

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE**

**Seventy-Sixth Session
March 25, 2011**

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 7:43 a.m. on Friday, March 25, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Rana Goodman, Private Citizen, Henderson, Nevada
Karen Dennison, representing American Resort Development Association
Garrett Gordon, representing Southern Highlands Community Association
Marilyn Brainard, Private Citizen, Sparks, Nevada
Robert Frank, Private Citizen, Henderson, Nevada
Randolph Watkins, Private Citizen, Henderson, Nevada
Gary Seitz, Private Citizen, Las Vegas, Nevada
Favil West, Private Citizen, Sun City, Nevada
Gary Miliken, representing Community Association Institute Legislative
Action Committee

Chairman Ohrenschall:

[Roll was called.] We originally were supposed to hear two bills, but Assemblywoman Neal asked that we not hear Assembly Bill 236 today. We will only be hearing Assembly Bill 246. Our Subcommittee is sort of Las Vegas based, but we take into consideration the interests of the whole state, as we always do.

We will open the hearing on Assembly Bill 246.

Assembly Bill 246: Requires the association of a common-interest community to make available to candidates for membership on the executive board its list of units' owners under certain circumstances. (BDR 10-1067)

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22:

I am here to present A.B. 246. As we all know, homeowners' associations (HOA) are everywhere throughout the state. There are dozens of them, and they represent thousands of homes. Sometimes the boards of these HOAs supervise millions of dollars.

The concept of this bill is very simple, but I find the application of it is going to be somewhat complicated. The original intent of the bill is to provide a level playing field for those running for the positions on the association boards. It has come to my attention that in some cases, those challenging the incumbents on the board are not given the same opportunity to distribute their literature. The intent of the bill is to provide an equal opportunity to everyone so they can reach the homeowners in that particular association when they run for a board position. The original bill required the HOA, upon request of a candidate, to provide the names and addresses of all members of the association. However, it was brought to my attention that certain people, like

judges, police officers, et cetera do not want the general public to know their names and addresses. It is not my intent, or the intent of those who asked me to bring this forward, to reveal private information. I have had several calls with suggestions of how to rectify that situation. May I present a couple suggestions of how we could solve this problem?

Chairman Ohrenschall:

Yes, please proceed.

Assemblyman Stewart:

The first suggestion would be, at the request of the candidate, to provide just the addresses and not the names of the individuals. The candidate could send out the information on their own to "occupant." Another suggestion would be to have the management company, also at the request of the candidate, send out the material.

We have an amendment ([Exhibit C](#)) that was just given to me a few minutes ago that would cover the one case.

Chairman Ohrenschall:

Is that the amendment proposed by Garrett Gordon?

Assemblyman Stewart:

Yes.

Chairman Ohrenschall:

I believe that is on the Nevada Electronic Legislative Information System (NELIS).

Assemblyman Stewart:

I would be agreeable to that. Maybe we could change the amendment to read "at the discretion of the management company, it could provide the list without the names."

Chairman Ohrenschall:

You are proposing that it would be up to the management company?

Assemblyman Stewart:

Yes. We could give them the option of the two choices. We realize there are some very small HOAs, and there are some that consist of thousands of individuals. I would be open to leaving it to the discretion of the management company.

Chairman Ohrenschall:

That would be the entire list and not just individuals who wish to keep their name private.

Assemblyman Stewart:

It would be the entire list with just the addresses but without the names.

Chairman Ohrenschall:

If you are running for the board of your HOA, and the owner of one of the homes lives out-of-state, would you still be able to get your campaign material to the homeowner if you only had the address and no name? Would it be forwarded to him or her? How would that work?

Assemblyman Stewart:

We would have to leave it up to the discretion of the management company. If owners are living outside the state, it would still be the same postage.

Chairman Ohrenschall:

Are there any questions? [There were none.]

Do you have anyone else wishing to speak in favor of the bill?

Assemblyman Stewart:

I think there might be some people in Las Vegas, and there are some here in Carson who would like to speak.

Chairman Ohrenschall:

Let me go to Las Vegas first. Actually, all of them are in opposition to the bill; so they will speak later. Is there anyone here in Carson in support of the bill?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I am a homeowner. I support the bill if it affords transparency and an opportunity for nonincumbents to have a chance at serving their communities. There should be no reason for anybody to be against it unless he or she wants the status quo to remain.

Chairman Ohrenschall:

If I were to run for the board of an HOA right now, they would not provide me with the information needed to do mailings. Would I have to go to the property assessor?

Jonathan Friedrich:

To my knowledge, that is correct. I cannot speak for all the associations as there are just under 3,000 of them in the State of Nevada. According to Mr. Randy Watkins, there are 950,000 people living in HOAs in Nevada.

Chairman Ohrenschall:

You believe the incumbent members currently have access to this information while the challengers do not?

Jonathan Friedrich:

I cannot speak for them. But, from my limited experience, the people who are in power are a tight-knit group and vote for each other. That is another issue. Senate Bill 174 deals with eliminating cumulative voting, which could work in favor of minority candidates.

Chairman Ohrenschall:

That bill has not come to us yet, but we will consider it if it does make it here.

Jonathan Friedrich:

The Senate Judiciary Committee has not even made a motion of do pass on it yet.

Chairman Ohrenschall:

Are there any questions? [There were none.]

Rana Goodman, Private Citizen, Henderson, Nevada:

I am in support of the bill. I do have one suggestion though, and it came from the last Common-Interest Community Commission (CICC) meeting that I attended. It was made by one of the commissioners. The suggestion was made that in our association, which has over 7,000 homes, the homeowners did not want their names and addresses given out. He made the suggestion that in spite of the fact that you can go to the assessor's office, you can also go to a mailing house and get all of these names and addresses. Many times the addresses are not up-to-date, not valid, and they come back. What if our management company did the actual mailing, and the candidate paid the mailing cost? Would that be acceptable? The candidate would not have access to the names and addresses, but he or she would still get the mailing done while paying the mailing cost. The candidate who was at the meeting did not find that objectionable. If that is the only fee he or she is paying, I think that is perfectly fair.

Chairman Ohrenschall:

Are there any questions? [There were none.]

Karen D. Dennison, representing American Resort Development Association:

The American Resort Development Association (ARDA) is the national trade association for the timeshare industry. We have Senate Bill 200, which was heard in Senate Judiciary, and I have proposed an amendment ([Exhibit D](#)), which proposes to blend these two bills. Our interest in S.B. 200 is to protect the privacy of timeshare owners. Timeshare owner lists are getting out to unscrupulous marketers and resale companies, and the residents are being badgered with these marketers who are trying to get owners to resell their timeshares. They take a fee and are never seen again. We are trying to prevent this abuse. *Nevada Revised Statutes* (NRS) Chapter 116 does not cover timeshare associations. It only covers timeshare associations where there is a master association umbrella, which covers both a timeshare project and a whole-owned condominium or planned community project. We are concerned about that master association, and we are concerned about listing the individual timeshare owners' names on the master association list. I think S.B. 200 deals with this in a balanced way. It recognizes the need for owners to communicate with one another, such as with campaign materials being distributed.

What S.B. 200 does is provide that either the board or the manager is the gatekeeper of the list. The list is not given out to the person who wants it distributed, but rather, the person who wants materials distributed goes to either the manager or board, pays the cost of the mailing, and either the board or manager disseminates the material. I heard Assemblyman Stewart say this is a possible amendment he is considering. I think it is a fair and balanced approach. Senate Bill 200 was taken from a Florida statute, which has taken all of these interests into consideration.

My amendment is on the bottom of page 4. It may not be artfully drafted, and I will hopefully be working with the Legislative Counsel Bureau (LCB) to come up with some better language. The language I used is out of section 2 of S.B. 200, which is also attached to the back of my amendment so you can see the parallel language we are trying to accomplish. With respect to section 2, if the timeshare project is part of a master umbrella association, that master association list will only contain the names and addresses of the elected delegates from the timeshare project to the master association. If there are no elected delegates, then it would be the timeshare association itself, and its name and address would appear on the master list. The timeshare association would see to the dissemination of the information to the timeshare owners.

Assemblyman Carrillo:

If you send something in the mail, the recipient has the choice of whether or not to throw it away. Unless he or she has contact information that someone could

use to call repeatedly and harass an owner rather than just send something in the mail, how is that an issue to a timeshare owner?

Karen Dennison:

I have been told by the members of ARDA that they are able to contact the owners through the telephone numbers provided on the owner lists. Current law governs timeshare associations, which is different than HOAs that are governing condos and planned communities. *Nevada Revised Statutes* Chapter 82, which is the non-profit statute, applies and states that any person who has been a member for six months is entitled access to all the books and records of the association, and that would include phone numbers and mailing addresses.

Assemblyman McArthur:

The wording may have to be fixed a little bit, but I notice at the bottom of your amendment it says, "Reasonable procedures for timely communicating" I find this very troubling because sometimes the information never gets out. The whole process here is to make sure the other people running for office have the same information the incumbents do. That would probably have to be cleaned up a little bit in order to help this part of the bill. Is this something you are stuck with, or is it something you can fix?

Karen Dennison:

We can certainly work on the language. In fact, I had thought I might just put in the same procedure we have in S.B. 200 which is pretty detailed as to how the mailing or communication would take place. I am certainly willing to work on any language that will ensure these campaign materials can be provided in a fair and timely manner to the owners.

Chairman Ohrenschall:

Currently, how does a candidate from one of these communities get the owners' information in terms of elections? Does a candidate go to the property assessor?

Karen Dennison:

I believe the assessor's records would have the timeshare association's name on them through the maintenance fees the timeshare owners pay. I have not checked any particular records. It would simply be the association's name, which would be consistent with our bill and having that same information on the master association's records.

Garrett Gordon, representing Southern Highlands Community Association:

Southern Highlands Community Association is a Las Vegas master-planned community with approximately 7,000 homes. We had a couple issues with the bill. I appreciate the sponsor meeting with me yesterday and this morning about my amendment ([Exhibit C](#)).

To answer a couple questions posed earlier, when Southern Highlands gets a request for this information, it does one of two things. One is referring the person to the assessor's webpage because, as Assemblyman Stewart mentioned, state law prohibits listing and distributing addresses for policemen, firemen, and judges. If you go to your assessor's webpage, you will not find any of those addresses. In the list Southern Highlands has, there is no distinction made as to whether a person is a policeman, fireman, or judge. Also, they recommend you walk the neighborhood and collect the addresses. It may be cumbersome, but that is the second request.

I believe there is a simple solution to what needs to be fixed here. In my amendment, I made four changes to the original bill. Instead of requiring a list of unit owners and addresses, just list the addresses. Second, confirm that the person is a candidate and has submitted a nomination form. Third, I placed a cost per page. Throughout all of these NRS Chapter 116 hearings, and as currently listed in state law, many times there is a cost per page since there is a cost of doing business. For instance, if you go to the county recorder to get information, there is a cost per copied page.

Finally, to answer the Chairman's question, incumbents should not be getting this information right now. The first sentence of section 9 of this bill states, "Notwithstanding the provisions of NRS 116.31175" That prohibits the distribution of this personal information. That is another reason why Southern Highlands will send these people to the assessor's website. It does not want to be in violation of that section. I hope the amendment I proposed does meet the intent of the sponsor and protect not only our association, but others as well.

In the amendment, and in the original bill, it states, "The organization or its agent must make available" From a legal perspective, I would argue that "or its agent" would include the management company. If you make a request to the association, the association would provide that information or kick it to the management company to provide that information. I think we have that covered.

Chairman Ohrenschall:

Assemblyman Stewart mentioned potentially allowing a challenger candidate have the management company do the mailings. Is that something you would be comfortable with?

Garrett Gordon:

Yes. I think nine times out of ten the association would pass that request along to the management company anyway to send out that information. That would be no problem for me.

Chairman Ohrenschall:

In your amendment, you state, "The association or its agent must make available to the candidate at the cost of 25 cents per page, to allow the candidate to communicate campaign material directly to units' owners" Is there any provision for the data of the addresses to be given electronically? Will this allow for that if the challenger candidate wanted the data file in order to send out a mass email or mass mailing?

Garrett Gordon:

I think that would be feasible, but I should follow up with Southern Highlands. I asked the Association what kind of material it would provide if there was this kind of request. This morning the Association sent me a large stack, but it is an Excel spreadsheet. I imagine if it was feasible to put that data on a CD, there would probably be a minimal cost for the CD and the time to put that together. We could try to build that in as well.

Chairman Ohrenschall:

As written, the amendment seems to only contemplate paper records, which might be cumbersome for a candidate. So to be clear, this is only physical addresses? You would not be able to get email addresses if you wanted to send out an email to all the members of Southern Highlands?

Garrett Gordon:

I do not believe, at least for Southern Highlands, it has an email address for each of the unit owners. I can double check, but I venture to guess we are crossing more into the privacy line. Mailings made to the unit owners are usually done by mail and not by email.

Assemblyman Carrillo:

You mentioned the incumbents should not have access to a list, or they should not have access to the actual homeowners. Being in an HOA myself, the board members have access to everyone's records, including their financial records as

to what they owe on assessments. When you stated they should not have access to that, could you please elaborate?

Garrett Gordon:

I do not have the NRS in front of me, but from my understanding, there is some gray area there. Technically, you should not be distributing unit owners' information without their consent. There is an argument that as a board member, if you are utilizing that information for a personal purpose of running for office, that could venture into a violation.

Chairman Ohrenschall:

Is there anyone else wishing to testify in support of the bill? [There was no one.] Is there anyone wishing to testify in opposition?

Marilyn Brainard, Private Citizen, Sparks, Nevada:

I serve as one of the homeowner representatives on the Nevada Commission for Common-Interest Communities and Condominium Hotels. I will be speaking for myself today because our commission has not had the opportunity to review the bill. We have conference calls on Friday mornings, but we were not able to conduct one last week, so we are behind in getting the full consensus of our fellow commissioners. These will be my personal comments ([Exhibit E](#)).

I certainly support Assemblyman Stewart's willingness to amend his bill. I think it is very important, and the privacy issue has been well vetted this morning. There was a question raised about how nonresident owners would receive materials.

Chairman Ohrenschall:

I am sorry to interrupt, but you mentioned we have a copy of your comments, or do you have an amendment?

Marilyn Brainard:

I am not proposing an amendment. I was not able to because we did not, as a commission, discuss this. I have shared it with the commissioners, but we have not had a confirmation of it yet.

Chairman Ohrenschall:

We have a copy of your comments?

Marilyn Brainard:

Yes.

I want to clarify that nonresident owners always provide a mailing address to the management company. They will receive anything that is sent out.

Also, email addresses are provided voluntarily. You asked about email access, and it is a problem for owners to voluntarily give their email address to the management company. It is a shame because it is a preferred way to communicate a lot of information.

Chairman Ohrenschall:

For those who have provided their email addresses, is that given to either the incumbents or challengers who run for the board?

Marilyn Brainard:

No, it is provided to the management company. The issue with the bill is how a candidate is supposed to get his or her campaign material out. Is that correct?

Chairman Ohrenschall:

Correct.

Marilyn Brainard:

The management company has the list of email addresses, and it is able to communicate information that way if the owner has given his permission.

As far as the bill is concerned, I understand the reasoning behind it. However, many boards have difficulty even getting enough candidates to fill the director positions. That is something we need to keep in mind. I did have a long conversation with one of the employees at the Washoe County Assessor's Office. All you need is a list of the street names, and you can get the information electronically and at no charge. I am sorry, but I did not get the chance to contact the Clark County Assessor's Office.

On the form the candidate fills out, there is the opportunity to attach a page to that candidate statement, and it can be of campaign-type material. That is something that has no cost and is mailed with the secret ballot to all of the homeowners.

[Continued to read from prepared comments.]

I have observed that many candidates do want to go door-to-door to meet the owners and present their campaign materials or their positions on things important to that association. They have 90 days to do that before the ballots are mailed out to the unit owners.

[Continued to read from prepared comments.]

Identity theft is an issue. If the candidate was handed the list of names and addresses, that opens up the possibility for burglary, domestic violence abuse, and a personal safety issue.

[Continued to read from prepared comments.]

I think the idea of getting the list on a CD is very acceptable. That would be the easiest way to go. You can take the CD home and do the mailings from there because you would have the addresses. That cost should be assumed by the candidate. The cost can be considerable if you ask the management company to mail it out, which is another way to go. Other unit owners should not have to subsidize the mailing of that material. It can be very costly if you live in one of the larger associations.

Chairman Ohrenschall:

If I am a challenger candidate for the board of directors of my HOA, I can ask the management company to mail out my flyers?

Marilyn Brainard:

I mentioned that in my association, the one-page prepared statement is attached to the nomination form, and that is mailed out. The candidates are not given the addresses at this time.

Chairman Ohrenschall:

That one-page nomination form is mailed out by the management company to all the owners?

Marilyn Brainard:

Yes, along with the secret ballot. The nomination forms go to the unit owners along with the ballot. There is a two-envelope process to maintain the integrity of the vote, and those go out with the ballot as well. That is done at no cost, and I think most associations would do that at no cost. I cannot guarantee it.

Chairman Ohrenschall:

It is just for your association in Sparks.

Marilyn Brainard:

Right.

Chairman Ohrenschall:

You mentioned they will allow the candidate to staple a flyer, or did I misunderstand that?

Marilyn Brainard:

I did not say flyer. It reads that additional comments may be made. You are welcome to make additional comments on the separate piece of paper that will be sent. Sometimes it is printed on the back of the nomination form, so it is less to mail.

I believe NRS 116.31175 was noted by Mr. Gordon, and I think it is important.

[Continued to read from prepared comments.]

I think that goes beyond just judicial appointees, including judges or law enforcement. I think every unit owner should have that right.

[Continued to read from prepared comments.]

I believe you have come up with some very good delivery options and how the candidates would have the opportunity to have a list and still maintain privacy. Hopefully, this will work out that way.

Assemblyman Carrillo:

I am on an HOA board, and we have a nomination form that is filled out and then a paragraph is written by the candidate as to why he or she should be elected to the board. It is up to the homeowners to decide and many times, out of the 599 homes in my community, on average we get around 100 ballots back. If the management company has the master list of every homeowner in that community, it would be just as simple to have the candidate run that information. It would be a financial thing. If the candidate information is attached along with the nomination ballot, would that not simplify this entire process? The candidates can still go door-to-door and meet their neighbors. This is more of a statement rather than a question. It seems this could be resolved fairly simply if the HOA board decided to put the candidate information with the nomination ballot, have the management company send it out, and the candidate accepts the burden of the cost of the mailer. It seems like we are splitting hairs here because there is an issue with privacy rights, but it is the public information on the assessor's site. It seems like we are going around in circles and no one wants to make a decision as to who is right and who is wrong.

Marilyn Brainard:

I appreciate your comments. I have no problem with the management company sending out the candidate's information, if in fact the candidate is paying the expenses. My concern was the expensive cost for mailing. If the bill can be amended to say, "At the candidate's expense," then I would have absolutely no problem with that at all. I agree with your suggestion.

Chairman Ohrenschall:

Are there any other questions? [There were none.]

Assemblyman Stewart:

I have a work session in the Assembly Committee on Government Affairs I am holding up. If you would like to meet with me on Monday at 2 p.m., we can work out these amendments.

Chairman Ohrenschall:

Thank you for staying here so long this morning. I have one more person in support of this bill down in Las Vegas.

Robert Frank, Private Citizen, Henderson, Nevada:

I strongly support the concept of what this bill is trying to do. It is trying to make it more open and provide the opportunity for candidates to get their message to the residents. If you have a small community of say 500 residents, I agree with Ms. Brainard that it is not hard to do a walking campaign, but when you live in a large community like mine in Henderson with 7,000 homes, it is almost impossible to hit everybody without going through the mail. It is important to have the freedom of being able to communicate through the mail and have the challengers be equal with the incumbents and those who have been on the board before. I feel like this is a very good move to open things up.

I would like to correct one thing that I may have misunderstood from Ms. Brainard. She mentioned the candidate information flyers would go out along with the ballot, and I believe the statute says it should go out 30 days before the ballot. An option to go with the ballot can also be done, but the intent was to get the information out before the ballot is sent out. The most important thing, especially for large associations, is to try to get more of the community involved. People work and do not have the opportunity to get very involved in the governance of the community. Their one chance to make a difference is when board members are elected. I think we owe the candidates the chance to let us know as much as they can about themselves.

Chairman Ohrenschall:

I am not sure whether you have worked on any campaigns or been a candidate yourself, but we have an amendment.

Robert Frank:

I am actually a candidate for the board right now, so I am working the campaign. I will find it difficult to communicate with the people unless this bill is passed.

Chairman Ohrenschall:

We have a proposed amendment that might just release addresses and no names. Would that still work for your purposes?

Robert Frank:

Yes, it would. I think any way to make it possible for the management company or board to allow the candidates to communicate with the members is an effective solution. I realize the bill originally anticipated releasing the membership list to the candidates. I do not have a problem with that, but I think it might be better for those concerned about privacy that the candidates not have the list itself. I would like to see the bill be open and allow the candidates to communicate as often as they wish with the unit owners assuming they will have to pay for that privilege, with the exception of the one-time mailing required by statute.

Chairman Ohrenschall:

One other proposal mentioned earlier was for the candidate to have the management company send out his or her mailings to the owners. Is that something you would be comfortable with?

Robert Frank:

Of course. The most practical way to do this is to allow and encourage the candidates to make materials available through their normal mailings. Many of these large HOAs actually mail on a monthly basis to distribute magazines and newsletters. The ideal situation is to allow the candidates to include their material with the standard mailings so it minimizes the cost but allows them to communicate more than once with the residents.

Chairman Ohrenschall:

We appreciate your input today. You can contact Assemblyman Stewart on Monday.

Robert Frank:

I will do that.

Chairman Ohrenschall:

Are there any questions? [There were none.]

I will turn again to the opposition. Do we have anyone opposed to the bill here in Carson City? [There was no one.] We do have three people signed in, in opposition in Las Vegas.

Randolph Watkins, Private Citizen, Henderson, Nevada:

As far as the access to the members' mailing addresses and so forth, I am opposed to that. I am opposed, generally, to the bill in all of its concepts. I think it can be solved very simply. The current statute states, "The candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community"

Chairman Ohrenschall:

Could you tell us where you are reading from? Could you give us the citation?

Randolph Watkins:

I am reading from current statute on page 6, lines 17-26.

Current statute allows the candidates to request the association to send out the information statement that is returned by the candidates after they have nominated themselves. I think some minor modifications in this paragraph would solve everybody's problems about not giving out mailing addresses and so forth. It goes on to say in line 24, "Must be no longer than a single, typed page." That is the candidate informational statement. On that page, the candidate can make any statements he or she wants in support of his or her candidacy for the board of directors. If I were to make a change, it would not be 30 days before the election but mailed with the election material. The election material must go out a minimum of 15 days prior to the actual return of the ballots. It would all be at the association's expense, and each candidate would be treated exactly the same. Every association member would be paying an equal share for every ballot that went out. We would not have to have all the other amendments to this particular bill.

Chairman Ohrenschall:

If I am a challenger in your HOA, and I am running for the board of directors, is this the only outlet to get my information out to the homeowners other than the candidates meetings that Ms. Brainard discussed or going door-to-door?

Randolph Watkins:

In large associations, they usually do hold a candidates night. Smaller associations usually do not. This would be the same vehicle for everybody, whether in a large or small association. Everybody would be included in the mailing, everybody would be treated the same, and everybody would share the common expenses.

Chairman Ohrenschall:

In large associations, do many candidates supplement this mailing and send out mailers of their own?

Randolph Watkins:

I live in a large association, and I do receive mailings from candidates on their own behalf rather than from the association. They have that option, and they are able to obtain public mailing records and do that at their own expense. My point is that if you do the simple thing and allow candidate information statements to go out with the ballot, then everybody is treated the same, and there is no additional expense to the association. That should eliminate the complainers. If they want to mail their own candidate information statement, let them do their own research and find their own vehicles to do that. Take that burden off of the association.

Chairman Ohrenschall:

If I understand you correctly, instead of it being optional, you would want all candidates to have to give their one-page, typed campaign statement given to the association.

Randolph Watkins:

My thought there is that the candidate informational statement would be mailed with the ballot. If the candidate chose not to mail it, that would be his or her choice. If the candidate chose to mail it, yes, it would go out with the ballot. That would be the only vehicle the association would allow for the candidates to address the membership through, and the association would not disclose the mailing list to anyone other than the management company and the administrative body of the association.

Chairman Ohrenschall:

That is basically the law now, except a candidate can supplement additional information. If I run for the board of directors, I can request that my informational statement be sent out, but I can also supplement that with my own additional mailings if I have the resources to do it. That is what you would like to see prohibited?

Randolph Watkins:

Yes. The law right now says "a candidate may request," which means they must request from the board of directors. I think this is where some of these problems are coming from. Some associations do not honor the requests, or they do not meet in a timely fashion before the next election, so the candidate's request goes unanswered.

Chairman Ohrenschall:

I think I understand it. On page 6, line 27, you would like the "may be sent with a secret ballot" changed to "shall be sent with a secret ballot." Have you mentioned this to Assemblyman Stewart?

Randolph Watkins:

I have not. The first time I read the bill was this morning.

Chairman Ohrenschall:

You can send him an email. I know he is going to have a meeting on Monday, and perhaps you can participate via phone.

Randolph Watkins:

I will send that out today.

Chairman Ohrenschall:

Are there any questions? [There were none.] I also have Gary Seitz and Favil West signed in down South.

Gary Seitz, Private Citizen, Las Vegas, Nevada:

I am in agreement with the spirit and intent of the bill, and I am in agreement with Jonathan Friedrich and Rana Goodman. As it is written, I disagree with the enforcement and protection of the personal, confidential, and financial information of the homeowners. I have heard many say to leave it up to the discretion of the management company. Currently, under NRS Chapter 116, the ombudsman office does not have any jurisdiction or authority over the actual management company. If there is abuse, or information gets out that should not, and I have personal experience with homeowners' information being released by the management company, there is nothing that can be done by the ombudsman office. I would be in support of the bill if there could be a little more enforcement, especially towards whoever handles this data.

Chairman Ohrenschall:

I do not know whether you were here earlier, but there is a proposed amendment that would just release addresses and not names. This means a candidate could send out a flyer to "the resident at" or "my neighbor at."

Gary Seitz:

I heard that. Many times this is not as simple as having one file over here and one over there. Anytime you are releasing this information, there must be protections and responsibilities. It is fine leaving off the names, but sometimes errors do happen, especially in the computer world. You can hit the wrong button, and all this financial data on everybody is sent out. I have personal experience with guarded information being released by the board and management company. There need to be more safeguards or more jurisdiction from the ombudsman office over the companies that actually release the information.

Chairman Ohrenschall:

Are there any questions? [There were none.]

Favil West, Private Citizen, Sun City, Nevada:

I am a member of the Commission for Common-Interest Communities and Condominium Hotels. I am a three-time board member and former chair. I am a two-term chairman of the election committee at an HOA that has 7,144 homes.

I am against the bill as written for various reasons that have already been articulated effectively by Ms. Brainard. I do have one other thing I want to mention.

Chairman Ohrenschall:

Which association do you live in?

Favil West:

I live in Sun City Anthem. I believe I am the person Mrs. Goodman was referring to who suggested an alternative solution to this.

One of the major problems we have is that there are a number of HOA board of director members who have received death threats. I happen to be one of those. On our board, there have been at least two who have received death threats. In my opinion, it would be impractical to release this information to the general public. The law that was earlier referred to by Mr. Watkins was NRS 116.31034, subsection 12. It takes you all the way through the issues whether or not to send out information. It says it does go out at a cost. We have been doing that in our association for about ten years now, since the first election. This is a common thread. Every single candidate has exactly the same break. We do not allow the homeowners' names to be released. You can do as I did and walk to each one of the houses. Early on was easy, the second time was harder, and the third time we had nearly 6,000 homes. It was tough,

but that is what we did. One of the things here that is of concern to me is the potential for fraud. If the names are released, by CD or any other way, they can be sold or used for other purposes during the off times. I am categorically opposed to releasing the names. As I mentioned earlier, my suggestion is that the association, at the expense of the candidate, send out the flyers the candidate would like. There would have to be a limit on it because there is just so much they can do without hiring people. However, it must be clear that there is to be no defamatory or profane information that can be sent out with this. If there is a modification there, that would have to be included.

Chairman Ohrenschall:

There has been an amendment proposed that would just release addresses and not names. Would you be comfortable with that?

Favil West:

I would not be comfortable with that because who is going to pay, and how much will that person pay? If you have 7,144 homes, and you release 7,144 names at 25 cents per page, the candidates will be up in arms at the expense. They can obtain this information from the assessor's office. I formed a foundation, and we went out and got the names ourselves. A candidate can do this. The problem we face is that candidates want everything given to them and not have to go out there and work for it. I am sure when you ran for office, you had to work for it. That is the way it should be.

Chairman Ohrenschall:

One comment I heard Assemblyman Stewart make was that there is a feeling that perhaps incumbents have access to this information and challengers do not. I think we spoke earlier with Mr. Gordon about possibly including in an amendment some provision for getting the data electronically. I imagine it would be much cheaper than having to run copies. Would you be comfortable with that if it were given to a challenger candidate in electronic format?

Favil West:

That would not work. Many people in our association do not use, or have, computers. We are a senior community, so many of us go back to the days when there were no computers. You have to keep this in mind. You are looking at one size fits all and one size does not fit all. In this particular case, if we did have the association send these out at the expense of the candidate, then it would be one size fits all and every association would be covered. Email would not cover everyone. In our particular association of 7,144, we have fewer than 3,000 people who have opted to have their name in our directory. I hope that explains some of the concerns about identity theft and privacy. We

do not release, under any conditions, the list of names except to one person, the election committee chairman. That list is kept in possession of two people.

Chairman Ohrenschall:

Mr. Watkins mentioned his belief that the ideal situation would be having the management company mail out a candidate informational sheet, and that would be it. That would be at the cost of the association. Anything the candidate wanted to do additionally would be up to him or her. Is that something you are comfortable with?

Favil West:

I am very comfortable with that. That is pretty much what most associations do right now because, with the exception of the "shall," that is contained in current statute.

Chairman Ohrenschall:

You would be okay with changing that "may" to a "shall" on page 6, line 27 of the bill?

Favil West:

I am reading directly from the statute, and it says, "A candidate may request that the secretary or other officer"

Chairman Ohrenschall:

I think the "may" we were referring to with Mr. Watkins was NRS 116.31034, subsection 12, paragraph (c), "May be sent with a secret ballot," and changing that to "shall be sent with a secret ballot."

Favil West:

I am perfectly agreeable to that, but you must go on to the next line, which says, "Or in a separate mailing." The "shall" works fine if you do not have that. One or the other is what it should be. The "may" really says it "may be sent . . . mailed pursuant to subsection 12 or in a separate mailing."

Chairman Ohrenschall:

If you would communicate your concerns to Assemblyman Stewart, as I told Mr. Watkins, he is having a meeting on Monday.

Favil West:

The Commission for Common-Interest Communities and Condominium Hotels will be meeting right after this, and we are going to discuss this. There will probably be an amendment we will suggest.

Chairman Ohrenschall:

Is there anyone else in Las Vegas who wishes to testify against this bill? [There was no one.] Is there anyone neutral to the bill either in Carson City or Las Vegas?

Gary Miliken, representing Community Association Institute Legislative Action Committee:

We were originally opposed to the bill, but I have heard several amendments since then. I talked with Assemblyman Stewart, and we would be glad to work with him. I believe you have already received a letter from John Leach. Those are his concerns on this issue. We have discussed most of those. Several mentioned content, and I think that is one of the areas you need to look at when you talk about mailing. Another comment from Mr. Leach was what do you do with someone who does get a list and then uses it for purposes other than elections?

Chairman Ohrenschall:

Was Mr. Leach aware of the amendment that would provide for addresses only without names?

Gary Miliken:

No, he had not seen that amendment. That is why we are neutral. We would like to take a look at the amendments. I will be glad to be here at 2 p.m. to discuss it with Assemblyman Stewart.

Chairman Ohrenschall:

Are there any questions? [There were none.] Is there anyone else neutral on the bill? [There was no one.]

We will close the hearing on A.B. 246. I think we will wait to hear what happens with Assemblyman Stewart and all the interested parties.

The meeting is adjourned [at 8:53 a.m.].

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: March 25, 2011

Time of Meeting: 7:43 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 246	C	Garrett Gordon	Proposed Amendment
A.B. 246	D	Karen Dennison	Proposed Amendment
A.B. 246	E	Marilyn Brainard	Prepared Comments