourselves on economic development and diversifying our business base in Nevada.

DEAN WHITE:

I think so. In particular for the law school, by building a law school, there is a choice between building an "okay" law school and building a really great law school. The difference is both the quality of faculty and the quality of students. We are a small-population state, and we do our best to get the very best Nevadans to come to the law school. That is, in part, because the size of the State is more or less limited. We have the opportunity to bring the very best faculty we can assemble; that is more difficult for us. If we have a really good law school as opposed to an okay law school, then the quality of the lawyers that we produce will be much improved. That can be extrapolated into other areas such as the quality of research, science departments, literature departments and others that might be produced.

PAMELA BROOKS:

I am here to speak in support of S.B. 283. My testimony is about Marie, my partner of over nine years, who died unexpectedly two years ago and my experience dealing with hospital administrators ([Exhibit K](#)). As a United States citizen and a Nevadan for 12 years, I should have the same legal rights and protections that straight citizens are afforded. I am not asking for special rights, I am only asking for equal ones. I urge you to pass S.B. 283.

JIM RICHARDSON (Nevada Faculty Alliance):

I have been involved for several years in efforts dealing with issues of health insurance associated with domestic partners. The Nevada Faculty Alliance has actually been involved in this issue for about five years, two of them in a formal manner. The effort Dean White referred to involved a petition to the PEBP Board signed only by presidents of the education system and presented by the general counsel of the system. That demonstrated how important this issue is to higher education institutions. I am moved by stories such as the one just recounted, and I have heard these stories from friends of mine as well. The focus that I have been involved in has been the health-insurance issue where the "rubber meets the road" for many people. It is a fairness issue, and I firmly believe that the State is in violation of its own antidiscrimination policy.

We have a serious problem competing for obtaining and retaining good faculty and classified employees. This also affects other State agencies. I want to read into the record some of the states around us that offer health benefits for their state employees or at least for university and community colleges: New Mexico, Oregon, Washington, Alaska, Hawaii, Arizona, Montana, California and Utah. Universities in Utah offer health benefits for domestic partners. The only state missing in this region besides Nevada is Idaho. We certainly compete in the regional market for faculty, but we also compete in the national market. Over 300 universities that we compete with for faculty offer domestic-partner benefits. We need to get with the program and deal with this issue. It is fascinating that the second largest public employee health-benefit program in the State offers domestic-partner benefits; that is the Teachers Health Trust in Clark County. Last week, Incline Village voted to renew its domestic-partner benefits in the health-insurance area.

While there are many reasons to adopt this bill, I would point out that there is a real fairness issue about the competitiveness concern, as mentioned by Dean White, which puts us at a remarkable disadvantage.

CHAIR CARLTON:

The Culinary Union also has the domestic-partners insurance benefit. Are there any questions from the Committee?

KRISTINE KUZEMKA:

I am in support of S.B. 283. Much of the important testimony described today, both from a fiscal perspective as well as a personal humanitarian perspective, was best said by the minister. He said he could not believe that we have to so vigorously pursue changing laws to establish equality here in Nevada, and I agree with him.

My testimony is a personal perspective in consideration of this bill. Some of the labels that describe me are: public servant, sister, daughter, aunt, United States citizen and taxpayer; I also happen to be lesbian. My spouse and I moved back to Las Vegas from Washington, a state that has domestic-partnership benefits, because we love this State and are proud to be here. If you do not effect change, or at least try to, then nothing changes.

I have been working and paying taxes for the past 31 years; however, I do not enjoy the same civil rights as my neighbors, a heterosexual couple. If my neighbor, a local fireman, was to be injured on the job or face, unfortunately, death, his wife would enjoy certain benefits such as: the right of survivorship in their home without having to contract for it, inheritance rights that could not be challenged by his family, the right to make burial decisions, disability benefits, the right to sign papers for emergency surgery and more. Compare that with my situation. I would have to contact Nancy's brother in Buffalo, New York, to come to sign those papers. These are rights that I do not have.

The City of Henderson has adopted domestic-partnership benefits, and the City of Las Vegas did so as well in 2006. Doctor Doug Selby, the former manager of Las Vegas, said, "Insurance for one is insurance for all, and it is the fair thing to do." I could not agree with him more. Mr. Ziser mentioned the possibility of his church being forced to accept transgender people. That is not true. If domestic-partnership benefits are granted to me and other GLBT citizens of Nevada, we cannot go to a church to ask them to accept it. It is my understanding of our system of government that there is a separation of church and state. Let us be clear; if this bill is passed, it does not confer any rights on me or any other person to demand to be recognized or accepted by any church

or temple. What we are asking for is civil rights that are enjoyed by other taxpaying citizens of Nevada.

STEVE AMEND:

I have been a resident of Nevada for 24 years, and I am in favor of S.B. 283. My partner Josh of eight years is a lifelong Nevadan, and he is an owner of a small business in Las Vegas. Last year, he attempted to add me as a dependent to his health insurance. However, his health-insurance company informed him they only provide domestic-partner health insurance in states where it is required by law, and Nevada is not one of those. He looked into switching insurance companies that may offer benefits for domestic partners; however, because of preexisting conditions with other employees, it was cost prohibitive.

My partner and I are currently in the process of having children through surrogacy, and we have many concerns with regard to health insurance. Some of those concerns are the right to hospital visitation, the right to make health-care decisions for a partner when they are unable to and the right of survivorship for property in case one of us dies so that the surviving partner and our children will have the ability to stay in the home.

DENISE BARCLAY:

We have heard a lot of wonderful personal accounts here today that have been very sad, tragic and unjust. I would like to bring this to a more universal message. When we are discriminated against, or treated with prejudice or viewed as being different, we can all feel compassion.

Our country was founded on the idea and enlightened words that we are all created equal. Too often, we forget these words when confronted with something that is different whether it is the color of skin and ideology, or even the words that we use like "God" or "Allah" or if we are different in whom we love romantically. Different does not equal better than or lesser than. Even though on the surface it may seem different, if we look more deeply, we are all really the same. We feel the same when we are given the message both loud and clear or more subtlety by the laws we choose or by the lack of laws. Whether we are women, African-Americans or homosexuals, we feel inadequate, hurt, afraid and outraged. For most of us, we have the benefit of hindsight. What were we thinking that women could not handle the right to vote, or that we could not intellectually understand the same things as men, or that we could own another human being or that it is okay to kill in the name of

God? We can look back to see how we have misinterpreted and justified our limited perspectives that were fueled by fear; a fear of what was different.

As lawmakers and as human beings, it is imperative that we remember the truth that our Country was founded on. We are all created equal. Any belief that we are not equal is false. To not give the same rights to homosexual couples that are given to heterosexual couples, is not only unjust, but just another misinterpretation arising out of that fear.

MR. EMERSON:

I am very supportive of S.B. 283 and wish to thank Senator Parks for bringing this bill forward. I am urging your support of the bill and have provided written testimony to that fact ([Exhibit L](#)).

MS. ROWLAND:

Many individuals have detailed their moving and infuriating reasons why this bill is so necessary. I cannot add to that and will let them stand on their own. What I would like to address is the constitutionality of this bill. As an attorney with the ACLU of Nevada, I will briefly say that when I was privileged enough to graduate from Harvard Law School, I had two requirements for a job: I wanted to be an ardent civil libertarian, and I needed protection and benefits for my domestic partner of six years. It was not just theoretical; it was a matter of being able to afford to live. The fact that my employer offers these benefits has everything to do with why am sitting here today. I have a personal stake in this as well.

Turning to the constitutionality of S.B. 283 in a letter addressed to the Committee from the Coalition for the Protection of Marriage in Nevada, Richard Ziser said, "S.B. 283 will not withstand a constitutional challenge." I am here to tell you that is blatantly untrue. It is not supported in any way by the law or any case law that has been developed in the country or other states where domestic-partnership benefits have been protected.

Noting the history of our Defense of Marriage Act (DOMA) in this State, the marriage amendment was ratified constitutionally in 2000 and 2002. We at the ACLU of Nevada believe that was a mistake. When it was advertised to the public, the proponents were very clear to argue to everyone that it was an incredibly simple amendment. All it did was add 18 words to the Nevada Constitution and simply dealt with the fact that we had a critical situation

where Nevada might be forced to recognize out-of-state same-sex marriages. That was the impetus behind the proponents. The description of the amendment placed on the ballot said nothing about benefits. It simply limited itself to redefining marriage so that we would not have to recognize out-of-state same-sex marriages. Further, the proponents affirmatively stated to the public that the law would not affect benefits. For instance, when asked about how this would affect benefits, Mr. Ziser said, "It is a red herring," and "It has nothing to do with hospital visitation policies. The ballot initiative is opposed to gay marriage, but not opposed to gays." Ask Mr. Ziser what has changed between when that amendment was propounded and now because I certainly hear a different message coming through in his written testimony.

Further, Catholic Bishops Philip Straling of Reno and Bishop Joseph Pepe of Las Vegas publicly stated "...believe[d] [issues of insurance, inheritance, hospital visiting rights, and other issues affecting same-sex unions] can be considered without redefining the meaning of marriage" ([Exhibit M](#)). The Nevada public, when they voted for DOMA, was under the impression that this was not a broader amendment to ban benefits or ban same-sex couples enjoying protection under the law but merely to prevent recognition of those out-of-state marriages. This history does not lend any textual support to the fact it would in any way be unconstitutional to have domestic-partnership benefits.

More importantly, every state court that has reviewed domestic-partnership benefits in a state where there is a standing defensive marriage act has indeed found that it does not violate DOMA. We have submitted written testimony that includes case cites from all of those states so you may peruse them at your leisure, [Exhibit M](#). Suffice to say in almost all of those states, their DOMA has more words than 18. It is a broader ban than what we have in Nevada. Not only have those states found that it does not conflict to give domestic-partnership benefits under the DOMA, but we here, have the history of it being advertised to the public as not doing so. The ACLU of Nevada believes there is no legal or constitutional impediment to S.B. 283. We believe that the state of law counsels the other way. Because of the Fourteenth Amendment that requires equal protection, as other people have so eloquently spoken to, in addition to the fact that we have standing statutory bans on discrimination in employment based on sexual orientation, we believe the way of the law counsels that this is a legal and moral imperative to pass this bill. It is certainly not barred by the language in the Nevada Constitution.

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CHAIR CARLTON:

In working on this bill with the Legal Division, Senator Parks, do you have any concerns with constitutionality or crossing of any barriers?

SENATOR PARKS:

I did discuss this with Committee Counsel and they confirm the statements made by Ms. Rowland.

DANNY COYLE (Retirees Chapter, American Federation of State, County and Municipal Employees, Local No. 4041):

The American Federation of State, County and Municipal Employees, Local No. 4041 has always been on record, as part of their policy statement, as being in support of domestic partnerships. This position identifies and coincides with that of the ACLU. We take a very egalitarian approach to the fact that all people should be treated the same under our Nevada Constitution, and there should be no laws discriminating on the basis of race, color, creed, sexual orientation or even couples who were previously married and have become divorced and live together for economic reasons. We support S.B. 283.

ELISA MASER (President, CEO, Nevada Advocates for Planned Parenthood Affiliates):

We operate five clinics in Nevada and see many clients. Access to health care is an important issue as we have heard today. We support S.B. 283 which would make it easier for folks to get access to health care. I have provided written testimony in support of this bill ([Exhibit N](#)).

In regard to the responsibility side of equal rights, my mother, Patty Cafferata, Executive Director of the Commission on Ethics, and I have talked quite a few times about the irony of not recognizing the legal rights and responsibilities that go with these relationships. If you have an ethics conflict and you are in a heterosexual relationship, you must declare and, in certain cases, abstain from voting. We have the ironic situation that if you are in a same-sex relationship, it is a theoretical possibility that you would not, under current law, have to declare this ethics conflict. We have created an interesting situation where we do not hold these relationships under current law to the same responsibility standards that we hold opposite-sex couples to.

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SENATOR AMODEI:

I would like the time to prepare some amendments for this bill which deal directly with the Ethics Commission since it is apparently germane to this issue.

MS. MASER:

I declare I am not an attorney and not practicing without a license.

JOHN HUNT (Chairman, Clark County Democratic Party):

Something very magical happened last November, and we came together to create a new direction for this Country. That direction led to the current structure of our Assembly and Senate. I commend Senator Parks for getting this bill on the table. For those of us who really are enlightened, equality is for everyone, and it is important. You have heard the testimony today, and what it gets down to is, "Are we all to be treated equal?" We have an opportunity to let everyone know they are going to be treated equally as evidenced by the presidential election. On behalf all the Clark County Democrats, all those who believe in equality, whoever they are, and those who have suffered over the years from not having access to equal treatment, I would absolutely recommend passage of this bill.

MICHAEL CABRERA (Vice President, Associated Students, University of Nevada, Reno; Chair, Commission on Diversity, University of Nevada, Reno):

We are proud to support S.B. 283 and urge its passage by members of the Committee. We are proud to say that generally the climate at our campus is very accepting. Students at the university, 17,000 on any given day of the week, gay, straight, female, male and everybody in between believe that all people are equally human and deserve equal rights.

At a debate a few years back between young Democrats and the college Republicans, this issue came up as to whether or not people should be afforded a domestic partnership if they were gay or lesbian. Students found common ground on this, and they did not have much to debate after all. We are excited to be on the cutting-edge of history, and we urge your support on S.B. 283.

BEVERLY GOHEEN:

I am in support of this bill. Thank you, Senator Parks for bringing this bill and presenting it. I have been in a 27-year relationship with my partner. When at age 40, she had a career change, we chose her law school because they accepted domestic partners, and it was part of their presentation. This is an

important thing for Nevada to do. We have three children, and all of them have attended college in Nevada; both sons served in the armed services. This is a vital piece of legislation that you can pass which will help all of us. For 27 years, we have paid taxes and purchased 3 homes, but we are still not recognized. We have no rights. When she gets sick, it is difficult if I do not carry a power of attorney around with me. We leave them in our vehicles for that purpose should anything happen. I would love to have something that actually accepts me for who I am as well as my relationship.

ROBERT TOWNSEND (Public Policies Group, Washoe County Democratic Party):
I am in support of both S.B. 207 and S.B. 283, and I thank both Chair Carlton for providing this opportunity to testify and Senator Parks for introducing the bills. This is simply a matter of civil liberties, and there is no justification for doing anything but supporting and passing this bill. Regardless of party affiliation, this is about doing the right thing.

JUNE BURTON:

I am speaking for George Flint, Chapel of the Bells, who would like to show support of this bill. Mr. Flint is mindful that it would help with tourism by bringing people into the chapels which issue certificates of commitment. Issuing certificates of domestic partnerships could bring funds into the State through fees and the conducting of ceremonies at chapels. I urge you to speak to Mr. Flint at a future work session.

CHAIR CARLTON:

We will, and we will make sure the sponsor has a conversation with him also.

JOE EDSON (Progressive Leadership Alliance of Nevada):

Although we have already spoken giving testimony in favor of the bill, with your indulgence, I would like to ask the brave individuals in favor of the bill to stand up as a show of support.

LESLIE JOHNSTONE (Executive Officer, Public Employees' Benefits Program):

I have signed in as neutral because the PEBP Board has not had an opportunity to take a position on this particular bill. There were regulations approved by the Legislative Commission's Subcommittee to Review Regulations in August 2008 that did not provide for any type of registry similar to what is in this bill. The general definition of domestic partnership was very similar to what is in

S.B. 283; however, the implementation of those benefits has been contingent upon State funding for this subsidy portion of the health insurance.

The PEBP Board's approach was that dependents added through any expansion of domestic partnership would be subsidized at the same level as any other dependent on the program. By nature of that condition, the regulations do have a clause that the PEBP Board would make a determination at the closing of this Session as to whether there was funding provided in the budget. On this particular bill, I submitted an unsolicited fiscal note of about \$2.3 million this year for subsidy because of the October implementation date, and \$3.3 million in the following year for State subsidy ([Exhibit O](#)). That had a couple of assumptions; one being that domestic partnerships refer to same-sex and opposite-sex domestic couples; and that the State would subsidize those added dependents at the same level that it subsidizes other dependents.

CHAIR CARLTON:

Senator Parks handed me the Executive Agency Fiscal Note, [Exhibit O](#). To be clear, would this be the exact same benefit that any other State employee would enjoy?

MS. JOHNSTONE:

That is correct.

CHAIR CARLTON:

Is the stumbling block the fact of how the subsidies are handled and the cost of health insurance?

MS. JOHNSTONE:

Yes, the cost of health insurance.

MR. ZISER:

The Coalition for the Protection of Marriage was responsible for qualifying the initiative for the ballot and passed it into a Constitutional amendment protecting the definition of marriage in our Nevada Constitution. You all should be in receipt of some written comments I sent to you ([Exhibit P](#)). We obviously recommend a no vote on S.B. 283. From the side of constitutionality, we believe that this act, the Nevada Domestic Partnership Act, is simply another name for marriage. Common sense will show that, regardless of whatever name

you call something, if the essence of a relationship is identical to marriage, then it must be marriage.

In section 21, Article 1 of the Nevada Constitution it is very simple and clear. It says only a marriage between a male and female person shall be recognized and given effect in this State. We see in section 10 of this legislation, a specific statement that a domestic partnership is not a marriage for purposes of section 21, Article 1 of the Nevada Constitution. I have never known that one could simply state in a piece of legislation that something does not apply to the Nevada Constitution and think that is going to make it so. Just because you simply redefine a term and call it something else, does not make it so. This bill is an attempt to circumvent the language of the Nevada Constitution. We see that in the language of S.B. 283 because it does not leave room for believing otherwise; it actually assigns the attributes of NRS Title 11 to domestic partnerships. That is in section 11 where it says, "... a domestic partnership is a valid civil contract entitled to be treated in all respects under the law of this State as any other civil contract created pursuant to Title 11 of NRS would be treated." Look at just the title headings of Title 11 of NRS as shown in my handout, [Exhibit P](#).

Marriage, under Title 11 of NRS, is the only civil contract. If you give all the attributes of Title 11 to something called the domestic partnership, then it is marriage. It is straightforward and there is no other conclusion. This bill is in direct violation of the Nevada Constitution and direct violation of public policy established by the constitutional-amendment process.

As I mentioned on the previous bill, Senator Parks mentioned A.B. No. 5 of the 22nd Special Session. I would like you to consider that this public policy was created by a Special Session, rather than in a full Session when everybody is aware of what is going on. I would also like to draw to your attention the domestic-partnership benefits that were approved and made reference to moments ago; it too has been brought before the full Legislature and has not passed. Instead, the university system took it to the Board of Regents for domestic-partnership benefits, and in my opinion, they handed it off because they did not want to make the difficult political decision that needed to be made. They handed it to another board that is not elected; they made the decision, and it had to be approved by the Legislative Commission during the interim. This process took place outside the normal legislative process. Well, it is normal because that is what has been established to take place during an

off-session time; but the fact is that these very critical decisions were being made and have been made outside of the normal purview. Since the marriage initiative was done through a vote of the people twice in Nevada, the public policy is more established in that realm than it would be in either of these bills that have passed through the Legislature.

I will not belabor this. There has been a lot of talk about civil rights, benefits and supposedly what I said and did not say during the campaign. I will stand by anything I said, and it all depends on how you might have interpreted what I said, but the essence of the amendment is very true. It was not based on what we were being accused of which was taking benefits away from someone. That was not the case. There were no benefits that were going to change by this amendment, and no benefits changed by placing this amendment into the Nevada Constitution. Nothing has changed as of this point in time.

With regard to Ms. Rowland's earlier statements, I am not an attorney but will say that I have seen some renderings from some laws that have shown there are some cases. I will have to get that information to you. There is some precedent on the other side that this is not constitutional. It really makes no difference what has happened in other states. The way we have defined marriage in Nevada and the way it is articulated under NRS Title 11, there is no other way to understand the definition of marriage. The Nevada Constitution strongly applies, and the will of the people needs to be upheld in this situation.

CHAIR CARLTON:

I speak for myself when I say that it has been alluded to that the same due diligence is not done in a special session as during a regular session. I will respectfully disagree with you. Any time I put on my senator hat and push a button, I take it with a 100-percent responsibility and the utmost diligence that I can put into doing the job I was elected for. We will agree to disagree, Mr. Ziser.

MR. ZISER:

Madam Chair, if I may. My reason behind that statement is not about how any particular Legislators would have voted, but the fact that the special session was not necessarily done in the light of day as it would have been had it been done in the full spectrum. I would agree most likely votes would not have changed, but we could have brought pressure onto some Legislators who may have been influenced otherwise. That is the purpose of these hearings. When

these things are done when we know they have been done prior to the full Legislature and are not approved, and they then bring them back when the full Legislature is not in session to approve them, that is problematic. We will have to agree to disagree.

MS. CHAPMAN:

Speaking on behalf of Janine Hansen, Nevada Families Eagle Forum, her following testimony should be added for the record:

Senate Bill 283 completely circumvents the will of the people.

Seventy percent of the people voted to keep marriage only between a man and a woman. A marriage by any other name is still a marriage. Please vote no on S.B. 283.

APRIL SHONNARD:

I am a 15-year-old student in Carson City. I am opposed to this law because I believe it would impose on the religious practices of many citizens and associations including Catholic hospitals, Catholic churches and Catholic adoption agencies.

SENATOR SCHNEIDER:

I believe the statement earlier was that the Catholic bishops supported this bill, [Exhibit M](#). The young lady who spoke said this would be in opposition to what the Catholic Church was doing, but the testimony earlier was that the Catholic bishops, who supported the gay-marriage ban, support S.B. 283.

JOHN WAGNER (Vice Chairman, Independent American Party):

We oppose this legislation as it is written. Three weeks ago, I had surgery and had to fill out all the hospital forms, and I put my daughter down as next of kin. One problem is, "Who is the next of kin?" I see no problem with making your next-door neighbor your next of kin. The testimony from a young lady earlier spoke of her friend dying and all that she had to go through. I am truly sorry for her loss, but had she been specified as "next of kin," this would have taken care of the problem. I would like to see someone introduce a bill to say that, "next of kin is who I or whoever says it is." It would be fair with no opposition of any kind.

CHAIR CARLTON:

We have vetted this issue thoroughly. I would like to thank everyone who has participated. We will close the hearing on S.B. 283. We will open the hearing on S.B. 252.

SENATE BILL 252: Revises provisions relating to solicitations of charitable donations. (BDR 52-843)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

Today I come before you with S.B. 252 which requires certain disclosures be made by a person who solicits contributions for, or on behalf of, a charitable nonprofit organization. Simply stated if the organization benefits law enforcement officers or professional firefighters, the person making the solicitation must also disclose the percentage of total contributions that benefit law enforcement officers or professional firefighters in the State.

You may have experienced these calls where the caller uses your first name or rushes to say, "Hey buddy, how you doing?" Often these are con artists who push you to make an immediate donation, especially to use your credit card. Furthermore, they usually will not send written information to prevent you from checking them out. They often try to confuse you by using names that sound like well-known charities, especially law enforcement and firefighting agencies.

CHAIR CARLTON:

Was there any consideration that this type of scam should apply to all those individuals who make phone calls representing themselves to work for veterans, children's groups and hospital agencies? I have gotten a number of calls of this type, and they are not all police and fire.

SENATOR PARKS:

I did have another bill that was to be referred to the Senate Committee on Judiciary that would have required a major registration process for all nonprofits. This bill is a little different in that it tries to target those who primarily use the telephone to solicit the contribution, and they are well skilled at pushing hard for a contribution. As far as my concern goes, I do not know if we want to start smaller and get bigger, but certainly those affecting police and firefighting organizations are at the top of the list. I would defer to you as to what you might like to recommend and what further testimony might result.

DAVID KALLAS (Las Vegas Police Protective Association; Southern Nevada Conference of Police/Sheriffs):

We appreciate Senator Parks for bringing this issue forward to Committee along with other worthy legislation that he has proposed today. Specifically as it relates to nonprofit fundraising in Nevada, I would defer to the Chair and the rest of the Committee if they feel it is appropriate to include other organizations, but I know as a law enforcement organization, we feel our good name in the community has been taken advantage of by individuals and groups who seek to profit from that good name. For the last few years, we have been dealing with one particular organization that goes by the name of Police Protective Fund, which is similar to the Las Vegas Police Protective Association. Generally, when most people receive calls from these groups, they do not differentiate between local, national and unknown organizations. They focus on whatever the caller intends them to focus on such as the name Police Protective.

I had a call from a solicitor from the organization, and naturally, I allowed them to go through their speech before I asked a few questions. Initially, I asked where the organization was located and was told that they were located throughout the country. Then I asked, in reference to the money they raise, how much of those monies stay in Nevada, and I was told 95 percent. I then asked what the money is used for and was told that the money that stays here is used to help families of officers who are either hurt or injured in the line of duty. Based on my knowledge and experience, I knew that was not accurate. After a number of those types of calls, not only myself but also other officers in the department and other agencies, we came to Senator Parks with a request to see if we could pass legislation so that we would at least get our foot in the door to keep these people from taking advantage of the good names of firefighters, police officers, correction officers, veterans and other groups. For their own profits, they abuse residents of our State.

In 2007, the Police Protective Fund raised approximately \$6.8 million. The biggest goal, as described on their Website, is to provide death benefits to those who participated with the fund. Based on various news sources and according to their own information, from the \$6.8 million, they provided \$50,000 in death benefits. From our perspective and from anyone looking at it reasonably, that is problematic. We have enough individuals in our State, especially in these economic times, who are suffering. I would hate to see any group, let alone one that is supposed to represent injured police officers, taking advantage of those people in order to profit themselves. Out of the \$6.8 million, this group

spent approximately 63 percent on fund-raising objectives and 26 percent went to program expenses. Their three officers averaged approximately \$160,000 to \$180,000 a year on salary. Our residents do not need to be victimized by these groups. I ask the Committee to help our residents by stopping this type of abuse.

SENATOR COPENING:

For clarification, Senator Carlton, you had asked this as well, in section 1, it does say that this bill applies to any person who is sourcing on behalf of a charitable for a nonprofit organization or religious purposes. Further down, it says if it happens to be law enforcement officers or professional firefighters, then they need to reveal the percentage. It does look as though that was the intent of the bill, but I do not think it is a bad idea to require any organization that calls to reveal the percentage that is going to the nonprofit organization. That is something for the sponsor to consider.

CHAIR CARLTON:

That is where my comments were leading. I know there are a couple of folks out there purporting to represent veteran's organizations. They particularly call the senior citizens because they know how close veterans are to senior citizens, and they have taken advantage of a few folks. If the individuals involved with this issue would consider that, I would be grateful.

RUSTY McALLISTER (Professional Firefighters of Nevada):

We also support the provisions of S.B. 252. We have faced many of the same situations that Detective Kallas brought forth, and it came to light after the September 11, 2001, tragedy with firefighters taking front stage in many charitable events. We were overrun with efforts to solicit donations from citizens of this State on behalf of firefighters to send back to New York.

There is an organization located in Florida, a state with very little regulation of telemarketing firms, called the Injured Firefighters Fund. I have been called and asked for donations. I asked some of the same questions the Mr. Kallas did. I actually asked who to contact in Nevada to get some of those funds because I have a lot of those guys who are hurt and injured; then they hang up. They do not want to answer once they find out the person they are talking to is a firefighter. We limit their ability to use our good name by specifically taking a position that we do not phone solicit contributions. We feel it denigrates what we do and have chosen not to use that as a fund-raising source. Most

fund-raising organizations that have approached us want about a 50/50 split of the money they raise on our behalf. We have chosen not to take that route, and we would oppose anyone trying to raise money using our profession.

SENATOR COPENING:

It is a great idea, but how will you enforce this? How will you prevent those folks from doing these things illegally?

MR. McALLISTER:

Enforcement would be a difficult process. When we found out this was going on, we spent funds to run ads in the newspapers letting citizens know that we do not solicit donations, and if they are receiving phone calls from individuals soliciting, it is not us. We also educate the public to ask questions about where the money goes. If they cannot answer those questions, the public will be reticent to donate funds.

SENATOR COPENING:

Perhaps another thing to consider would be to require a tax identification number be divulged. This may provide another way to throw people off, if you ask for a tax identification number, which any legitimate Title 26 Internal Revenue Code section 501(c)(3) (501(c)(3)) organization will have. It will be difficult because there are a lot of scams that go on out there. The average person does not know the right type of questions to ask, and it will take quite an education.

SENATOR PARKS:

I would like to follow up on Mr. McAllister's comment. First, I followed an organization that used a private mailbox drop in Reno; however, the organization was based in Boca Raton, Florida. They did major solicitations and it ended up that a number of states went after this organization using their attorney general's office. What usually happens is the organization will shut down the operation in a particular state when things get too hot.

Secondly, we were handed a document from the ACLU relative to this bill, and they may still be here to testify ([Exhibit Q](#)). I have had conversation with our Committee Counsel, and we can address their concerns.

CHAIR CARLTON:

Did the ACLU have something they want to put on the record?

MS. ROWLAND:

We have testimony in opposition to the bill.

CHAIR CARLTON:

We will finish with those who want to testify in favor of the bill. Is there anyone in southern Nevada in support of the bill?

TIM TETZ (Executive Director, Office of Veterans' Services):

We are neutral on S.B. 252 and as far as the Veterans' Services goes, it is our duty to support veterans organizations; many of them are 501(c)(3) or Title 26 Internal Revenue Code section 501(c)(19). Personally, this issue affects our office probably on a monthly basis. We get phone calls from individuals who have been duped, have given donations and then are unable to follow up with the organization. One afternoon last year, a deputy director spent a half day driving around Clark County trying to find a storefront of this supposed organization and found it to be an abandoned warehouse. It was truly not what they were purporting be. That does not shadow the truly many great veteran organizations soliciting funds for their programs.

Senate Bill 252 concerns me because those organizations, even though they are not 501(c)(3), are nonprofit organizations. As a nonprofit organization, from my understanding, we would be asking our veterans of those organizations to clearly disclose that they are a member of that organization, where it was founded and what that money goes for. Committee member, Senator Amodei, is a member of the American Legion. When soliciting for money for Boys State, he would then have to say, "I am Senator Amodei, a member of the American Legion formed in 1919 in Paris, France, and I am soliciting funds for Boys State because it does ... " forgetting many of the other things that the American Legion does. That is a pretty onerous thing if he needs to go out there and do what he does so well for us in getting us some boys for that program. Notwithstanding, some of these things need to be said to call out some of these bad folks.

An example I use is when girls from the Girl Scouts of America, a nonprofit organization, are standing at a storefront selling cookies. Are we to expect that a ten-year-old will need to introduce herself, describe the organization's founding date and location, where the funds go and then ask the customer to buy cookies?

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As much as we are not against this or for it, we would be happy to help figure out a way to make some of those things work out.

CHAIR CARLTON:

I think the concern has been addressed because this is purely aimed at telephone solicitations.

MR. TETZ:

Madam Chair, page 3, line 12 says, "A face-to-face meeting." It is all encompassing and will have to be disclosed at any time.

MS. ROWLAND:

We are opposed to this bill because we believe it is completely unconstitutional. The reason for that is that the U.S. Supreme Court has made it clear that compelled speech, which requires someone to affirmatively say something, is one of the most extreme forms of restraint on liberty under the First Amendment. I have provided written testimony indicating the ACLU's opposition to S.B. 252 ([Exhibit Q](#)), and I urge the Committee to focus on existing fraud law to regulate and control fraudulent solicitation.

SENATOR COPENING:

Ms. Rowland, what is the difference, for example a Realtor has to make certain disclosures for the protection of the home buyer, pretty much laid out, between situations where professions must say certain things for their protection?

MS. ROWLAND:

First, the U.S. Supreme Court has, in some ways, treated strictly commercial speech different from speech that is communicative on the First Amendment. The problem in this area is that the only speech we are talking about is solicitation of charitable donations which is at the extreme end of what the First Amendment protects. It is the very basis of political speech which is asking people to support an idea or to give you support. Another explanation would be with respect to contracts; we are not really in the area of the First Amendment where we are compelling someone to make a statement about themselves or about the organization. You are sampling and requiring a disclosure of facts in order for the contract to be valid. That is a slightly different area because it is not expressive speech, it is a business contract. I agree it is not always as clear as we would like why these distinctions are made; but certainly from my point of view, the best I can tell you is that the U.S. Supreme Court is particularly

mindful when you are dealing with really protected First Amendment speech. Whether or not we like it, I am sure this U.S. Supreme Court case in my handout, [Exhibit Q](#), totally covers the bill.

CHAIR CARLTON:

If the phone call was made, the solicitor asked, the solicitee agreed, then the disclosure was made? I would hate to have you shoot from the hip, but to me, that would sound like after agreement it's disclosure, before agreement is your problem. So if they had asked the folks for \$30, they said, "Yes, I'll give you \$30." But, oh, by the way with that \$30 I need to give you this disclosure of this. What do you think?

MS. ROWLAND:

My answer would be no, because compelled speech is such an extraordinarily kind of "creepy" area of the law. It is the government telling someone that specific words have to come out of their mouth.

CHAIR CARLTON:

But a transaction has occurred.

MS. ROWLAND:

I understand; but again we are still talking about two people communicating in the context of the protected First Amendment speech. Even if you donated to someone, you have not engaged in a formal contract or a bargain. This is not a formal business relationship. You really are, as a citizen, offering to give \$10 to support your ideas, and we are still very much under the umbrella of precisely what the First Amendment protects. I do not see it as a dispositive, whether that disclosure is before or after. I see as more dispositive what kind of area the world of speech we are in. That seems to me how the U.S. Supreme Court looked at that North Carolina rule that did so.

CHAIR CARLTON:

What about this, they call me, I give them money, and they say thank you. Then I ask them for this information? Are they compelled to provide it?

MS. ROWLAND:

The word "compelled" is a little bizarre.

CHAIR CARLTON:

You have compelled speech.

MS. ROWLAND:

I do not think the government can pass a law that says, "This is what you must say." What the government can do and what the Legislature has already done is pass a law that says, "If you do not answer that question truthfully, you are fraudulently soliciting." I understand that the difference is small, but the difference is when you open up the government's power to tell people that they have to speak certain words, that is kind of a whole creepy area of possible policy that comes with that. When you tell someone, "If you intentionally misrepresent or lie to someone, we are going to prosecute you for fraud," that is perfectly appropriate. You are not telling everyone, innocent or guilty, they have to say a certain thing. You are saying that most people are good actors, but if you are a bad actor, we can come after you because you have essentially stolen that person's money. That is what the current law does and that is the appropriate balance to strike.

CHAIR CARLTON:

The way I understand it, even if I ask for the disclosure, they would not have to provide it to me, and then I would just withdraw my donation.

MS. ROWLAND:

I do believe they would have to because of the existing law on page 2, line 16, it says, if they:

"Omit any material fact deemed to be equivalent to a false, misleading or deceptive claim or representation if the omission, when considering what has been said or implied, has or would have the capacity, tendency or effect of deceiving or misleading a person ..."

That is fraudulent. If you ask them a direct question, and they do not give you a straight answer, this totally covers that and says that is a fraudulent solicitation.

CHAIR CARLTON:

Okay, so we are back to fraudulent solicitation.

SENATOR PARKS:

I did have a conversation with our Committee Counsel, and I think the best way to proceed is to get the ACLU and Committee Counsel together to see how we might be able to bring back an amendment for future consideration.

CHAIR CARLTON:

We will close the hearing on S.B. 252. We will now move to S.B. 295.

[SENATE BILL 295](#): Revises provisions relating to dentistry. (BDR 54-913)

MS. FULSTONE:

With me today, is Robert L. (Bob) Crowell, with Kummer Kaempfer Bonner Renshaw & Ferrario, and we are jointly representing InterDent Service Corporation (InterDent) and Pacific Dental Services (Pacific Dental), that are dental support-services organizations (DSOs). We ask the Committee to support S.B. 295. We appreciate the time and efforts of Senator Carlton in bringing this legislation forward for your consideration

The DSOs are companies that provide business support services to dentists and dental practices to alleviate the administrative burdens of the business of dentistry so dentists can focus their time and attention on the care of patients. With us are representatives of our clients and their affiliated dental practices who will be telling you a little more about their organizations and the dental practices that they support. In addition, you have all been receiving a ton of letters from many of the dentists, some of whom are in the audience in Las Vegas today, who work in dental practices that are supported by our clients ([Exhibit R](#), original is on file in the Research Library). These letters will provide you with additional insight into the relationships between our clients and their affiliated dentists.

There is a group called the Dental Group Practices Association which is a nonprofit association representing members of the DSO industry. They have also submitted a letter, which has a lot of information, in support of S.B. 295 ([Exhibit S](#)). We have also provided an article from the American Dental Association titled, "Financial Planning Issues for Dental Students" ([Exhibit T](#)) to underscore the tremendous financial strain imposed on new dentists, and the benefits that DSOs can provide in this regard. Finally, we have provided you with a report titled, "The Burden of Oral Disease in Nevada" ([Exhibit U](#), original is on file in the Research Library). This report includes comparisons of all disease

rates in Nevadans with national rates and shows that Nevada ranks far behind the national averages in many categories.

Dental support-services organizations should not direct, control or influence the clinical judgment of dentists or in any way engage in the clinical practice of dentistry. These clinical activities are sacrosanct and within the sole purview of the licensed dentist and hygienists. Unfortunately, the Board of Dental Examiners of Nevada (Dental Board) has encountered certain patient-care problems with some dentists affiliated with certain DSOs. These problems have included such things as undue influence over the clinical judgment of dentists and hygienists, control over access to patient medical records, authority for patient refunds, completion of prepaid care and correction of inappropriate care, conditions on the use of equipment and supplies and oversight and supervision of the dental practices. Both InterDent and Pacific Dental agree with the Dental Board that these problems must be addressed and that the independent clinical judgment of Nevada dentists and hygienists must be protected at all costs to safeguard Nevada patients. The problem is that there are no statutes or regulations to provide guidance to the dentists and the DSOs or specifically address these patient-care problems.

Before coming to the Legislature today, both InterDent and Pacific Dental encourage the Dental Board to engage in rulemaking to provide the guidance needed and address the patient-care problems encountered by the Dental Board. Despite the Dental Board holding a series of 5 meetings over the course of 16 months, from February 2007 until June 2008, for the purpose of deciding whether to engage in rulemaking and despite continued offers from InterDent and Pacific Dental to meet with the Dental Board to work together to address these problems, the Dental Board decided that no regulations were needed. In fact, the Dental Board members would not respond to multiple calls and letters asking to meet with them or even provide comments to several different versions of proposed draft regulations that we offered for their consideration. Instead, the Board decided to take a rather arbitrary ad hoc approach to enforcing the Dental Practice Act against dentists affiliated with DSOs.

The dentists and practices that contract with DSOs are fearful that without a legislative scheme they could be sanctioned or lose their licenses merely for being in a business relationship with a DSO that has been ongoing for many years. Enforcing the Dental Practice Act in such a way that could have the effect of driving InterDent and Pacific Dental out of Nevada along with other

reputable DSOs would be detrimental to Nevada patients, dentists and hygienists as well as to the companies.

We encourage the Legislature not to throw the baby out with the bath water, depriving Nevada citizens of more opportunity for good affordable dental care, but rather to enact S.B. 295 which will allow dentists, if they choose, to select the benefits of this practice option while protecting patients and safeguarding the clinical practice of dentistry.

I want to emphasize that the Dental Board plays a crucial role in regulating the licensing of dentists and the quality of dental health care in Nevada which our clients support. Senate Bill 295 in no way diminishes that role but instead reinforces the Dental Board's role as a regulator of the clinical practice of dentistry and as the protector of patient safety without limiting the way in which the business aspects of a dental practice are conducted.

ROBERT L. (BOB) CROWELL (Kummer Kaempfer Bonner Renshaw & Ferrario; InterDent Service Corporation; Pacific Dental Services):

Rather than walking through S.B. 295, I would like to go to the heart of the bill on page 3, line 33 of the bill. In trying to draw the line between what is a management service and what is clinical care, we are carefully drawing the line with the limits drawn in section 4 of the bill. Basically, a person can enter into a management-services contract, and those services can be provided with the understanding those services do not exercise any authority or control over the following:

- (1) The clinical judgment of a licensed dentist or relieve a licensed dentist of responsibility for oversight of all clinical aspects of the dental practice.
- (2) The formation or approval of any contract for the provision of dental services to a patient by a licensed dentist.
- (3) The hiring or firing of licensed dentists or hygienists or the material clinical terms of the relationship between a licensed dentist and other licensed dentists or hygienists.
- (4) The referrals by a licensed dentist or another licensed dentist or place any restriction or limitation on referral of patients to a specialist or any other practitioner a licensed dentist determines is necessary.
- (5) A licensed dentist's use of any type of procedure on a patient or establishment of a treatment plan for a patient.

(6) Patient records to the exclusion of the applicable licensed dentist or the applicable patient.

(7) A licensed dentist's schedule, including time spent with any patient, or place conditions on the number of patients a licensed dentist may see in a period of time.

Members of the Committee, those are the operative conditions that draw the line between management services and clinical judgment. We have talked with the Attorney General (AG) as to whether or not a violation of any of those provisions in this bill, if enacted, would constitute a violation of the Unfair Trade Practices Act or the Deceptive Trade Practices Act, chapter 598 of NRS. The AG has advised that they might but probably do not. From his office's perspective, there is a criminal sanction for the unlawful practice of medicine which includes the unlawful practice of dentistry. The AG is actively engaged in prosecuting folks for the unlawful practice of medicine or dentistry. There would be a sanction if these acts are violated, and the criminal law would be brought into effect.

With that in mind, the other parts of this bill basically follow what was just explained and defines the line between clinical-care judgment and management services.

SENATOR AMODEI:

Would the bill allow a contract to be executed with a part of the terms of the contract to be a percentage of income received?

MR. CROWELL:

The rationale would be a matter of business discretion between the contracting parties.

SENATOR AMODEI:

There is nothing in here that says it is illegal in Nevada for you to provide the stuff described in this bill, and if you freely decide to contract, part of the deal can be a percentage of the gross or net?

MR. CROWELL:

It does not speak to that business relationship, but Ms. Fulstone may have a different view. In my opinion, it does not speak to that business relationship,

but it allows the business relationship to be voluntarily entered into provided that the relationship does not do any of the things I just enumerated.

SENATOR AMODEI:

The answer to my question is that this does not make it illegal to provide remuneration to the managing entity on a percentage basis.

MR. CROWELL:

It does not.

MS. FULSTONE:

To elaborate, the bill does not address any aspect of the business relationship. That would be a private contractual relationship between the dentist and the management company. Relative to the percentage fees, it would be no different than many other services that are provided on a percentage-fee basis. That would be a private party contractual arrangement.

SENATOR PARKS:

Compare this for a dentist and a doctor working in a HMO. Is it the same? How might it be different?

MR. FULSTONE:

It is different. These companies are not insurance companies like a dental HMO. These are companies that just provide administrative support services to dental practices. The similarity is that it is an alternative practice model we think should be an option for dentists and may increase access to dental care in Nevada.

SENATOR COPENING:

Is this a practice that is currently in medical practices?

MS. FULSTONE:

Yes, it is. It is a very common practice model and has been in the medical realm for many years and may be somewhat newer to dentistry than to medicine. It is a current practice in Nevada. The business aspects of it are separate and are determined between the parties. So long as there is no impact on the clinical judgment of the doctors, then these arrangements have existed. I do not believe the Board of Medical Examiners (Medical Board) has had any problems as a result of them.

SENATOR COPENING:

In following up to Senator Amodei's comment, I know that one of the concerns was one of "whole percentage." If a dentist practice was not performing at a certain level, the management company might come in to say, "We are receiving compensation on a percentage basis. We want you to figure out a way to increase that revenue." That is one of the concerns. Looking at the medical profession, are you aware of any types of ethics charges or anything like this that have come up in this particular situation?

MS. FULSTONE:

No, I am not and, in fact, I think the Medical Board has had a number of problems with private-practice physicians who are not affiliated with management companies or HMOs. I do not know if the business model impacts anything. Similar problems are seen throughout, regardless of the business model.

SENATOR AMODEI:

Looking at page 2, line 1, of S.B. 295, can you give me an example of an intangible asset in a dental context?

MS. FULSTONE:

It would be perhaps the licensing of the name or some sort of intellectual property.

JOHN STEINBRUN (CEO, InterDent Service Corporation):

I appreciate the opportunity to testify in support of S.B. 295 and to present my views on this topic ([Exhibit V](#)). I urge the Committee to pass S.B. 295 to ensure that reputable support-services companies continue to operate in Nevada and continue to provide this important practice option for Nevada dental professionals and patients.

SENATOR AMODEI:

Do you know if Dr. Skinner pays InterDent on a fixed-fee basis or a different type of basis for the services that you have described?

MR. STEINBRUN:

We would be happy to discuss that with the Committee, but in this particular forum, that is a contractual matter. Some of our competitors are present, and we would rather not discuss it in this forum.

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SENATOR AMODEI:

Generally, are you familiar with these types of arrangements in Nevada based on the fact that InterDent does business in Nevada?

MR. STEINBRUN:

By these types of arrangements in Nevada, do you mean including other professions?

SENATOR AMODEI:

No. I think you are calling it something support?

MR. STEINBRUN:

Yes, dental-practice support-service companies.

SENATOR AMODEI:

So, are you familiar with the practice support business in Nevada?

MR. STEINBRUN:

I am generally familiar with it. I am not intimately familiar with the details of the fee arrangements.

SENATOR AMODEI:

So would you not have an opinion or knowledge about whether or not any of these in Nevada are done on a percentage or fixed-fee basis?

MR. STEINBRUN:

Among the other dental practice support groups, I do not know.

SENATOR AMODEI:

Do you take a liability position for any of the folks you are in business with in terms of a lawsuit or for some sort of liability related to alleged conduct? Does your company, if you can disclose that, have any contractual provisions which provide that you are either part of that or that you are excluded from that?

MR. STEINBRUN:

One of the services that InterDent provides to the dentists we support is general liability coverage and also malpractice liability coverage.

SENATOR AMODEI:

I understand that, but I want to know if InterDent has any contractual provisions that say if you get sued in your professional capacity, that is on your nickel. I understand that you may provide them with insurance, but do you have contractual provisions which provides that nothing you do in your capacity in the support-service contract is something that would provide joint or several liability for something that the dentist may allegedly do wrong in their scope of practice?

MR. STEINBRUN:

I do not recall off the top of my head the precise provisions of the contract, but as a practical matter, it is certainly true that InterDent would be named as a defendant in any such action along with Dr. Skinner.

CHAIR CARLTON:

To elaborate on that, it is my understanding that every licensed professional in the State that has to carry medical malpractice insurance would still have to carry their own insurance outside of any other contractual agreement that they would have. Is this correct?

MR. STEINBRUN:

I believe that all our dentists do carry liability insurance coverage, but I am not sure what the State requirement would be.

CHAIR CARLTON:

I want to clarify where Senator Amodei was going. If there were a problem, could all the range of professionals be named in a suit and could the services company be named as well? You would have to carry one portion, and the dentist would have to carry his portion. If the hygienist was required to carry medical malpractice insurance, they would have to carry their portion. Would everyone have to take care of their own particular profession?

MR. STEINBRUN:

Yes. Again, as a practical matter, InterDent is generally viewed as a "deep pocket" and we are, in fact, named in those sorts of actions.

CHAIR CARLTON:

Are you probably the first guy on the list, not the last?

SENATOR AMODEI:

Would you have a position if an amendment was proposed on this bill that added to the list that Mr. Crowell went through, making it illegal for any of the contracts to be done on a percentage based on the income of the practice? Would you have any thoughts about that, whether opposed or in favor, or do you want to think about it and get back to me?

MR. STEINBRUN:

That is certainly something that would obviously be within the purview of the Legislature, and we would comply with whatever position the Legislature took, of course.

SENATOR AMODEI:

I understand that you are in favor of complying with the law. What I am saying is, if there were a provision at the bottom of page 3 that said it is against the rules in Nevada to enter into a contract based on the remuneration being a percentage of fees earned by the licensed individual, would you be neutral, opposed or not sure?

MR. STEINBRUN:

I suppose I would be neutral on that.

MS. FULSTONE:

I am not going to change anything Mr. Steinbrun said; obviously he would think about it. They want to be here; they want to comply with the law, and they want to continue to provide services. The legislative history of the Dental Practice Act from a number of years ago pretty clearly distinguishes a dental practice and a dental business. In regard to the fee issue and the percentage-fee issue that you are raising, I do not believe there is any correlation between the business side of the practice of dentistry, the clinical side and the outcome of that. There are many fee arrangements that are on a percentage basis as I mentioned before. All private-practitioner dentists probably pay a portion of their fee to certain third-party providers. I do not think that the business and how the management fee is structured is really within the purview of the Dental Board or necessary or consistent with the legislative history of the Dental Practice Act.

SENATOR AMODEI:

I do not disagree with your explanation of the history. I am someone who holds a professional license, one that requires an exam to attain, in a profession where there is much consideration given to fee splitting. Knowing human nature, when I read that as a credentialed licensed professional in the State I can contract for all of these things on a percentage basis, I am going to have thoughts about how that return is coming. When you link those up with the issues we all deal with when we are credentialed or licensed, or sit before the State Bar of Nevada or a board, I think it would be hard not to monitor the return on my investment if it is not a fixed fee with a set interest rate but a percentage of the action. I appreciate your description and I understand the history. Some of those dots connect if you are in business, or if you are trying to pay the people you owe money.

MS. FULSTONE:

Senator Amodei, I hear what you saying, and I agree with it. I do not know that those temptations are any different whether or not you are in private business for yourself and you want to make more money whether you are working with or for an HMO or whether you are working in conjunction with a support-service company. A professional has standards they need to adhere to whether they are a doctor, a lawyer or a legislator; there are always temptations, and it is the individual professional who has to be responsible for dealing with those things. There are plenty of safeguards in this bill to deal with the professional, the licensure and the clinical aspect of it.

SENATOR AMODEI:

If I posed my question to you on prohibiting percentage of income as one of the things that ought to be prohibited, your answer would be that you would not be in favor, is that correct?

MS. FULSTONE:

I would not be in favor of putting anything in this bill that deals with the business that is conducted between dentists and or a practice model on the business side of the equation.

CHAIR CARLTON:

The percentage fee brings the exact opposite point of view when times are good and the practice is doing well, then naturally that percentage would be at one level. But when times are bad, as they are now, and things have slowed

down, if I had committed to a base rate three years ago and had another two years on a contract, I could be paying for services on business that is not there. When I look at percentages, I see the flexibility of dealing with the market. Being a waitress who lived off percentages for many years, I understand how percentages work.

SENATOR AMODEI:

I will not compare and contrast things about professions. This is probably a little different area of how to make a living than a triple-net lease in a strip mall. That is a percentage of what comes in the door. I completely agree with your analogy in that context, but when you are talking about things like people's assets, which lawyers deal with, or you talk about people's health-care, it makes me uneasy.

STEVEN E. THORNE (Founder and CEO, Pacific Dental Services, Inc.):

I appreciate this opportunity to testify in support of S.B. 295 and to offer my perspective on that dental-practice support-services business and its vital importance to Nevada ([Exhibit W](#)).

Pacific Dental was borne on the fundamental belief that the company needs to be a great choice for practicing dentists through the development of efficient and effective systems, permitting dentists to excel at what they do best—care for patients. I urge the Committee to pass S.B. 295 and permit dentists to have an important option available for their business structure in Nevada and permit patients to have more choices.

SENATOR AMODEI:

I understand the value that you and your organizations provide, and that is a good thing. I can see the benefit for someone in practice. My questions are in the area of erring on the side of caution of the fee-splitting issue and not creating the appearance of partnering in a business venture with someone who has a license when the management company does not.

CARY CALLAWAY-NELSON, D.D.S. (Co-Owner, Montecito Town Center Dental Group):

This dental practice receives dental support from Pacific Dental. I appreciate this opportunity to testify in support of S.B. 295 and to offer my perspective on the dental-practice support services as a dentist and its importance to the citizens

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of Nevada ([Exhibit X](#)). I urge the Committee to pass S.B. 295 and permit dentists to have an important option for their businesses.

L. THOMAS (THOM) MILLER, D.D.S. (Skinner Dental Group):

I have practiced dentistry since 1979, and I appreciate this opportunity to speak to the Committee and provide you with my testimony about dental support-service companies in support for S.B. 295 ([Exhibit Y](#)). I hope you will consider passage of S.B. 295 and permit good support-services companies to continue operating in Nevada.

SENATOR PARKS:

Do you own your practice and contract with InterDent?

MR. MILLER:

Yes, sir.

SENATOR PARKS:

Would the bill today allow InterDent to contract with the dentists?

MR. MILLER:

Yes.

WILLIAM G. PAPPAS, D.D.S. (President, Board of Dental Examiners of Nevada):

My testimony today is provided to you in my handout ([Exhibit Z](#)). On behalf of the Dental Board, I am asking for your continued support of current law and the rejection of S.B. 295.

SENATOR COPENING:

Dr. Pappas, would the Dental Board be responsible for overseeing these types of companies—InterDent and Pacific Dental?

DR. PAPPAS:

We have no ability to control this. We do not license or regulate these groups. As an aside, there is nothing in current law to prevent them from operating within the confines of law. As they said, they have been here since 1999. We do not seek to have them leave; we only ask that S.B. 295 not be enacted in order to allow some provisions that are in current law to be circumvented.

SENATOR COPENING:

If it is not enacted, how does it go back to be? What is the current situation? Do they continue to operate the same way that they have? I am not sure what changes.

DR. PAPPAS:

Yes, they can continue to practice, and their licensees will be held to the same standards that all licensees are held to—that they not aid or abet the illegal practice of dentistry and the ownership rules that we have currently.

SENATOR COPENING:

Do you believe that the enactment of this statute would open it to illegal activities and change it from where it is today?

DR. PAPPAS:

Yes, we do believe this, and our Dental Board counsel will expand on that.

SENATOR COPENING:

From what I understand, you do see a value in these types of companies. Is that correct? We heard testimony from the dentist who had a lot of loans. Do you see the value of this type of company?

DR. PAPPAS:

Yes, we do. Senator Amodei's concern earlier about fee splitting is certainly a large one and in 25 years of private practice, I do not contract with any company that I have to share a percentage, a fixed percentage, of my fees. I contract with many services. When my clinical judgment might be impaired by someone coming to me and saying, "Look, we get 33 percent of your practice, and your practice is not doing what it needs to do. We need to boost those numbers ... ," that is a big concern. Fee splitting is a serious concern.

SENATOR COPENING:

Do you believe that some sort of oversight in this area would be in line? Would you welcome this if there was a way for the Dental Board to have some oversight?

DR. PAPPAS:

That would be the very least. Yes, we would certainly welcome oversight.

SENATOR COPENING:

How do you see this differing from an employee leasing company like a Manpower that provides employees to provide administrative services? What do you see as the difference?

DR. PAPPAS:

When you contract with a temporary agency, that person is usually there for a specified period of time at a fixed rate that is usually hourly. Whenever I have used a temporary agency, it has always been an hourly type situation. I suppose it could be a salary as well, but it is not a percentage of what the practice grosses or nets.

CHAIR CARLTON:

Dr. Pappas, I looked at this bill as a provider- and patient-protection bill. When you get into the language that was discussed earlier about protecting the clinical judgment, the hiring and firing of dentists, referrals, owning the records, types of procedures, scheduling and time spent with the patient, this seems like it gives your licensees and the people they treat protections against the people that you have concerns about.

DR. PAPPAS:

With all due respect, Senator Carlton, that is the key word, "seems." Our legal counsel will share some of his concerns with some of the wording and how that can be misleading.

LEE DRIZIN, ESQ. (Legal Counsel, Board of Dental Examiners of Nevada):

What I had intended to do was to address a number of comments or concerns that were expressed at Wednesday's hearing, but I think they are really related to S.B. 295 that have also come up today. One of those issues is that it was observed there was nothing in S.B. 295 that really was trying to restrict the Dental Board's ability to address misconduct by dentists. I think the Dental Board would agree with that, but it truly is not the concern that the Dental Board has about this particular bill. The issue is the control of the non licensee who is now interacting so closely with the dental practice. I would assure Senator Amodei that he is not out in right field on this issue.

One of the biggest concerns we have is the fee sharing. Now, unlike a situation where I am hiring an employee to come work for me, like a Manpower situation, I am actually in business with someone. I am paying a percentage of the profits,

and that is what causes the Dental Board's concern. Exercising that type of control over the dental practice can result in lower quality of care. This issue has come up repeatedly about it being a good model for new dentists to own their own practice. My response to that is twofold. First, it is important that the Committee understand, or have more insight, as to what most of the DSO management contracts have provided. The dentist, in fact, has the illusion of owning a practice, but not the reality. The DSO, in most instances, owns or leases the dental office and then sublets the space to the dentist. They own the equipment. Many of the management contracts will have covenanted not to compete. A dentist will enter into a management contract and walk away with what? They do not own the equipment, the space nor the goodwill they have developed over the years they have been servicing those patients. Now, for a period of 2 years, you cannot be within an area of 25 miles or within the same area of the same county where you have been building that goodwill and servicing those patients. The dentist walks away with very little in terms of owning the practice.

The second part of my response is that the Committee needs to be careful because the Dental Board's position is that these issues should be looked at primarily from the perspective of the patient and not the dentist. This issue is these management agreements clearly put all the responsibility for the supervision of the clinical judgment of the dental activities upon this dentist. As you heard from the CEO of Pacific Dental mention, many of these practices are multidisciplinary practices. In other words, we are not talking sole or single-dentist operations. Now what we are talking about is taking new dentists right out of dental school and plugging them into a program where they have no experience operating their own office, and certainly no experience supervising the dental activities of other dentists, as well as hygienists, which DSOs have clearly said, "That is not our responsibility, we won't even touch that." The questions become, "Do we feel safe? Do we feel that is a good situation to put brand-new dentists into those kinds of positions of responsibility?" It is not a good model in terms of analyzing patient safety versus an opportunity for a brand-new dentist.

Repeatedly, we have heard the issue come up about choice. Should dentists have the choice of this model? The Dental Board's position is very clear on this; absolutely. The Dental Board is not anti dental-practice management. The Dental Board is in support of the position that the American Dental Association has maintained, which is that the health interest of patients are best protected

when dental practices are owned and controlled by licensed dentists. What the Dental Board has struggled with is the issue of, "What constitutes control?" The DSOs maintain that they are just administrative support services, but what we see in these contracts is not that they are simply contracting out accounting services. What they are doing is managing the practices. They are in charge of setting the budgets. They are in charge of telling the doctors what they can purchase and what they cannot purchase. They are in charge of handling all their supplies. They are in charge of dealing with the nonclinical personnel.

Interestingly, in 2006, we saw a lawsuit filed by the Park Dental Group, a group of 113 dentists in Minnesota. They filed a lawsuit against their DSO and in December 2007, they received a judgment in the amount of \$130 million. Their argument was that the DSO had overstepped their bounds of what was proper. One of the big issues they brought up was "it impaired patient care." What happened was the DSO responsible for dealing with things like refunds to clients and client complaints saw that their position on those issues overstepped those bounds. Many of the states that have legislation similar to Nevada that talks about these control issues, have determined that all clinical-judgment decisions should be left to the dentists, and they do not try to tell dentists what to do. Because DSOs owned and controlled the assets, that reality is a statement that has no substantive effect. For all intents and purposes, they still control the practice.

With respect to Ms. Fulstone, we do not believe that the legislative history has ever indicated this distinction between dental practice and a dental business. In fact, the terminology used in the NRS, is a dental practice. The Dental Board, faced with the difficult decision of trying to determine what constitutes control, contrary to InterDent's position, did not approach this on an ad hoc arbitrary basis. The Dental Board has developed a series of criteria. The criteria are based on the types of factors that other supreme courts in other states with similar legislation have determined to look at. One of the issues is sharing fees. Clearly, it is the same issue and the same factor that concerns Senator Amodei. Again, one of the important issues is about the closeness, the intertwining of the DSO and the dental practice.

Senator Hardy expressed his frustration with issues that come up repeatedly about how much a business interest can control a certain profession. The example he used was about a bill that came up that said doctors should not be allowed to own their own practices. We are not taking that position at all. The

Dental Board shares his concerns, as he stated, of inconsistent positions about how to approach these problems.

Senate Bill 295 creates an issue because you can have a situation where a dentist wants to purchase a new piece of equipment, which is not a clinical decision. He makes the determination that this new equipment will help better diagnose and ultimately more effectively treat a patient. The dentist, in his own practice, cannot make that decision unilaterally to go out to buy that piece of equipment. Why? It is not a clinical judgment. It is not a decision about performing a particular procedure. That is another issue. We do not have a clear definition in this proposed statute of what constitutes clinical judgment. The problem that we have is that we will see more inconsistencies.

The issues, like the one about purchasing equipment, that affect clinical aspects but do not necessarily affect clinical judgment are a concern of the Dental Board. When these types of business arrangements can significantly impact clinical aspects of the practice, those are the cases where the court has determined that it amounts to control. That is the illegal practice of dentistry. On that basis, the Dental Board has concerns about indicating that ownership of assets and control of certain types of staff persons will have a direct impact on the clinical aspects. It puts the Dental Board in an extremely difficult, if not, impossible position, with a statute that is virtually impossible to for us to enforce.

We are going to have non licensees, as Dr. Pappas pointed out, that we do not have jurisdiction over. Yet clearly, those decisions they make are going to impact the quality of patient care and the services that are rendered by the dental practices. On that basis, the Dental Board will respectfully ask that you reject S.B. 295.

CHAIR CARLTON:

Were you going to address some of the concerns brought up by Dr. Pappas about the actual language?

MR. DRIZIN:

The concerns were in section 2 of page 2, the actual owning of the assets. That has been used as one of the factors in determining a control issue. Owning the assets constitutes control. Contracting for the services of personnel other than licensed dentists was the concern I addressed that came up in the Park Dental

Group case. It was determined they had the responsibility of providing the office manager and other staff, but he lost the right, as a dentist in his own practice, about making the decisions about refunding clients and addressing client complaints. That right was contracted away. The doctor said it led to a decrease in the quality of care they could render.

CHAIR CARLTON:

The question I asked Dr. Pappas was about the clinical-judgment language, the formation or approval of any contract, the provisions, the hiring, the firing, the referrals, the licenses dentists use, the whole last section of the bill and the scheduling. I had said those look like patient protections by protecting the dentists and putting a barrier between the practice service and the dentist.

MR. DRIZIN:

Madam Chair, the issue or the concern about that language is the way this is worded it refers to if the person does not exercise any authority or control over the clinical judgment; it does not say clinical aspects. It does proceed to say, "... or basically they are being relieved of oversight for all the clinical aspects." In that part of the statute, they are distinguishing between clinical judgment and clinical aspects. The category of clinical judgment is simply too narrow. The example I gave was meant to address that about purchasing.

CHAIR CARLTON:

I wanted to make sure I understood where your testimony was going in reference to the bill. I have another question and would like a brief answer or have legal help with the answer. It appears to me the biggest concern in this bill is the business practice and the dental practice. Does the Dental Board currently have statutory authority to discipline a dentist for bad business practices?

MR. DRIZIN:

It does to the extent that those bad practices constitute fraudulent billing or improper conduct. If you mean to the extent the dentist employs an office manager that has a bad attitude and is rude to clients, I am not sure that necessarily rises to the level of an incident that the Dental Board would address. To the extent that there is poor record keeping, those are the types of issues the Dental Board does have authority to address currently.

CHAIR CARLTON:

Do we happen to know where that authority lies?

KATHLEEN KELLY (Executive Director, Board of Dental Examiners of Nevada):

If I could have some assistance as to what particular aspects of business; there is no distinction in our current statute between the dental practice versus dental business. Again, going back to history in 1983, there was some introduction of language calling for a dental business that that Legislature, at that time, did not pass. They kept dental practice as dental practice. The Board does currently enforce fraudulent claims, fraudulent billing to an insurer, which is defined as Medicaid insurance, and that is under NRS 631.348.

CHAIR CARLTON:

To clarify and to make sure we are talking about the same thing, I think you gave me my answer since it does not actually mention dental business. The discipline you are talking about is tied to the actual dentist and their practice, not the dentist and their business.

MS. KELLY:

I would respectfully ask, what is the distinction?

CHAIR CARLTON:

Well, because this bill is talking about a business versus a practice. That is what the Committee is trying to grapple with, and those are the types of questions we need to ask so we may understand. When I walk into a dentist or doctor's office, it is a building, an office and all encompassing to me. This opens up a new area of business and practice. That is the reason I asked the question.

MR. DRIZIN:

We have not looked at this as distinguishing between business and dental aspects. We have looked at what the statute currently provides. The issue is that it is illegal for a non licensee to have control or ownership. Clearly, the factors the Dental Board has looked at to determine what constitutes control are those issues, specifically laid out in S.B. 295, that will no longer be considered illegal. I am not sure that helps make the distinction.

CHAIR CARLTON:

It makes it very clear. We could continue to amend this bill, and if it had any similarity to the context to which it is now, you would still be opposed. That is the impression I get, and I believe that answers my questions.

DR. PAPPAS:

I make decisions on a daily basis with respect to patient care that are not always good "business practices." I refund money when needed and redo restorations when needed without respect to the bottom line. If somebody were influencing whether I should do that because it was not a good business practice, that would not be in the best interest of patient care. That is why there is such difficulty in distinguishing between the business and the practice. When you become a health-care professional, you have to divorce yourself from looking at it as a business. There is no question, my family relies on me to "bring home the bacon" in order for us to survive, but I cannot let those business decisions influence my health-care practice. I have to do things that are in the best interest of my patients, whether it is good business or not. Allowing someone to control those aspects of my practice is a very dangerous thing. That is why we are opposed to it. We are not opposed to these practice management groups helping out, but when they exert excessive control over those aspects of the health professional's practice, there are real problems. We have seen it and will show you the stipulations. We will provide those to you.

CHAIR CARLTON:

I would rather not see them. It is not appropriate for me to see those things.

DR. PAPPAS:

They are public record.

CHAIR CARLTON:

I understand, but I am trying to make a policy decision on this. I do not feel that it is appropriate to share that type of information right now. If the other Committee members would like to see it, I would never stop them from getting any information they need to make a decision; but for myself, I would rather work from this context.

DR. PAPPAS:

Even if it would help to elucidate what types of practices these organizations have engaged in?

CHAIR CARLTON:

I am not here to debate you. I am here to ask questions, get answers and find information. If the information is not good for me, that is my decision. But you are more than welcome to share it with the other members of the Committee.

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DR. PAPPAS:
Thank you, Madam Chair.

MS. KELLY:
In sharing information, did you care to hear from the patient who sent us the letter regarding her experience in our managed practice, or would you like me to just submit that and have it filed?

CHAIR CARLTON:
Were you going to read it into the record?

MS. KELLY:
I was going to unless you would rather I just submit it?

CHAIR CARLTON:
No, that is fine. Please read it into the record.

MS. KELLY:
We were sent a patient-complaint letter regarding a practice that had a management arrangement. I will read the complaint and submit the written testimony from Debra L. Blair ([Exhibit AA](#)). The Dental Board did actually assist Ms. Blair, and she was eventually helped by another local dentist who did her follow-up and corrective treatment free of charge.

CHAIR CARLTON:
Can you tell me the date this occurred?

MS. KELLY:
This occurred in 2005. We finalized the injunctive relief in 2006, and the Federal Bureau of Investigation was investigating the corporation.

CHAIR CARLTON:
Did this happen under the current Dental Practice Act?

MS. KELLY:
Yes, it did.

I also have two e-mails from dentists opposed to this bill and would like them added into the record ([Exhibit BB](#)) and ([Exhibit CC](#)).

CHAIR CARLTON:

Are there any questions from the Committee? Are there any other folks in opposition?

GEORGE LEONAKIS, D.D.S. (General Dentistry):

I signed in against the bill, but I will try to be as neutral as possible and share some of my dental-practice experiences. First when I read this bill just as a layman, it strikes me as easily removing the dentist from the practice. If the locations are owned and the company decides not to renew the agreement with the dentist, it is very difficult for me to understand how that dentist is going to continue to do business in that location. The location is very important in dentistry. Many people will return to that location after a practice is sold because of familiarity with the staff, environment and proximity. The locations give the dentist some controls on the practice. This bill does not allow for other exclusions to be made. If you are going to leave in the exclusion that the dentist cannot practice in a certain radius, it would not be beneficial to the practice.

What I have noticed in my experience working both for a dental management company and on an HMO in a solo practice and an HMO in a group practice, is the staff turnover rate, unfortunately, is higher. It is higher in the dental management organization because of double monitoring. Not only is the production of the dentist monitored by the management company, but it monitors employees such as the chair-side dental assistant. The concern whether or not she is punching the card on time or taking a lot of days off, which might be okay in private practice, becomes more important than her asset and ability to provide patient care. Dental assistants are an asset to the practice because of their familiarity to the patient and their ability to provide calmness.

I just read an article in a state journal about the hindrance of referrals to specialists under the production-quota environment where fees or payments are shared. These new inexperienced dentists who are going to refer then watch that referral be U-turned in the same practice to another general dentist. That affects the rapport between dentists and the patient. It goes without saying that implicit gagging follows. The implicit gagging is the inability of a dentist to go against the production for the sake of keeping his place in that facility. When anyone wants to try to keep a job, it puts duress on that relationship; I mean having the job is one thing and having duress production to keep the job gags the relationship. A dentist may think that referring is better but will refrain from doing it because it will affect his production and risk his job.

Some of the unseen things related to these types of managed practices are the bigger assets with ownership. This motivates them to keep the patients to protect their assets, separating them from the dentist. Managed practices are motivated to prevent the arrangement where the patient follows the dentist. Patients are the business string asset for the business management company.

In my practice, I have a certified public accountant, I have an attorney and I close the door to make a bank loan. I am pretty much in the same position as a dentist who works in a managed practice; however, I face the bottom line directly. Whereas, a dentist in a management company may be able to be carried for a while, but if they are not productive will eventually lose. The loan, or being productive for a company that has to make the loan anyway, is going to affect It is sort of a null issue that comes out to the same point. That loan has to be paid unless of course it is a shareholder issue.

We have a dental school here now to supply dentists, so the ratio of patient to dentist is going to improve. The issue of overexpansion by corporate entities or dental management companies will happen. I know of a venture capital group that owns a practice in another state, and they can expand super fast, create a bubble and have it collapse. Venture capital groups can come in and create their own little bubble.

The idea that management companies will not increase State costs is where I get to my experience with another state. The Dental Board is going to have to hire additional manpower for the complaints that are going to increase with these types of dental management groups. These groups are efficient at billing the State for the dental welfare program. The State will become distrustful because of an increase in bills and will eventually have to set up monitoring systems. The State monitoring system will request patient records, patient X-rays and reasons for treatment. Someone will have to be paid to monitor this system. It does affect the State's costs in those two aspects.

Children are usually the victims when a dentist does not refer them to a specialist. When the production goals are established, you have to work fast and children end up getting overanesthetized or oversedated. This can sometimes lead to death. Then we have to create new laws to further control the sedation aspect. The evolution starts with fines and then goes into monitoring costs for increased State manpower and restrictions on sedations.

Pain-and-suffering limits in Nevada can be removed at any time. If Nevada removes its pain-and-suffering limits, it will create job problems that can get pretty expensive. They settle pretty high if the pain-and-suffering limits are removed by a bill. You may see a "choke-up" like you did with the obstetricians and gynecologists when their premiums went up.

Another thing about public policy related to payment splitting is its effects on the patient's rapport with their dentist. If you start splitting fees, you never discuss it with the patient because they become suspicious when they know that their payment is being split. A public policy should not be legislated. It is okay to share payment, but it should just be contractual like it is.

CHAIR CARLTON:

Dr. Leonakis, please realize that what we are trying to do is to look at the scheme to make sure, if we decide to pass it, that all the protections are in place.

DR. LEONAKIS:

I understand.

CHAIR CARLTON:

Look at it as a business arrangement; but no business arrangement is worth allowing either the patient or the professional to be taken advantage of. That is the key to what we need to look at.

DR. LEONAKIS:

Yes, I think it is in juxtaposition with this article of location ownership, and it sets it into opposing forces.

CHAIR CARLTON:

I understand. With regard to the manpower for the Dental Board, the Dental Board is self-sufficient, and the fees come from the licensees who would be working there. It is all encapsulated within the same universe. That actually does not have an impact on the State. As far as some of the monitoring, maybe on the Medicaid side or some of the other things, there might be an impact and we have divisions to monitor that. I am not sure how it would impact the State, but it is one of the things we can look into.

JOE LUEVANOS (Absolute Dental):

I am not a dentist, but I have over 15 years of experience in the dental field. I am a former employee of three different corporate-owned offices in California. I am embarrassed to say that I have worked for places like that where the main goal is production, and patients are like cattle. Doctors are paid based on what they produce at about 20 or 25 cents to the dollar. What that means is the more patients they can see and the more they diagnose, the more money is attained. I feel that integrity does not exist in corporate-owned offices like this. Some patient complaints are about the number of patients being seen, and that they are always waiting.

When people go to a dental office, they should not be taken advantage of. I have witnessed patients categorized as and referred to "cash," "insurance" or "Medi-Cal" (California) or "Medicaid" (Nevada). One of the corporations I worked for took advantage of the Medi-Cal system by overdiagnosing. As long as I have been in the field, I know that dentistry is supposed to be on quadrant dentistry. It is based on recall. When a doctor has a patient relationship, they want that patient to keep coming back because once they do, so do their families and friends. With Medi-Cal, the corporation abused it with full-mouth dentistry and overdiagnosing. Now, if a patient is on California Medi-Cal, which was an excellent state-funded insurance, preauthorization is necessary on everything. They want pictures and a narrative describing why the procedure is necessary for this type of work.

After living in California, I feel that the people of Nevada do not need to experience this type of work. If corporate dentistry is abused in the California state-funded health care, what makes you think that they will not do it to Nevadans?

CHAIR CARLTON:

Are you currently a dentist?

MR. LUEVANOS:

No, in California I was a Registered Dental Assistant with Expanded Functions (RDAES) and in Nevada I am a dental assistant.

CHAIR CARLTON:

What is a RDAES?

MR. LUEVANOS:

It stands for Registered Dental Assistant with Expanded Functions. It is similar to a California license that is like a registered nurse or dental assistant.

CHAIR CARLTON:

Do you happen to know what protections were in the California law as far as the companies that you worked with?

MR. LUEVANOS:

The companies basically protect themselves because they hold the doctor completely liable. They are getting the money from the doctors. What you heard from the opposition is true. There is a corporate manager, and then there is a dentist. That manager runs the dentist. It is all about the numbers being pushed. Most of these offices have more than five operatories. If you go to a general private-ownership dentist, he or she will probably have about four operatories that are more about patient care. With the corporate operations, it is all about the numbers. Many young dentists make friends with corporate operators and associate with them. They are pressured to push, and it is all about the numbers. You have heard "I have a loan." I have seen a lot of dentists' integrity go out the door.

CHAIR CARLTON:

I guess it would be wise to take a look at the California law to see what is built into it to make sure, as we work through this, that we do not let some of the same pitfalls happen.

MR. LUEVANOS:

Unfortunately, with one dental group I worked for, a child was oversedated and died. The doctor tried to falsify the records. One of the assistants declared no and testified to the amount of the sedation the patient was given. The dentist changed his name and is still practicing the same way.

SENATOR COPENING:

Was that doctor who oversedated the child told by the management company to oversedate that child?

MR. LUEVANOS:

That I do not know. The doctors I know feel pressured. It is a lot of work thinking about the amount of work and equating it to the amount of income it

could generate. The work cannot be referred out because of the amount of income it would generate. What the corporate office tries to do is keep everything in-house. In our field, we have endodontists, orthodontists and oral surgeons who have gone to school for many years to specialize in these fields. The corporate operation tries to prevent those referrals to these specialists.

SENATOR COPENING:

Why do you believe these dentists stayed with that type of practice and just did not leave and go out on their own?

MR. LUEVANOS:

They need the money. They do not stay long. One doctor might start a root canal; basically the nerve is removed to take the patient out of pain. The patient will come back and be treated by another dentist. They may ask what happened to the dentist who started their treatment and are told that he is no longer here, or he is not here that many days. The doctors who work for these corporations do not have a one-on-one relationship with the patient. One minute the doctor is there, and then he/she will move on.

DEBRA LEACH (Absolute Dental):

I am here speaking as a patient and as a former employee of one of these types of corporate-owned and managed facilities. Starting out as a patient, I went to the doctor's office concerned with the space between my front teeth to fix my smile. After waiting two hours in the waiting room, I was brought back for two hours of X-rays, and the doctor said he would fix my teeth stating what he would do. I was young and did not know any better; six front teeth were pulled, and a partial was put in. The doctor got his production; I had a fixed smile but not my teeth. That is the type of work they do. Patient care is not there. It is all about production.

I ended up going to school and working in one of these facilities. The office I worked in had 2 X-ray rooms, 13 operatories and 4 doctors. It was like processing a herd of cattle. It was a process of bringing patients in, fill out papers, get X-rays, fill up the rooms and send them back out to the waiting rooms. When they were finished, it was a turnover. Patients did not have names or faces; they were labeled by insurance companies. If they had DentaCal, they were viewed cash patients or insurance patients. The doctors have a minimum production for the day. If they did not meet the production minimum, they would receive a phone call from the corporate office the next day asking why

we did not produce or maximize each patient. They would get into trouble, and the next day we would be booking more patients. I had people come to me with their complaints from this company. I was embarrassed to say I worked for them and I quit. We do not need that here in Nevada.

JOEL GLOVER (Nevada Dental Association):

You have heard a lot of testimony, and this has been quite long. You know the position of the Nevada Dental Association (NDA). Our major ethical goal is that patients are treated by dentists; they are treated first and by what they need. We have a number of dentists as our proponent of the bill mentioned who are practicing in their practices in Nevada. Most of those dentists are members in good standing of the American Dental Association as well as the NDA. We are not here to take issue with their practice and the way they work. What we take issue with is that this bill does not fulfill what is needed and that is to ensure that the practice of dentistry is maintained with a relationship between the patient and the dentist—not the patient and the management company or a patient and an owner. The owner by law now has to be a licensed dentist in the State. There is no fee splitting allowed at this time, and we want to prevent that. We want to maintain the integrity of an ethical professional relationship between a Nevada dentist and the citizens of the State who are the patients of those dentists.

CHAIR CARLTON:

For those of you who are here on S.B. 320, the dental hygienist bill, I apologize, but we will not be able to get to this bill today.

[SENATE BILL 320](#): Revises provisions relating to dental hygiene. (BDR 54-367)

CHAIR CARLTON:

We will continue with S.B. 295.

DOUG GUZMAN (Absolute Dental):

I too, like the gentleman before me, have been a dental assistant for more than 15 years. I felt compelled to testify in regard to the type of treatment that was presented to me when I moved from Nevada about seven months ago. I thought I was going into a company that would help me generate more money for my family. With this whole institution of running what the numbers represent and what the company is going to produce makes the employees do things that

I felt were not right. What they wanted me to do, by selling treatment, was not something I was used to in working in the dental field for 15 years.

Working for a company that pushed numbers and indicated that in order to keep my job an amount of daily sales was necessary, left me restless and unable to sleep at night. I would be back at work the next day knowing the company expected me to do things I felt were unnecessary; that was to sell treatments that were not really needed. It was common to get the patient approved by credit card for these treatments, those credit cards would get cashed out, and all of a sudden you have made your quota for the month and your job is safe.

I worked for this company in southern California for six months and that was enough to compel me to come back to Nevada where I felt I was able to sleep at night. When the dentist is the one who tells me to present something to a patient, it allows me the satisfaction of knowing that what I am giving the patient is the best care available; not what is best for company to make more money to meet quotas. I felt that coming back to Nevada I would be doing what the doctors are recommending to make the patient happy. I did not want to go home knowing that a patient put \$10,000 to \$20,000 on their credit card just so I can keep my job. I was fired from my job because I did not meet the quotas they wanted me to meet. At the same time, I felt I could not sell something that was not necessary; I felt more compelled to let the patient know that it was their decision, not the management's decision to push numbers to make them get the numbers they wanted.

Coming back home, six days now, I got my old job back. I feel much better now knowing when I give a patient a presentation that it is honest; it is not something I need to sell in order to keep my job.

STEPHEN SILL:

I was a disciplinary screening officer for the Dental Board for approximately seven and one-half years before I was appointed as a member on the Dental Board. My concern is that some of the most difficult cases I investigated for the Dental Board were cases with a complaint against an employee dentist. The problem was the employee dentist would then blame the employer for his situation. It is very difficult for the person going into these offices to investigate these complaints to find out who is ultimately responsible. My feeling is that if this corporate-ownership bill is passed, and these corporations are given more

power and more control, this issue will be even more clouded and more difficult to assign blame and responsibility.

Currently, many of the corporations or employers hide behind the fact that the dentist is an independent contractor and, therefore, is responsible for all his actions. In reality, that independent contractor is just an employee who can be fired for not producing, not accepting the treatment plans or not producing enough or selling enough dentistry. This bill does not have the provisions that would provide for the safety of the public. Many of the provisions that you cited previously in testimony were basically unenforceable for an investigator to go into an office to see who is responsible for making sure these provisions are enforced.

CHAIR CARLTON:

If there is no further testimony, or questions from the Committee, we will close the hearing on S.B. 295.

Senator Parks, did you want to entertain a motion today, or do you want to wait until another day?

SENATOR PARKS:

I know we had testimony earlier today on S.B. 207, and I testified on the bill in the Assembly Committee on Commerce and Labor which deals with the same issue. Will the Committee entertain a motion to do pass S.B. 207?

CHAIR CARLTON:

I would have no problem with that. We only have four members present. If we are good with that, we could go forward, or would you be more comfortable doing it when there are more members present?

SENATOR PARKS:

I would be more comfortable when more members are present. We should give them that opportunity.

CHAIR CARLTON:

We will put it at the beginning of next week.

For the record, we will submit written testimony received in support of S.B. 207 from Gary Peck of the ACLU ([Exhibit DD](#)). We also submit written

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testimony received in opposition of S.B. 283 from President June Ingram and Juanita Clark of the Charleston Neighborhood Preservation Board ([Exhibit EE](#)).

There being no further discussion of the Senate Committee on Commerce and Labor, the meeting is adjourned at 5:52 p.m.

RESPECTFULLY SUBMITTED:

Vicki Folster,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____