MINUTES OF THE
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS

Seventy-sixth Session
May 5, 2011

The Senate Committee on Legislative Operations and Elections was called to order by Chair David R. Parks at 3:30 p.m. on Thursday, May 5, 2011, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 5100, 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 David R. Parks, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Steven A. Horsford
Senator Barbara K. Cegavske
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Carol Stonefield, Policy Analyst
Eileen O'Grady, Counsel
Michelle Ené, Committee Secretary

OTHERS PRESENT:

Ross Miller, Secretary of State
Scott F. Gilles, Deputy for Elections, Office of the Secretary of State
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Ray Bacon, President, Nevada Manufacturers Association
Lynn Chapman, Nevada Families
Janine Hansen, Independent American Party; Nevada Eagle Forum

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada
John Wagner, State Chairman, Independent American Party
Alan Glover, Former Senator; Clerk/Recorder, Carson City

CHAIR PARKS:
I will open the meeting with a bill draft request (BDR) to revise the legislative districts from which members of the State Senate and Assembly, as well as the representatives to the U.S. Congress, are elected.

BILL DRAFT REQUEST 17-1289: Revises the districts from which members of the State Legislature are elected. (Later introduced as Senate Bill 497.)

SENATOR DENIS MOVED TO INTRODUCE BDR 17-1289.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR PARKS:
We will move to Assembly Bill (A.B.) 81.

ASSEMBLY BILL 81 (1st Reprint): Revises various provisions relating to elections. (BDR 24-406)

ROSS MILLER (Secretary of State):
Mr. Chair, with your permission I would like to present three bills simultaneously. I have prepared a PowerPoint presentation called 2011 Elections Legislation (Exhibit C), which encompasses A.B. 81, A.B. 82 and A.B. 452.

ASSEMBLY BILL 82 (1st Reprint): Makes various changes relating to elections. (BDR 24-407)

ASSEMBLY BILL 452 (1st Reprint): Revises provisions relating to governmental administration. (BDR 24-1136)

These three bills contain necessary changes to the administration of elections. Assembly Bill 81 addresses many important issues dealing with third party groups in the electoral process. Assembly Bill 82 remains in basically the same format as the election reform bill introduced in the 2009 Session. That particular bill passed both Houses but never made it to the Governor's desk.

I would like to begin with A.B. 452. Of all the provisions in these three bills, none are more important than the three key elements in A.B. 452, listed on page 3 of Exhibit C.

It is time for Nevada to make significant changes to its campaign finance reporting laws. These three elements alone will send a message to voters that transparency is a priority in our campaign and elections process. The three go hand in hand toward increasing accessibility. Without all three of these provisions, this legislation would be incomplete.

The proposed legislation before the Committee today is the result of our experience in election matters and a great deal of thought and research regarding the issues addressed.

It is important to note that Nevada is increasingly assuming a role of a battleground state in elections; consequently, national attention is on our State and our elections process.

A big part of the transparency we want to provide is letting voters know who is funding the campaigns. The reasons and the need for transparency is obvious, even to those outside of Nevada. The Campaign Disclosure Project—of the Center for Governmental Studies, the Pew Charitable Trusts and the University of California, Los Angeles, School of Law—gave Nevada an “F” in 2008 for the State’s campaign finance disclosure law, electronic filing program and disclosure report accessibility. That is the same grade Nevada had received in four previous reports. In the real world, the term for this is “flunking out.” There is absolutely no reason Nevadans should tolerate any excuses for this type of performance. The proposed changes in these areas will provide Nevadans with more transparency and accessibility. The single most important thing we can do in election reform is to make information publicly available in a timely manner and in an easy-to-access format.

We can reach this goal with the passage of these three key elements: electronic filing, relevant deadlines and making the Office of the Secretary of State the single custodian of records for campaign information.

Under our laws, a candidate can file a 200-page handwritten finance and expenditure report and mail it from anywhere in the Country with a postmark that meets the deadline. My office receives it days later and has to scan the reports to get them online. This is not timely—60 percent of the public has likely already cast ballots through early voting. The scanned information is not available in a format accessible for public dissemination. It is not fair to expect voters to sift through hundreds of pages of PDF documents to determine who is financing certain campaigns and whether it will impact their votes.

Assembly Bill 452 would move us to instant online filing of campaign contribution and expense reports. The bill would also change reporting deadlines so the public would receive additional and updated reports by the Friday night before the election. The new deadlines in our legislation would require an additional report four days before early voting begins and four days prior to Election Day for both the primary and the general elections.

I have heard concerns about access to technology and the fact that some people may not be able to file online, so this legislation has a provision which allows someone to file an affidavit stating he or she cannot file online and will be submitting a paper filing.

The proposed legislation will affect candidates, political action committees (PACs), independent expenditures, recall committees and legal defense funds. Mandating the electronic filing of campaign contribution and expenditure reports will generate public access to information about who is funding the candidates' campaigns. The public would then be able to query contribution and expenditure information by name, address and dollar amounts in a searchable and user-friendly database. There will also be a requirement for candidates and appointed officials to file financial disclosure statements with my office. If we are going to have electronic filing, it makes sense to have the Secretary of State be the sole filing office for virtually every race, rather than having the public try to obtain information on municipal and county election Websites across the State. A centralized approach to storing and disseminating the information is the only efficient way to serve the public's right to know.

Assembly Bill 81 and A.B. 82 are the result of lessons learned from the 2010 and 2008 elections respectively. These two bills address policy changes, transparency of third party groups, online voter registration and formation and reporting rules for PACs.

The definition of "express advocacy" will make it clear that Nevada does not require specific words or phrases such as "vote for" or "elect" when determining whether a candidate or a group is expressly advocating in an election. The result will be a clearer definition of when PACs and third party independent expenditures need to be reported. It will close, what some groups have argued to this office, a reporting loophole. A provision requires a disclaimer on every advertisement costing in excess of $100—made on behalf or in opposition to a candidate—to identify the person or group who paid for the advertisement. If approved by the candidate, the advertisement must additionally state so and further disclose the address, telephone number and Internet address of the person or group who paid for the ad.

This proposed legislation, as written, will eliminate Ballot Advocacy Groups (BAGs) and give them the same status as PACs. Having separate categories is redundant. When this language was added to the statute in 2007, it generated a number of calls to my office with questions about what constitutes a BAG and what a person could say before having to register. We conferred with the Office of the Attorney General, and it was proposed that the Committee return BAGs back to the definition of the PACs.

My office is looking to make information accessible and give the public the opportunity for voter registration online while at the same time increasing the security and integrity of the registration process. Our pilot program for online voter registration worked very well. Prior to the 2010 election, we were only the ninth state in the Country to use this system. There was no appreciable difference in the percentage of Republican versus Democratic voters during the pilot program in Clark County, in spite of the fact the area has a significantly greater number of Democrats. Those results should dispel any concerns we heard last Session about the online system favoring one party over another.

This is an opportunity to address both accessibility and security. The online system requires immediate verification of the registrant and his or her address through either a Nevada driver's license or an identification card; this is more secure than a paper-based system. The online system automatically corrects

errors during the registration process. Those are the kinds of errors which contribute to letters going back and forth between registrants and clerks for weeks at a time.

There are also provisions for increased penalties for voter registration violations. A voter registration agency that knowingly employs a person who is a convicted felon of theft, fraud or dishonesty would face a fine. Clerks are prohibited from appointing any field registrar who has been convicted of a similar felony. We are increasing penalties for a variety of offenses in this legislation. In 2010, we were inundated with phone calls questioning the integrity of the electronic voting machines. This type of tampering is a direct assault on the democratic process and a direct attempt to undermine the electoral process. This bill also increases the penalties to deter this type of activity.

We have proposed language that makes it a violation for any contributor to a PAC to forward money to a specific candidate which, in combination with the total of contributions already made by the original contributor, would violate the contribution limits in chapter 294A of the *Nevada Revised Statutes* (NRS). This change clarifies any misconception that a single source can give a candidate in excess of the prescribed monetary limitations by funneling money through a PAC to a single candidate. This provision will go a long way to detract contributors and candidates from forming shell PACs as a means to skirt the contribution limits as well as to prohibit contributions in the name of another.

Together, these three bills are extensive pieces of legislation, but they are also extremely important in improving the laws and procedures governing elections in Nevada.

I cannot emphasize enough the impact these laws will have on maintaining the integrity of our election system and the resulting increased confidence and subsequent increased participation of Nevadans. They deserve the very best we can give them, and that is what we are trying to provide in this legislation. It is time to break the pattern of repeated errors and do things differently to get the positive result Nevada voters deserve.

SENATOR CEGAVSKE:
We need to take each of these bills individually so we can ask questions. It will be difficult to go back through the material and figure out what subject went with what bill.

SENATOR SETTELMEYER:
With reference to A.B. 81, what is the percentage of people filing electronically?

MR. MILLER:
Are you referring to contribution and expenditure reports that are filed online?

SENATOR SETTELMEYER:
Correct, which is the subject of A.B. 81.

MR. MILLER:
We can provide that figure to you. I guess it to be 20 percent to 30 percent.

SENATOR SETTELMEYER:
That low? I thought it was much higher. If it is 20 percent, a large number of people are not utilizing the computer system.

The proposed legislation changes the date from the first Tuesday after the primary to the fourth Friday in June. Is it a good idea to make it a fixed day in June rather than a floating day behind the primary?

MR. MILLER:
Are you referring to the contribution and expenditure report deadline?

SENATOR SETTELMEYER:
Yes.

MR. MILLER:
Those provisions are in A.B. 452. I would be happy to take those out. They originally were part of A.B. 81.

SENATOR SETTELMEYER:
That is why I am getting confused. I was using the original bill.

MR. MILLER:
The wording says the reports are due 4 days before the primary election or 21 days before the primary election. I do not believe the wording specifically relates to the primary.

SENATOR CEGAVSKE:
There are some good aspects in A.B. 81 but so many different issues. The legislation is too broad. We will be voting on everything in the bill. I would like to see it broken down on the different issues. I agree with some things, and others I do not.

SENATOR SETTELMEYER:
The proposed legislation on page 11, lines 2 through 4 of A.B. 81 states it would be the fourth Friday in June of the year in which the general election is held. The original language was the first Tuesday after the primary election, which meant it would be floating. If we changed the election date, it did not matter because it was automatically the first Tuesday after the primary. I am afraid the proposed legislation creates a fixed day. If you move elections around, then would we have to come back?

MR. MILLER:
The provision to which you refer relates to the last period of time during which any change to the ballot could possibly be made. This language came as a suggestion from one of our judges, James Todd Russell, District Judge, Department 1, First Judicial District. This language allows a time period for challenges and a definite cutoff date that would allow the interpretation of the court system when judges have to rule.

CHAIR PARKS:
Secretary Miller, did you wish to go through the bill individually and pick up points, or were there particular areas where you had comments?

MR. MILLER:
We can provide a summary of these bills to the Committee which will be of some help. Assembly Bill 82 is in substantially the same form, even though it is not on the omnibus bill; it has a lot of cleanup language suggested by the county clerks.

Assembly Bill 81 deals with many provisions of third party PACs and other third party efforts to influence an election. Many provisions of the bill are cleanup. I hit the highlights as to significant policy changes through A.B. 81.

Section 36 of the bill, defines what constitutes express advocacy. During the last gubernatorial campaign, we had an out-of-state PAC that came to Nevada

and ran a host of television ads that appeared to advocate for one candidate. We filed a court action requesting an injunction because we did not have any filings indicating who this group was or the source of the funds contributing to this message. We had a number of complaints in our office about it. We were met with opposition that these ads were not express advocacy. The definition in A.B. 81 provides a very clear definition of when you advocate sufficiently, you would have to file as a PAC and report your contributions. The other key policy provision addressed in A.B. 81 has to do with conduit contributions and the ability to set up multiple PACs to avoid contribution limits. This can be found in section 41.5 on page 26 of this bill.

Since I have been elected, we have not had an election reform bill pass, and as a result, we have a lot of issues that need to be addressed in our election statutes.

SCOTT F. GILLES (Deputy for Elections, Office of the Secretary of State):
It has come to our attention that there was a minor drafting error in the first reprint of A.B. 81. Some language was inadvertently removed. There were a handful of reworks of the bill on the Assembly side. I discussed the issue with Chair Tick Segerblom right before this Committee meeting, and he indicated it would not be a problem, and the Assembly would concur with the changes. I do not have the formal amendment to submit today, but I will have it to the Committee by the end of the day or first thing tomorrow morning.

CHAIR PARKS:
Did you want to describe what was inadvertently left out?

MR. GILLES:
You will not see any changes to NRS 294A.380, which refers to the Secretary of State's authority to review PACs. As written, it limits the authority to look at whether a PAC has met the reporting requirements. We propose to change the language so we will have the authority to look into contribution limits. It was part of the changes we initially provided to the Assembly in relation to the multiple PACs scenario. The provision that was taken out and moved to another section should have left the other changes in that statute, but they were inadvertently removed in a drafting error.

SENATOR SETTELMEYER:
On A.B. 81, page 24, section 37, the bill changes report expenditures for a PAC to an amount over $100. Is that down from the previous $10,000? It seems to be a very low limit.

MR. MILLER:
I believe the previous limit for PACs expending communications that would expressly advocate the election or defeat of a ballot measure was $1,000. I can get back to you on that. This provision simply lowers the limit to remain consistent with the amount when contributions have to be reported for candidates.

CHAIR PARKS:
We can come back to this later.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
We have problems with sections 16, 19 and 37 of the bill. In section 16, subsection 3, paragraph (c) should not be deleted from NRS 293.1715. Section 19 deals with knowingly and willfully language that specifies an individual " ... willfully files a declaration of candidacy or acceptance of candidacy knowing that the declaration of candidacy or acceptance of candidacy contains a false statement." Some of the problems that exist in this language as drafted could be remedied by adding the words "of material fact" after the words "false statement" on line 8.

Section 37 of the bill is highly problematic from our point of view. In 1992, the *ACLU v. Heller*, 378 F.3d 979 (9th Cir. 2004) case, the U.S. Court of Appeals for the Ninth Circuit struck down Nevada's ban on anonymous political flyers. This section renews that discredited approach. The $100 threshold is limiting. The NRS has a $1,000 threshold; that amount is more appropriate.

SENATOR CEGAVSKE:
Do you want everything in section 16 to remain intact as in statute?

MS. GASCA:
No. Only subsection 3.

SENATOR CEGAVSKE:
Do you agree with the changes to A.B. 81 in the language on page 12, lines 25 through 30 and on down?

MS. GASCA:
Yes.

SENATOR CEGAVSKE:
On page 16, section 19, you only want to make a clarification on line 8? Do you agree with everything else?

MS. GASCA:
Yes. The language would read "declaration of candidacy or acceptance of candidacy contains a false statement 'of material fact.'"

SENATOR CEGAVSKE:
Do you object to all of section 37 on page 24 of the bill?

MS. GASCA:
I need a minute to reconcile e-mails between me and my general counsel.

SENATOR SETTELMEYER:
I believe that is in reference to the concept of when you have to disclose the communication—place the name of person of the committee or political party on the flyer.

SENATOR CEGAVSKE:
I just wanted to know if she wanted the whole section disregarded.

SENATOR SETTELMEYER:
I think she wants to go back to the original law.

MS. GASCA:
Because this deals directly with one of the ACLU cases in the Ninth Circuit, I would like to come back with a more specific amendment.

CHAIR PARKS:
That would be appropriate. I have no intention of taking a vote on this bill today.

RAY BACON (President, Nevada Manufacturers Association):
Our concern is with section 37, the $100 threshold which has already been discussed earlier. I have been known to send out letters to my friends to support somebody. I would never recognize this provision. The amount of $100 is only 200 letters. The old number was $1,000, which was reasonable.

LYNN CHAPMAN (Nevada Families):
I would like to discuss the electronic filing of reports. Not everybody is good at doing that. We had a number of candidates in the Independent American Party who do not have computers because they have no idea how to use them.

There will be no issue if a candidate is allowed to fill out an affidavit stating he or she can hand carry or mail the contribution and expenditure report to the Office of the Secretary of State.

JANINE HANSEN (Independent American Party):
On page 12, line 40, the date is changed for filing a petition. I have been in contact with Richard Winger, who writes *Ballot Access News.* He stated that A.B. 81 would be better if the bill did not move the petition deadline for a new political party petition to an earlier month. In 1986, a U.S. District Court in Nevada invalidated the old April petition deadline for new parties in *Libertarian Party of Nevada v. Swackhamer*, 638 F.Supp. 565, 569 (D.Nev.1986).

Minor parties and independent candidates have even more judicial protection against early petition deadlines when a presidential race is involved. The green party cannot place its presidential nominee on the 2012 ballot with the party label unless it submits 7,013 validated signatures using the new party petition. It would be a good plaintiff against any new Nevada law that requires petitions to get the party on the ballot to be submitted as early as April or May. These petitions must be submitted to the county 25 working days in advance of the deadline. A bill that appears to require a May deadline for signatures actually requires them to be submitted to the counties in April.

This bill is greatly improved from the original version. We are very happy with many of the deletions, but there are still some concerns. We do not oppose the entire bill.

We have concerns on page 24, section 37 of the bill. It amazes me how every time I come to the Legislature, no matter who the Secretary of State is, he or she continually tries to regulate free speech.

For instance, on page 24, line 34, if you have a Website and plan to send an electronic mailing out to more than 500 people, you become part of this requirement of disclosure. We have a Website; we always disclose who we are because we want people to know who we are. Why do we continually impose regulations on free speech? Our Founding Fathers believed in anonymous free speech when they wrote the First Amendment.

The U.S. Supreme Court has underscored the idea that we have the right to anonymous free speech. In some cases, people are persecuted for their opinions—California on Question 8. People's homes were identified and put up on the Internet as places to persecute people because they had participated in a particular campaign. Anonymous free speech is part of American history and is an important thing to protect. This language is an attempt to control anonymous free speech. The Supreme Court has a definition for "expressly advocates." The reason that the Secretary of State has to have a different definition of "expressly advocates" in this bill is that it is far more tightly constructed than the U.S. Supreme Court's definition. We would be wise to stay in line with the Supreme Court's decision on express advocation.

On page 26, section 41.5, line 19 limits participation in political action. The way to have more transparency is to have more free speech. If you do not like the free speech someone has, then have more against it. This section talks about making a contribution to a PAC with the knowledge and intent that the PAC will contribute that money. We heard early about an amendment we have not seen. That amendment refers to this section. This means the Office of the Secretary of State can actually determine the intent of the person contributing and the intent of the PAC. Instead of PACs just having to report to the Secretary of State, apparently the Secretary of State is now going to investigate their intent. This is a violation of political liberties. Why should the Secretary of State determine what my intent is? We should be concerned about any government entity regulating free speech and determining intent.

Page 41, line 6 of the bill states "... political action fails to register ... ." This bill changes the date for PACs to register to January. The requirement is that PACs would have to register in January because if a PAC does not decide to get involved in this State until May or September, then it could be liable for a civil penalty since it did not register in January. In January, it may not have known it would be participating.

National Eagle Forum PAC decided to participate a couple of years ago well into the year. It would not have been in a position to register in January having not known it would be participating.

I have expressed my main concerns about A.B. 81. I have concerns with the other bills, A.B. 82 and A.B. 452, which I will express later in this hearing.

CHAIR PARKS:
Does the Office of the Secretary of State have any comment or concern relative to the comments made by previous individuals' testimony?

MR. MILLER:
The ACLU has concerns regarding the deletion of subsection 3 in section 16 of the bill. We are attempting to address many scenarios in subsection 3. In the 2010 election, the Tea Party of Nevada filed a certificate of existence with our office and then circulated a limited number of signatures so Scott Ashjian could qualify. That was a controversial issue. The group did this through this provision.

The Organized Labor Party of Nevada filed a certificate of existence with our office indicating this provision was such a mockery, they intended to exploit it and put candidates on the ballot to mislead the public. We had the "Super Happy Party" file a certificate of existence. If this provision of law is allowed to remain, we would continue to accept the certificate of existence of those minor parties. To qualify for a certificate of existence, a group only needs 100 signatures for the upcoming congressional race or 250 signatures for a statewide office election.

Section 16, subsection 2 clearly addresses the terms of access for minor political parties that are appropriate under the law. Subsection 2 states "To qualify as a minor political party, the minor political party must have filed a certificate of existence" and must obtain signatures from " ... 1 percent of the

total number of votes cast for the offices of Representative in Congress" at the last preceding general election or the last time your candidates were on the ballot they got " ... 1 percent of the total number of votes ... ." This is not an extraordinary barrier. This language prevents the mockery people have made of the process of having an extremely low barrier of 100 signatures for parties with this artificial distinction that are qualified as minor political parties but do not have ballot access. This provision should be given support.

In response to the ACLU's suggestion with regard to section 19, line 8, we would be agreeable to adding additional language that states " ... knowing that the declaration of candidacy or acceptance of candidacy contains a false statement with regard to these provisions relating to a material fact." You can not look at this statute in isolation alone. The information contained in the declaration of candidacy or acceptance of candidacy is defined in statute. That is not something we make up or where the candidates have any latitude. All of the statements the Office of the Secretary of State requires are mandated under law and are material facts. A scenario does not exist where someone could list a false statement that did not pertain to a material fact because all of the provisions required are mandated under State law. We do not have any discretion in this regard.

On page 24, section 37, under statute, any entity with expenditures over $100 made in connection with a campaign to advocate for or against a certain candidate or BAG has to file a contribution and expenditure report. It is already required to disclose with our office and file paperwork. This is not an issue of putting cumbersome requirements on people. This is a requirement if $100 is spent for the purposes of financing a communication related to an election; you have to disclose from whom it came.

In Ray Bacon's scenario, if he spent more than $100 advocating for or against a candidate, and he sent the letters bearing a letterhead, by definition, he already met the requirements outlined in this statute because it requires identification of who paid. Presumably, if it was on his letterhead and he sent it out to people, we would know from whom it came. This language is intended to address campaign practices—about which we get more complaints than any other area in our office—of the anonymous mailers and attack ads that appear in mailboxes. People are throwing up their hands and saying, "I do not know who funded this; I do not know who it came from." We are not blazing the trail on the debate here between free speech and whether we can restrict this practice

by putting this legislation in place. We ranked dead last for a reason. This language is taken from just about every other jurisdiction out there, including federal provisions. This does not conflict with the First Amendment right and whether the government can infringe on this. This is not a controversial area of debate as to whether this is improper infringement on free speech. The proposal is reasonable and addresses clear abuse in Nevada campaign practices of anonymous messaging through the mailbox and on Websites or political advertising by other methods. This language would require a person, a PAC, a political party or a committee sponsored by a political party to file a statement.

The next provision brought up by Ms. Hansen was PAC registration. That provision is in A.B. 82, but it puts registration on the same timeline as the contribution and expenditure report filing date, so everyone knows to look for those reports. This is reasonable cleanup language.

CHAIR PARKS:
We will close the hearing on A.B. 81 and continue the hearing on A.B. 82.

MR. MILLER:
I have already given my presentation and addressed the important key points on A.B. 82. Assembly Bill 82 remains in substantially the same format that passed through both Houses last Session. Nothing has changed since we debated these issues at length.

SENATOR CEGAVSKE:
Why did you not include all State officers in the language on page 45, section 61?

MR. MILLER:
We have not made any changes to this language since last Session. The original legislative intent with this provision was to eliminate the appearance of undue influence of anyone involved in the legislative process while the Legislature was in session. Other State officers do not have any votes when the Legislature is in session. We are not making any substantial proposed changes to this section.

SENATOR CEGAVSKE:
On page 35, section 50, should the language not restrict, not expand places that you can spend unspent contribution donations? We have a bill from

Senator Valerie Wiener, Senate Bill (S.B.) 157, regarding unspent contributions. Does this contradict her legislation?

SENATE BILL 157: Revises provisions governing the donation of unspent campaign contributions. (BDR 24-6)

MR. MILLER:
I do not believe so. Scott Gilles can address this issue. Senator Wiener has suggested language in another bill for our office.

MR. GILLES:
Senate Bill 157 has almost identical language to ours with one distinction between the two. The Secretary of State's language on page 36, section 50, line 2 requires that the governmental entity, fund of the State or political subdivision must be authorized to receive donations.

Some concerns are raised by our Attorney General that there are agencies not authorized to accept donations. There may be different procedures by which they need to go through the Interim Finance Committee to have those donations accepted. The counties may have different procedures or requirements for accepting donations.

SENATOR CEGAVSKE:
Upon the end of an unsuccessful campaign or retirement, does this include that your money should be disposed of by a certain period of time?

MR. MILLER:
No, it does not include that. We had proposed that provision last Session, and it was met with controversy; therefore, we have not addressed that issue. Pages 36 and 37 of the bill relate to the disposition of unspent campaign funds. We included the language Senator Wiener suggested last Session in this bill.

SENATOR CEGAVSKE:
It makes sense to dispose of all money by January 15 of the year following the election or the end of the position. There should be some language in the bill so candidates or officeholders cannot continue to hold on to the money. I remember the discussion, but I did not remember people opposed to the language last time. This provision has been before us a couple of times.

MR. MILLER:
Yes. It is an ongoing debate. The interpretation of the statute is you can hold on to any unspent contributions and use them for your next election. You become a candidate for the next election when you have raised more than $100. Candidates who are no longer in office, have been termed out or have chosen not to seek office have rolled over those balances by continuing to file their reports and accepting contributions in excess of $100 to maintain those balances. There is no requirement that a candidate dispose of the unspent contributions.

My office attempted to change this policy in the last Session; it appeared to have been contentious enough that it would have jeopardized passage of this bill, so we removed it.

SENATOR CEGAVSKE:
Assembly Bill 82 is a very broad piece of legislation. It has good pieces and others I do not support. There is good legislation in your bills, but I do not agree with language in each one. It is a concern for me.

JAN GILBERT (Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada):
We are in support of A.B. 82. We want more people participating in the election process and are pleased that the Secretary of State included online voter registration. With access to computers at libraries and public buildings, this is a way to get more people registering to vote. Nevada always seems to rank near the bottom for election turnout.

MS. GASCA:
Assembly Bill 82 in its original form raised various concerns for the ACLU. These concerns were addressed by the adopted amendments. We appreciate the work the Office of the Secretary of State put into this bill as well as the work of the Assembly Committee on Legislative Operations and Elections. We are still troubled by the requirement in sections 48 and 54 that a PAC needs to report every expenditure over $100 concerning a ballot initiative. Unincorporated groups that may organize for or against an initiative should not be faced with these types of formalities that could inhibit robust political activity. To address this issue, we propose a conceptual amendment that would raise the threshold from $100 to $1,000.

Page 29, section 41 is also problematic from our point of view. The definition of "committee for political action" still includes groups in the definition contained in NRS 294A.0055, subsection 1, paragraph (b). Their inclusion, under various reporting provisions now existing and amended into this bill, is an issue from a First Amendment point of view.

We support sections 24 and 25 which provide for computerized registration because it makes it easier to register and will enfranchise more voters.

MS. HANSEN:
We support most of A.B. 82. We support section 28 on page 24, line 5, where the language adds "registration of voters" and line 8, the addition of the word "intimidation." We ourselves have been subject to intimidation and threats and appreciate that kind of protection. I have submitted an amendment (Exhibit D) that would also go along with this language. I suggest the language "private cause of action" be added to statute in addition to the existing penalties. If someone was intimidated or threatened, he or she could resort to a private cause of action. This section would be improved by adding the suggested language.

I have suggested amendments to page 31, section 48 and page 40, section 54, where the language states someone must sign "under penalty of perjury." A few years ago I testified and a change was made, changing contribution reporting from $100 to $1,000, on a ballot issue. This bill is changing that amount back. The reason the language was changed is that people can be intimidated and not want to participate on controversial ballot issues. In 2004, the Axe the Tax issue was on the ballot; we had one man who donated to our campaign. When the casinos found he had donated to us, he lost all of his accounts with the casinos.

Disclosures can be used for political intimidation to limit participation. In California, people were targeted and had to have bodyguards because of their position on a particular ballot issue. I have been assaulted and had my life threatened. I am a public person and might expect that, but other people might be too intimidated or afraid to become involved in a particular issue on either side of the political spectrum. This is why this Committee and the Legislature moved the amount from $100 to $1,000. This section in A.B. 82 changes back to the lower threshold. It used to be for PACs. The Secretary of State told you

the amount for ballot access committees was moved up to $10,000 for the same reason: so they could get started. Many do not raise more than $10,000.

In moving the threshold down again, you thwart political activity, as Senator Settelmeyer mentioned about this change. We oppose moving the BAGs in with the PACs because there is a reason why they are separate. We do not want political participation in ballot issues and people being intimidated in groups and organizations, making it more difficult to participate. Those changes were specifically made by the Legislature because it understood those threats.

I have a concern on page 44, line 9 in A.B. 82, where the language states " ... registration on or before January 15 ... ." I understand PACs need to register, but political activity may not have revved up enough for people to be aware they need to register by then. They may not even know they will be involved by then. If PACs decide to become involved and register later, are they subject to a civil penalty? There is no recourse in the Office of the Secretary of State; there is no hearing or opportunity to present evidence to defend yourself. Everyone is subject to the whims and arbitrary rulings of the Secretary of State's Office.

Last Session, the Senate Committee on Legislative Operations and Elections passed a bill similar to A.B. 82. Senate Bill No. 210 of the 75th Session died in the Assembly. The Office of the Secretary of State did not oppose it. The second amendment listed for A.B. 82, Exhibit D, suggests language stating that anywhere it says "these campaign filing forms could be signed under penalty of perjury", they could also be signed with an oath of "so help me God." An alternative oath of office is available for Legislators, executive, judicial and other officers. As Legislators, you have the option to have a secular affirmation or an oath which is a religious oath—so help me God—when you are sworn in. However, when you sign campaign filing forms, you do not have that option.

In 2006, I filed on time but crossed out "under penalty of perjury" and put "I swear in the name of Jesus Christ that the foregoing is true and correct." As a result of this, I have a civil penalty imposed by the Secretary of State's Office.

I filed the first set of forms by the required deadline and was not notified there was a problem. I filed the second set of forms on time and was not notified there was a problem. In January 2007, I filed the third set of required forms and was not notified there was a problem. In May of 2007, I was notified that I had a $15,000 civil penalty. I asked for a waiver which was denied on two different

occasions. I am being fined because I exercised my freedom of religion. An Ordinance in the *Constitution of the State of Nevada* says, Nevada is required to have " ... perfect toleration of religious sentiment ... ." The Nevada Constitution, Article 1, section 4 states "The free exercise and enjoyment of religious profession and worship ... ." This was denied to me, and I now have a $20,000 fine against me which I will not pay because it is based on persecution of me and my religion.

This amendment would resolve the issue for people who have a religion which would allow them, instead of a secular affirmation, to affirm with a religious oath. You have that option as Legislators, when you swore to uphold the Constitution in the State of Nevada. Candidates should also have this option. Last Session, the Senate Committee on Legislative Operations and Elections passed that language in a bill. It was passed by both Houses, but as the Secretary of State said, the Assembly adjourned *sine die* before the bill was sent to the Governor. The Secretary of State did not oppose this language last Session. This is the amendment I would like to bring forward. My main concern with A.B. 82 is the elimination of the $10,000 threshold for the BAGs and the changing of the reporting for individuals for ballot access from $1,000 to $100. This is the same concern that Senator Settelmeyer mentioned.

We had changed that language specifically a couple of Sessions ago to respond to concerns about people being intimidated about participating in the process.

SENATOR CEGAVSKE:
Page 44, line 37, talks about a legal defense fund. Money has to be given back, so we require a legal defense fund to give money back, but not the candidates? If you have a legal defense fund, you have to give the money back:

> Not later than the 15th day of the second month after the conclusion of all civil, criminal or administrative claims or proceedings ... shall: (a) Return the unspent money to contributors; (b) Donate the money to any tax-exempt nonprofit entity; or (c) Dispose of the money in any combination of the methods provided in paragraphs (a) and (b).

It seems interesting that you would have it for the defense fund but not for anybody else. This is new language.

CHAIR PARKS:
It is new language, but I think it is a replication of language also used for individuals who have lost a primary.

SENATOR CEGAVSKE:
It does not say that.

CHAIR PARKS:
That language is in a different statute.

SENATOR CEGAVSKE:
If there is more to it, I would like to see it. If you are requiring it here, why would you not put it in for anything else? If people did not like it for candidates, why would they like it any better for their legal defense fund?

EILEEN O'GRADY (Counsel):
The disposal of unspent contributions for candidates is covered in NRS 294A.160, section 50, subsection 5 of this bill. This language was just added because the disposal of unspent contributions was not covered before.

SENATOR CEGAVSKE:
It says you can donate the money to any governmental entity or fund of this State. Is that for a candidate?

CHAIR PARKS:
On page 35, read section 50 starting at line 28 of A.B. 82.

SENATOR SETTELMEYER:
You are correct on page 35, section 50, line 28 of this bill says "every candidate," which is in existing law. Later on in the bill it talks about people who hold public office. This has been added on page 37, line 4. This language addresses the issue we are discussing.

I would like to ask the Secretary of State a question. If an individual wants to donate money to a governmental entity, does the governmental entity have the right to refuse the money? If someone put parameters on the donation, such as "I want to give my campaign money to the school district; however, I only want it to go to people with last names starting with the letter S." The restrictions may be so onerous the entity does not want the money because it is too

problematic to enforce. I want to make sure entities have the right to refuse money.

We had a similar issue in the Senate Committee on Government Affairs. We put language into law saying that a county does have the right to refuse a donation after realizing the size of the donation may actually be exceeded by the cost of its implementation.

MR. MILLER:
I am not an expert in that area of the law, but it is my understanding that any governmental agency at any point can refuse any donation. We have authority in my office to accept or reject donations.

SENATOR SETTELMEYER:
Thank you. I just want to have it on the record.

SENATOR CEGAVSKE:
How does this differ from S.B. 157 which allows disposal of the contributions to schools, which are governmental entities? How does the language on page 36 in section 50 of the bill coincide with what S.B. 157 is doing?

MR. MILLER:
I do not think it differs at all. I believe the language is identical, or at least the provision originally included in this bill at the request of Senator Wiener in 2009. What happened is our bill died in 2009, and so Senator Wiener brought forth another bill to try to again get it passed.

To address your other issue, NRS 294A.160 deals with the disposition of unspent contributions. If you lose in a race, you have to give up the money—it is clear under the law. Another permissible provision is if you do not lose, but are term limited out or choose not to run, you can use the contributions in the next election. We support revising this section, but it appeared to not have support in the last Session, not to say we could not get it through this time.

Do you want to go back and address some of the concerns again?

CHAIR PARKS:
Yes. I would appreciate it.

MR. MILLER:
One of the concerns was the elimination of BAGs and the distinction that was created in the 2007 Session. That area created significant confusion for the public and some of the larger interest groups in the State. Creating a BAG and calling it something different than a PAC became problematic. By definition, every BAG is a PAC, but the converse is not true. Every PAC may not be a BAG. You can have a PAC that is not advocating for a specific ballot measure. There was confusion as to whether you have to file two reports and when it is triggered. In consultation with the Office of the Attorney General, the argument is it does not serve a legitimate purpose; let us clean up the language. Instead of having multiple reports, having confusion as to where to look and who these groups are, we are changing the language: if you are expending more than $100 and trying to influence the outcome of a ballot measure, you are a PAC, and you need to report as one.

An additional issue brought up regarded section 56, page 44, line 9 where PAC registration is due on or before January 15 of each year. This is another area of significant complaint from the media and the public. Political action committees are not required to report on an annual basis if they have not had any activity. This language mandates registration. If a PAC is still active, it cannot stop filing reports with our office. A lot of PACs are formed with our office; we have no idea whether they are still in existence. We rely on the honor system for PACs to say whether they had any activity and therefore should be required to report.

There are examples of PACs being in existence for 20 years and not filing documentation because there was no activity. Suddenly, a contribution is made to a campaign from a bank account no one knew existed. That is not a level of transparency we should accept.

The last provision brought up by Ms. Hansen had to deal with the proposed amendment relating to an oath or affirmation. This is a policy decision for the Legislature. We will enforce whatever policy determination you want about what is or is not on our forms. This office does not have any authority to impose a fine unilaterally upon someone because we feel like it. If there is a violation of campaign finance laws, the procedure in my office is to forward the claim to the Office of the Attorney General to decide whether to bring an action in district court. That is what happened to Ms. Hansen in her instance. We do not impose a fine; it is a court judgment. The court heard and disposed of those issues and ruled against her.

SENATOR CEGAVSKE:
Is it illegal to write anything on these forms? You may not add anything to the form?

MR. MILLER:
That is correct. On your declaration of candidacy, you may not scratch out provisions the Legislature has dictated.

SENATOR CEGAVSKE:
Nothing is scratched out. Additional verbiage was put on the form.

MR. MILLER:
The courts have a long history in this Country of holding strict language in the statutes. The NRS 293.177 outlines the provisions of the declaration or acceptance of candidacy. This is not an area of discretion. The statute states the name has to be printed on the ballot to be used in precisely this form. The Legislature provided this law for a reason: to limit the Secretary of State's discretion and to provide strict requirements. If the Legislature wants to change that policy, I will enforce anything you put in front of me.

SENATOR CEGAVSKE:
Do you regularly receive forms with added marks? I see an amended sheet submitted to your office on Ms. Hansen's Campaign Contributions and Expenses Report (Exhibit E). May you not write the word "amended" on the form?

MR. MILLER:
You cannot substantially alter any of the provisions mandated under State law.

SENATOR CEGAVSKE:
May you add anything to the form?

MR. MILLER:
You may not add anything that would change the material fact which was not specifically prescribed by our office. The Legislature has provided specific requirements for which we have to ask, and the form is required to be filled out. If you do anything to alter the form, it is deemed as not being appropriately filed with our office and it is forwarded to the Office of the Attorney General. What has happened in previous instances where people have altered the forms is that

we have deemed them not to be filed appropriately, and the issue has gone to court. The court has heard the issues, ruled against them and issued a fine.

SENATOR CEGAVSKE:
If I want to file, but I need to make an amendment, is there a separate form or an amended form?

MR. MILLER:
It is the same form. There is a box to check stating it is an amended form.

CHAIR PARKS:
I have a question on filing an annual Nevada Financial Disclosure Statement.

MR. MILLER:
Under the proposed bill, we would accept financial disclosure statements. Confusion with the form exists because appointed officials file with the Commission on Ethics and elected officials file with our office. No one knows where to look for those forms. We are responsible for enforcing filing requirement violations, which are filed with the Commission on Ethics. If we can mandate the reports be filed electronically, our office should be the sole filing office for all these forms. The public will know there is only one place to look, and all the candidates would know where to file. I hear from the clerks that the biggest area of confusion for candidates is where they are required to file their reports.

CHAIR PARKS:
One of the lines on the form asks what the annual salary is for your elected office. Legislators get a biennial salary versus an annual salary. It has always been confusing.

MR. MILLER:
I agree with you. That form is created by the Commission on Ethics, which is subject to approval by this Committee. If this bill passes, we will have the authority to revise the forms.

CHAIR PARKS:
If you revise the language so there is an option of checking annual or biennial, it will help 63 of us Legislators. I will close the hearing on A.B. 82 and continue the hearing on A.B. 452.

MR. MILLER:
Assembly Bill 452 was originally included in A.B. 81. In response to these bills being so comprehensive and covering many issues, we decided to strip out the three most important provisions of campaign finance reform and put them into A.B. 452. Assembly Bill 452 mandates contribution and expenditure reports be filed electronically with our office along with all other reports. We added a reporting deadline before early voting so the public has access to the information in a timely manner. Lastly, language that makes the Office of the Secretary of State the sole filing office for all those reports creates consistency.

An additional provision in A.B. 452 added by Assemblyman John Oceguera was accepted as an amendment. The amendment makes revisions to the cooling-off period that applies to elected officials, members of the Public Utilities Commission of Nevada, and the Nevada Gaming Commission. This language essentially says you cannot be paid to go back and lobby the body you formerly represented for two years. You can come back into the Legislative Building and lobby, but you cannot be paid. You could be paid to lobby for a separate commission. The provision borrowed from other states was a policy approach Assemblyman Oceguera brought forward.

SENATOR CEGAVSKE:
In A.B. 452, section 22, the language talks about appearing in the building. You stated this law would allow a former Assemblyperson or Senator to lobby a Senator or an Assemblyperson within the two-year limitation as an unpaid lobbyist. Lobbying on a bill, whether you are paid or unpaid, is still lobbying. Is a former Assemblyperson who is unpaid able to lobby a Senator or Assemblyperson?

MR. MILLER:
This is an appropriate question for your Legal Counsel. Under my reading of the law, it simply prohibits a former Legislator from receiving compensation to come back and lobby in the building. This language certainly would not preclude anyone from appearing back in the Legislative Building as long as he or she is not getting paid for lobbying.

SENATOR CEGAVSKE:
Former Legislators would be able to lobby?

MR. MILLER:
Yes. They would be able to lobby.

SENATOR CEGAVSKE:
We need to address this issue, Chair Parks. We need to speak to the sponsor of this amendment. It concerns me to allow this. If you do not want somebody lobbying, it should not matter whether they are paid or unpaid. The language does not go far enough. Paid or nonpaid lobbying is the same. That language should be in the provision.

We could put a revision in stating "if you or someone benefits from that lobbying." The problem is people come up as nonpaid who are lobbying Legislators because they want some bill or passage of something that would benefit them, a company or their employer. Maybe we need to do the language that way.

MR. MILLER:
The language in section 22, actually says "... shall not receive compensation or other consideration ... ." Page 36, starting on line 8 states:

> 3. As used in this section: (a) "Consideration" means a gift, salary, payment, distribution, loan, advance or deposit of money or anything of value and includes, without limitation, a contract, promise or agreement, whether or not legally enforceable.

This language in A.B. 452 is intended to cover a broad scope of making sure there is not any undue influence or any concerns about people immediately leaving this Legislative Building and coming back and lining their pockets by lobbying their old colleagues.

SENATOR CEGAVSKE:
Do you believe this section covers the scenario of preventing someone who has a company or works for a private entity from lobbying for legislation which would benefit him or her contractually or monetarily? I did not see where this issue was covered.

MR. MILLER:
The Commission on Ethics would enforce this legislation, not the Office of the Secretary of State. I would read it to be covered because it says you cannot receive a salary. For example, you cannot receive a salary to appear in the

building if part of your job performance is to come to the Legislature and you are expected by the company you represent to lobby on its behalf.

SENATOR CEGAVSKE:
It is a completely different issue.

MR. MILLER:
Am I missing the point?

SENATOR CEGAVSKE:
Yes. A former Legislator who works for an entity and comes to the Legislature to get money, General Fund money, to help an organization concerns me—a nonpaid lobbyist who is coming to the Legislature advocating for funds.

MR. MILLER:
You could not do that. You could not be employed by any entity and then ask former colleagues for money out of the General Fund because you are receiving a salary or some form of payment; you are appearing in the building and lobbying, which is conduct prohibited under the cooling-off period.

SENATOR DENIS:
Would there be a constitutional issue if you are done serving with the Legislature and volunteer in the community to come to the Legislature to advocate for or against a bill as a nonpaid lobbyist? You are not getting anything from it since you volunteered, so you should have the right to come and advocate on anything. I should be able to come back and advocate as an unpaid lobbyist.

I do not want to stop people having their voices heard at the Legislature unless they are doing it because they are getting paid.

SENATOR SETTELMEYER:
I share Senator Denis's concerns and the concern about freedom of speech. I am worried about the chilling effect of raising the noncompetition clause from one year to two years. I am concerned about the cooling-off issue. Will we be able to find good applicants for agencies such as the Gaming Control Board and things of that nature? Have we had particular situations come forward that brought this issue? Did something predicate this?

MR. MILLER:
I can only echo what was stated by Assemblyman Oceguera in terms of his intent in bringing this forward. He was not aware of anybody who had created a situation that made it necessary to bring this legislation forward. It was not suggested that there were any bad actors that this legislation would specifically address. This provision is good ethics legislation that avoids the appearance of any impropriety. It is appropriate to extend the cooling-off period for the State Gaming Control Board, the Nevada Gaming Commission and the Public Utilities Commission of Nevada and have it also apply to the Legislators. Assemblyman Oceguera's intent with the two-year period was to extend far enough so a Legislator could not come back the immediate Session after he or she finished legislative service.

JOHN WAGNER (State Chairman, Independent American Party):
I have one issue with A.B. 452. Why the $100 threshold? Today, $100 at some restaurants will not even pay for your dinner tab. To think that any one of you or any other elected official is going to be bought for a lousy $100 is insulting. I do not think $1,000 would buy anybody access to a Legislator. Access to Legislators is done the way we do it as paid or unpaid lobbyists. I feel the amount should be raised to $1,000.

Two groups of people want to know who is contributing the money to you or anybody else. One is your opponent. They want to know how much money and who is giving it to you. The second group is the press. The press wants to know everything, whether it pertains to anything or not.

Raising the reporting of contributions up to $1,000 would encourage participation. Many people would be willing to give more than $100, but they do not want their names splattered all over the Internet and all over the Secretary of State's Website.

JANINE HANSEN (Nevada Eagle Forum; Independent American Party):
Previously, I was talking about 2006 and the fine the Secretary of State's Office imposed on me. The handout, Exhibit E, caused some confusion because it is from 2010, but it does pertain to A.B. 452. I will make a point about 2006. The first two times I submitted my report to the Office of the Secretary of State, Dean Heller was the Secretary of State and chose not to fine me. It was the decision of Secretary Miller to impose a fine even after I asked twice for a waiver. To say it was all the Attorney General is erroneous. The handout I gave

you, Exhibit E, is from 2010. I had it distributed because it makes a point about this particular bill. I have two amendments (Exhibit F) for A.B. 452, which should not change the meaning or substance of the bill.

In sections 4, 5 and 9 of A.B. 452, you will notice on page 4, section 4, the language requires you to add up all of your contributions under $100. Last Session, you did not have to add up all the contributions under $100. This is a significant bookkeeping process for anybody who is running for office. Page 4, line 14 of the bill says, "The total of all contributions received during the period which are $100 or less and which are not otherwise required to be reported pursuant to paragraph (b)." This again adds the requirement you have to add up all the contributions under $100.

What is the purpose of this language? More bookkeeping? I oppose these sections. You should have to report anything more than $100, the way it was in the past—not make it more difficult for people to be candidates.

I agree with Mr. Wagner in that the $100 contribution limit should be raised to $1,000 because it will make more people participate. I will give you an example. When I was running a campaign last time, I would ask for contributions, and people would say, "What is the limit?" I would say "$100," and they would say, "I do not want anyone to know I gave." So they would give only $100.

For third parties and challenge candidates, the $100 limit makes it almost impossible to raise enough money to be a real challenger in a campaign. People will not give money, even though they support a candidate, because they do not want to be listed on a contribution report. They are afraid of the consequences from their employers or someone else.

The real result of the $100 limit is that it helps incumbents. It discriminates against third party minor candidates and nonmajor candidates because they cannot raise the money they need due to the discrimination and persecution which takes place when people donate to them. These laws suppress opposition and candidates who challenge incumbents. The Independent American Party had 54 candidates this last election who were challenge candidates. We oppose the lower limits because they harm our opportunity to be candidates who can compete.

I have concerns about electronic filing. In Exhibit E, you will see I did not cross out anything on this form as I did in 2006. I did not do that because I did not want to get another fine from Secretary Miller. I did not cross out "under penalty of perjury." Instead, I said, "I ... swear in the name of Jesus Christ that the foregoing is true and correct." I left it on the form and wrote, "I file under protest."

I have been working on opposing these campaign finance reports to some degree since 1996. I have concerns about the far-reaching consequences of these laws. I put this information on my report so when I discuss this information as a candidate, my position can be clearly known. I am disclosing and being transparent about my feelings in these reports.

In the Assembly, I asked for an amendment to electronic filing in A.B. 452 which allowed for a place to give specifics. A person could explain what he or she had done filing or adding a notation. Assemblywoman Debbie Smith stated she likes to have more detail in her filing, and that is why she does not file electronically.

If I am required to file electronically, I will be prohibited from placing my point of view on the form—a position of transparency for me. Electronic filing will prohibit people from adding any additional information or a statement of more detail on how incumbents spent their money. This is the only reason I oppose electronic filing. I understand the reason the Secretary of State wants it to reduce their workload. It is sensible and reasonable, but it denies people like me the opportunity to be transparent in filings. If there was an amendment allowing a person to add more detail, I would support the bill. The Secretary of State has stated he is against doing this. I am sorry that we are against people having transparency or making a statement that might be different from what the Secretary of State would believe. I am not sure why he opposes this, but I think it is reasonable to allow people to put in more detail. I am asking to have an amendment to this provision.

CHAIR PARKS:
I can concur with you on a number of those issues. I have received similar responses over the years. Are there any closing comments from the Secretary of State?

MR. MILLER:
I do not know what to say in response to the statements made that the government should not be in the business of mandating campaign finance, that we should abolish all of these measures, and it is none of the people's business who is financing the campaigns of our elected officials. It seems to be the broad policy directive put forth previously in this Committee. There is a strong public interest in having these reports filed in a timely manner. With regard to specifics on page 4, section 4 of contributions being reported in excess of $100, this provision does not require someone to report every contribution and identify the contributors individually. It simply requires a person to report the aggregate of the total amount of contributions of less than $100 he or she receives. Under our current scheme, you merely have to report all of the contributions in excess of $100 you receive cumulatively. This leaves open a huge window of possibility for candidates who could have substantial contribution balances of contributions less than $100 each. This is the policy provision they are trying to drive at there.

The other three provisions are the most important provisions we could put in place which deal with transparency. I urge their support.

SENATOR CEGAVSKE:
If we get $100 or less, we file what the amount is but we do not list the names. Is that what we will still be doing?

MR. MILLER:
You are not required to report any contributions you received which are less than $100. You are not required to report any expenditures you expended over $100. There used to be a provision on our form that required you to report an aggregate of how much you expended or received in contributions. We removed the provision from our form because it was not specifically authorized by the Legislature. This provision will put that provision back on the form, creating basic transparency. We do not want you to detail every 25 cents you receive but just tell us how much in total.

SENATOR CEGAVSKE:
We are still doing what we have actually been doing. Someone just has to disclose how much they have gotten, no names.

MR. MILLER:
Correct. If you receive $30,000 in contributions in less than $100 increments, you just have to report the total amount.

CHAIR PARKS:
We should have the total amounts, so when we tabulate everything the numbers will balance. Without a balanced total, it becomes difficult to know what unspent campaign contributions you have.

We will close the hearing on A.B. 452 and we will open the hearing on A.B. 473.

ASSEMBLY BILL 473 (1st Reprint): Revises provisions governing elections. (BDR 24-1021)

ALAN GLOVER (Former Senator; Clerk/Recorder, Carson City):
Assembly Bill 473 is our annual cleanup bill. We would like to thank Assemblyman Tick Segerblom for introducing this bill. Section 1, page 3 is an attempt to tighten up the statutes to address the Scott Ashjian and Mineral County Clerk's situation. People filed for office in a party to which, at the time they signed their declaration of candidacy, they did not belong. This provision requires candidates to be members of parties when they file their candidacies. Candidates will be signing under oath. It is our meager attempt to try and correct this issue.

Section 3, page 6 deals with ballots for a general election. On the ballots, we used to use abbreviations for political parties. We were directed by the Office of the Secretary of State last Session to write out the full name of the party, which caused the printing office and our office, along with other counties, major problems. We would like to go back to putting abbreviations for the parties so the statute is clear. We put a key to abbreviations in the sample ballot to eliminate any confusion.

Section 4, page 7 applies to voters who register by mail. This applies to very few voters whose information given to the county or city clerk does not match with the Department of Motor Vehicles' (DMV) record. The provision would help get voters in the right precinct.

On page 8, line 1 states, “If there is a question as to the physical address of the person, the election board officer or clerk may request additional information.“ This language addresses the issue where someone registers to vote and he or she uses a business address, which is against the law.

Section 5, page 8 brings NRS into compliance with the Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act. These acts require county clerks to distribute ballots 45 days before an election.

Section 6, page 9 deletes the requirement that county clerks consider absentee ballot requests for two elections immediately following the date on which the county clerk received the request. This provision brings us into conformity with federal law.

Section 7, page 9 of the bill deletes the requirement to write out, in words and figures, the number of each vote. In the past 20 years, I have never done this nor have I seen this done. We print out the election results, hand them to the county commissioners and they approve it. This provision is still in statute and needs to be removed.

Section 8, subsection 2 on page 10 was added so voters could register online until midnight on the day before early voting begins.

Section 9 cleans up language. This section relates to staying open on days before the election. This is old language from when you could only register at the clerk’s office. Most people now register at DMV, and hopefully people will soon be able to register online. We do not get many people registering late on these days. The clerks can set the hours. County clerks may stay open late in Clark County, but they may want to close early in Esmeralda County.

Sections 10, 11, 12 and 13 all conform these sections to apply to cities, which is very important.

Section 14, page 14 requires the court to give a complaint challenging an initiative or referendum priority over all other matters pending with the court, except for criminal proceedings. We left out the words “except for criminal proceedings.” Under statute, if you have a major murder trial before the Court,

it would have to take an election issue over that trial. This conforms to every other section except for criminal proceedings.

Sections 15 and 16 revise the hours of operation in the county clerks' offices during the last five days of registration.

Section 17 was added by Larry Lomax, Registrar of Voters, Elections, Clark County. This provision amends the filing deadline for candidates for election to the governing board of the Virgin Valley Water District.

Section 18 repeals NRS 293.219, which removes statute authorizing political parties to recommend registered voters to county clerks to act as election board officers—this is seldom done.

We would like to add an amendment making this bill effective on passage and approval. This is because the special election is coming up. If this goes through the normal process, the county clerks' offices will be required to stay open until 9 p.m. to register people on the very first day of early voting. This falls on a Saturday; we will not have anyone in the office. I do not believe it affects the Office of the Secretary of State's timeline. When we do the notice of the election or the close of registration, we will state the closing time on that day. This passage also puts the abbreviations on the ballot if that is how we list candidates.

SENATOR CEGAVSKE:
I have a question regarding section 8 relating to online voter registration. Why would we change this provision? Why would we not leave that to be consistent with walk-ins? Why would we allow online voter registration until midnight on the day before early voting begins?

MR. GLOVER:
The Assembly Committee on Legislative Operations and Elections added the language. Assemblyman Tick Segerblom suggested we close online voting the last day of early voting. Assemblyman Lynn D. Stewart did not like the suggestion and suggested we use the first day; the motion passed.

SENATOR CEGAVSKE:
I will not support the bill if that remains. I do not agree with it. I also have a question on the 30 days before Election Day cutoff.

MR. GLOVER:
We have not changed that. Close of registration is 30 days before an election, in-office registration is 10 days before an election and online registration is a new time period.

SENATOR CEGAVSKE:
There is not a new time period? You still have the 30 days?

MR. GLOVER:
Correct. We still have the 10-day, in-office registration. This provision allows a person to register to vote online up until midnight on the first day of early voting.

SENATOR CEGAVSKE:
I have a question on section 9, subsection 2. Why would we extend the hours of operation? I do not remember an issue with needing to extend hours. Please enlighten me on this.

MR. GLOVER:
We are actually reducing the time the offices of the county clerks need to be open for a primary or special election. We are asking to close at 5 p.m. during the last two days before registration closes if approved by the board of county commissioners.

SENATOR CEGAVSKE:
The language says “must be open until 7 p.m.”

MR. GLOVER:
That language is in statute.

SENATOR CEGAVSKE:
In the bill, it appears as if it is new language.

MR. GLOVER:
It was very odd language. We had to be open from 9 a.m. to 5 p.m., then close between 5 p.m. and 7 p.m. and then reopen the office from 7 p.m. until 9 p.m. We just used to stay open, but we did not do that last time because of budget constraints. We did close for the two-hour period.

SENATOR CEGAVSKE:
Page 10, lines 38 and 39 of A.B. 473 say, "A minimum of 8 hours on Saturdays, Sundays and legal holidays."

MR. GLOVER:
That language applies to Clark County. We received approval for that from Clark County. The county election officials thought it was appropriate to stay open longer hours in counties with populations over 100,000. This does not apply to counties with populations of less than 100,000. This applies only to Washoe and Clark Counties. The registrars did not have any problem with this; it is their language.

SENATOR CEGAVSKE:
I have concerns with this language as well. You talked about minor parties submitting a slate of candidates.

MR. GLOVER:
No. The repealed section states:

> Not less than 60 days before a primary or a general election, the county central committee of each major party for each county may recommend to the county clerk of the county three registered voters for each precinct in the county to act as election board officers of the primary or general election in the precinct or district.

This never happens. This provision has not been used in years. It was used once in Clark County a number of years ago. We contact the central committees and anybody else we can find looking for precinct workers. This is only a recommendation anyway; there is no provision that the clerk or the registrar would have to hire someone.

SENATOR CEGAVSKE:
You had a bill that was clean, and additions were put on.

MR. GLOVER:
Correct. We have no problems with it.

CHAIR PARKS:
Any other comments or questions from the Committee? Do you wish to make a statement, Mr. Gilles?

MR. GILLES:
I want to get on the record that the Secretary of State does support this bill. There is a lot of practical and good cleanup language for the clerks and for voting procedures.

CHAIR PARKS:
Assemblyman Segerblom, do you wish to make any comments?

ASSEMBLYMAN SEGERBLOM:
The current registrar in Clark County has a great system. The name is matched with the driver's license file so the clerks know immediately whether a person is registered. If you sign up online, when you physically show up you have to show your driver's license and sign in, to prove who you are. The Clark County registrar said this system was used in the last election and it works great. We are just trying to move up the date by which you could register online. The compromise was to do online registration until midnight on the day before early voting begins.

SENATOR SETTELMEYER:
What is the requirement now? If you wanted to go in and change your registration or register to vote, what is the cutoff for nonelectronic registration?

ASSEMBLYMAN SEGERBLOM:
It is 30 days before the general election with the cards. If you can go into the county registrar's office, it is ten days.

MR. GILLES:
We support the amendment proposed by Mr. Glover. The extension of an online registration period until the day before early voting starts is not a problem for the special election. The statute specifically dictates for a special election, registration must be open through the first day of early voting.

MR. WAGNER:
I have a proposed amendment (Exhibit G) to A.B. 473. This amendment was submitted to the Assembly Committee on Legislative Operations and Elections. According to the Assembly Committee on Legislative Operations and Elections work session document dated April 14, on the second page, of which you have a copy, at the bottom under special notes, it says, " ... the two issues mentioned above have been addressed in the clerk's proposed amendment."

Unfortunately, it has not been addressed; it fell through the cracks. The purpose of the amendment is to get rid of the confusion on the ballot between "independent" and "Independent American Party." People go to file for office, and they put down they are independent. What is an independent? There is an Independent American Party, but there is no party called independent. I also have a voter registration form, page 2, Exhibit G; on part 10, under party registration, it says to check only one box. There is not a box for a party called "independent." There is a box for "nonpartisan, no party affiliation."

We believe the term "independent" is not a political party. On a ballot, when you vote, you vote for a person or the party. How do you vote for a party when you have ten people claiming "independent"? They do not belong to any party at all.

The idea of the amendment was to avoid confusion between the Independent American Party and people who claim to be independents. I have spoken with Vice Chair Lucy Flores of the Assembly Committee on Legislative Operations and Elections concerning this amendment. She stated she did not have an issue with it. I have spoken with Secretary Miller numerous times about this issue, and he does not have a problem with it either. I am hoping this amendment will pass this time. This amendment should become law upon passage because it will be helpful to have it clarified for the next election.

MS. GASCA:
We find the insertion of word "currently" in section 1 of this bill to be problematic. This brings up the Ashjian case, which came up this last election cycle.

In that case, the U.S. Supreme Court said the phrase means substantial compliance because a minor party candidate's party affiliation is not a necessary part of his or her qualification as age or address would not be. By adding in the word "currently," we foresee this section of law going back to court.

I would like to comment on the issue brought up by Mr. Wagner. There is often confusion with relation to nonpartisan versus independent. We think that by leaving it in its long form, it will be more apparent and easily understandable. We feel a clarification would be appropriate.

CHAIR PARKS:
We will close the hearing on A.B. 473. There being no further business, we are adjourned at 5:57 p.m.

RESPECTFULLY SUBMITTED:

Michelle Ené,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 81 A.B. 82 A.B. 452	C	Secretary of State Ross Miller	2011 Elections Legislation
A.B. 82	D	Janine Hansen	Letter to Senate Committee on Legislative Operations and Elections containing Amendments to AB82
A.B. 452	E	Janine Hansen	2010 Campaign Contributions and Expenses Report
A.B. 452	F	Janine Hansen	Letter to Chairman Parks and Members of the Senate Legislative Operations and Elections regarding Amendments to AB452
A.B. 473	G	John Wagner	Proposed Amendment to A.B. 473