

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Seventh Session
May 7, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:13 p.m. on Tuesday, May 7, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. 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, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Wesley Duncan
Assemblyman Pat Hickey
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Andrew Martin
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblyman Tyrone Thompson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Pat Spearman, Clark County Senatorial District No. 1

Minutes ID: 1087



STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Kevin Powers, Committee Counsel
Nancy Davis, Recording Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State
Barry Smith, Executive Director, Nevada Press Association
Martin Dean Dupalo, representing Nevada Center for Public Ethics
Janine Hansen, representing Nevada Families for Freedom
Craig Madole, Senior Associate, Nevada Chapter, Associated General Contractors of America, Inc.
Stacey Shinn, representing Progressive Leadership Alliance of Nevada
John Wagner, representing Independent American Party
Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada
Theresa Navarro, Board Member, Progressive Leadership Alliance of Nevada
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Donna DePauw, Private Citizen, Carson City, Nevada
Robert F. Joiner, Private Citizen, Carson City, Nevada
Cadence Matijevich, Assistant City Manager, Office of the City Manager, City of Reno
Dwight Dortch, Council Member, City Council, City of Reno
Bob Cashell, Mayor, City of Reno
Adam Mayberry, Community Relations Manager, Community and Government Relations, City of Sparks
Geno Martini, Mayor, City of Sparks
John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc.
Lawrence A. Werner, City Manager, Carson City
Alan Glover, Clerk/Recorder, Carson City
Andrea "Ande" Engleman, Private Citizen, Carson City, Nevada
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Terry Care, Private Citizen, Las Vegas, Nevada

[Assemblywoman Flores assumed the Chair.]

Vice Chair Flores:

[Roll was taken.] I will open the hearing on Senate Bill 49 (1st Reprint).

**Senate Bill 49 (1st Reprint): Revises provisions relating to public officers.
(BDR 24-382)**

Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State

We call Senate Bill 49 (1st Reprint) the Aurora Act. Part of this bill is designed to increase campaign finance disclosure by providing greater transparency into who is funding Nevada campaigns and how much is spent by candidates and third party groups. A second part relates to the receipt of gifts and clarifies what gifts will be banned, which are acceptable, and what gifts must be disclosed by public officers. These are nonpartisan issues and this bill will not have a fiscal impact on the state.

I will begin with the campaign finance reform portion of the bill, touching on the highlights and more relevant portions, and will then be happy to answer any specific questions you may have.

Section 3 of the bill defines "personal use" of campaign contributions, which has never had a statutory definition and is prohibited under Nevada law. The definition is in line with the federal standard, and it is not a departure from how that term has been interpreted by the Office of the Secretary of State, which has been guided by an Attorney General's opinion from 2002. Our proposed amendment to section 3 ([Exhibit C](#)) removes language in the original bill and language that was added into this definition after presentation of the bill in the Senate. The definition in section 3, subsection 2, of the bill now reads, "As used in this section, 'personal use' means any use that fulfills a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a public officer. . .".

The next section that I want to touch on is generally referred to as cash-on-hand reporting or ending fund balance.

Vice Chair Flores:

Are you still referring to the amendment, or the original bill?

Scott Gilles:

I am on section 4, page 5 of the bill. Section 4 will now require public officers and candidates to report the balance of their campaign account in the first contribution and expense (C&E) report filed each calendar year. This will

provide the public with knowledge of how much money is being carried over from one year to the next. Currently, as required by law, only contribution totals received within a single accounting are calculated and reported. Cash-on-hand reporting will become effective January 1, 2014 and will apply prospectively. All current public officers and candidates will report a zero balance on their annual report covering calendar year 2013, which is due January 15, 2014.

Sections 5 and 6 of the bill concern real-time reporting. The provisions in these sections will require candidates to report both contributions and expenses totaling over \$2,000, including aggregate totals from one contributor or one incurring of expense within 72 hours, but only during the early voting period, which, as you all know, is a 14-day period two weeks before the general election. This reporting standard will result in expedited and more up-to-date disclosures of large amounts of campaign money to provide voters as much information as possible prior to casting their vote.

Sections 6.3 on page 7 and 6.7 on page 8 add additional C&E reports in nonelection years. Currently, in nonelection years you are only required to file an annual C&E report. Senate Bill 49 (1st Reprint) will change that to a quarterly report in nonelection years. The reporting standard will apply to all current public officers in all levels of government.

The bill does make some changes to *Nevada Revised Statutes* (NRS) Chapter 294A regarding enforcement provisions by clarifying that the Secretary of State's Office may seek injunctive relief for campaign finance violations. This is to ensure that individuals and groups file the required C&E reports as mandated by law, and pay any financial penalties if they choose not to file as required. If we take a violation to the First Judicial District Court, this provision clarifies in the law that we may seek such injunctive relief to not only penalize an individual or group for failing to file, but also to allow the judge to compel them to file that report so full disclosure is made to the public.

That concludes my presentation on the campaign finance provisions of S.B. 49 (R1). I can take questions now or move on to the gift provisions.

Vice Chair Flores:

Are there any questions for Mr. Gilles regarding the campaign finance provisions of this bill? [There were none.]

Scott Gilles:

The provisions related to gift acceptance and disclosure are, in my opinion, the substantive policy changes in S.B. 49 (R1). The Secretary of State's Office

believes these changes are necessary to update our laws as they apply to gifts made to public officers by those who could potentially benefit financially from providing those gifts. Obviously, not every gift provided to a public officer has an ulterior motive behind it. We crafted this legislation to provide for an allowable set of gifts. However, it also attempts to ban those gifts that could lead to the appearance of impropriety, resulting from lax restrictions on this type of activity. These provisions would apply to all public officers throughout the state as defined in NRS Chapter 281. This legislation also clarifies what allowable gifts must be reported on the financial disclosure statements that are filed electronically with the Secretary of State's Office.

Several other states have similar restrictions—Arizona, Utah, Oregon, and Iowa. Iowa is the state whose gift provisions we essentially mirrored for our bill. They have had their laws in place for over 20 years and are continually ranked high in areas of governmental ethics and public disclosure. We felt the Iowa model was a good fit for us as the other states had more onerous gift restrictions with a strictly applied aggregate limit. For example, in Washington State there is a \$50 aggregate value limit for a calendar year. California has a very similar rule. Under S.B. 49 (R1), there is no limit on the amount of authorized gifts a public officer may receive. The major change here is that any allowable gifts with an aggregate value of over \$200 will need to be reported on the annual financial disclosure statement.

To summarize, S.B. 49 (R1) will now establish what a gift is, what is a prohibited gift, who is a restricted donor, and what gifts must be disclosed on the financial disclosure statement.

On page 36, section 26, lines 23 through 25, gift is defined as follows: "'Gift' means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value unless consideration of equal or greater value is received." In section 26, lines 26 through 34, you will see that the definition further states: "'Gift' does not include: (a) A contribution; (b) A commercially reasonable loan made in the ordinary course of business; or (c) Anything of value received from: (1) A member of the recipient's immediate family; or (2) A relative of the recipient or relative of the recipient's spouse within the third degree of consanguinity or affinity or from the spouse of any such relative." I will give you a general summary from the Commission on Ethics as to what that means.

Vice Chair Flores:

I can tell you I am Mexican and I have second, third, and fourth cousins. I know very well what that means.

Scott Gilles:

Fair enough, Madam Vice Chair. According to the Commission on Ethics, the third degree of consanguinity and affinity means your children, grandchildren, great-grandchildren, parents, siblings, grandparents, aunts, uncles, nieces, and nephews. Any gifts received from those people, or those related to you by marriage, would not be considered a gift under this bill.

The definition of a restricted donor includes any individual who would tend to benefit from the decisions made by a public officer who would be the recipient of the gift. The focus is on an individual who would benefit greater than the general public, which I think might address the question that Assemblyman Anderson posed to me earlier in the day regarding a decision on a statewide tax. This caveat would cover that situation. The definition of a restricted donor includes registered lobbyists who participate in the legislative session in this building.

The general rule that is introduced by this legislation is that a public officer cannot receive a gift from a restricted donor. There are two key clarifications to this rule. First, there is a safe harbor that you can return the gift within 30 days and avoid a violation or, second, you can donate the actual gift or give a dollar amount equal to the value of the gift to a tax-exempt nonprofit, governmental entity, or fund of the state.

Section 30 creates an extensive and broad list of gifts that are exempted from that general prohibition. I will not go through every category as there are 18 subsections with various paragraphs and subparagraphs to each subsection with too many potential hypothetical gifts to cover in this hearing. I am happy to make myself available after the hearing to address any specific examples you may have.

Acceptable gifts include the reimbursement of food, travel, lodging, or registration fees related to participation in a meeting, panel, seminar, or other type of speaking engagement, when some type of meeting has an educational component to it. Items received from an organization in which the public officer is a dues-paying member are acceptable, as long as that gift is given to all other dues-paying members. Plaques and awards given for the public officer's public service are also acceptable. Subsection 7 addresses food and beverage at a reception to recognize public service of the public officer or to raise money or support for a charitable organization. Other accepted gifts are flowers or memorials for a funeral service, a wedding or anniversary gift. You may accept food, a beverage, or entertainment provided at any event during the session to which every member is invited. Those gifts are still allowed under this legislation. The one thing you must note is that gifts allowed under section 30

must be disclosed on your financial disclosure statement if their aggregate is over \$200 within that calendar year. It should also be noted that the gift restrictions and authorizations in this legislation do not affect the general Commission on Ethics' prohibition, as noted in NRS 281A.400, of the acceptance of any gift which would "tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties."

It should also be noted that the intent of the donor and the potential behavior of the recipient are irrelevant for the law to be violated. The issue is whether or not the person giving the gift is a restricted donor and whether or not any section 30 exception applies to the giving of the gift.

Sections 31 and 36 extend authority to the Secretary of State's Office to enforce these new gift provisions in a manner nearly identical to the provisions in NRS Chapter 294A, which gives us the authority to enforce the filing of the C&E campaign finance reports.

Finally, sections 18 through 22 revise NRS Chapter 218H, which is the chapter regulating lobbying in Nevada. It extends the definition of a gift to that chapter and requires that the Director of the Legislative Counsel Bureau (LCB) give notice to the Secretary of State's Office of any suspected violations.

Aside from the amendment noted earlier regarding the definition of "personal use," we also have amendments for sections 26, 29, 30, 31, and 35. These amendments concern the provision related to gifts. First, we are changing the term "gift" to "item of value" which you can find on page 2 of the amendment ([Exhibit C](#)). This change is based on concerns we received from public officers who often attend educational meetings or other work-related seminars and events that are paid for by organizations that may potentially fall into the category of a restricted donor. I know many people in this body go to the Council of State Governments (CSG) events or other state legislator events that are paid for by someone else. We do not want to stop public officers from attending these types of events to educate themselves and broaden their horizons in those areas. The concern was the characterization of these events and payment for them as gifts. "Gifts" will now be referred to as "items of value" on the financial disclosure statements. This does not change any substantive policies of the bill or the disclosure requirements of this bill; it is simply a different labeling for the financial disclosure statements.

A second amendment related to gifts concerns the general prohibition on relatives of public officers, to the third degree of consanguinity or affinity, from receiving gifts. We were concerned about how far this restriction could reach

to the relatives of a public officer. The Commission on Ethics' general rule on acceptance of gifts would probably cover any type of untoward action, for example, the giving of gifts to someone's wife or husband to potentially curry favor with that public officer.

The Associated General Contractors (AGC) have a friendly amendment ([Exhibit D](#)) to the bill. Craig Madole is here to answer any questions you may have for the AGC, but we have talked to them at length and I wanted to address it. The amendment removes the client of a lobbyist from the definition of a restricted donor. The intent of this change is not to allow the unrestricted and unregulated gift-giving directly from a lobbyist client when a lobbyist cannot do it. The intent of the amendment is to make sure that the bill does not make a client of a lobbyist a restricted donor. For example, an attorney who is a registered lobbyist for one particular client in front of this body may have other clients in their law practice completely unrelated to this body, such as a woman they are preparing a will for. Under the definition as it now exists, that could potentially be interpreted to mean the woman who needs a will is now a restricted donor. We do not want to capture her as a restricted donor. If she is having conversations with a legislator and buying him dinners and other items of value, then she would fall into the catchall definition of a restricted donor. We just wanted to clarify that this does not extend to all clients of a lobbyist. This is not going to open up the floodgates for any client of a lobbyist to start giving gifts and not be regulated by this bill. I believe that covers the AGC amendment.

One other thing I want to make clear is that the definition of "public officer" as it is used in NRS 281.005 and for the gift restrictions in this bill is not the definition that is found in NRS 281A.160 or any other areas.

The reason that we brought this bill is that Nevada is routinely listed at the bottom regarding campaign finance disclosure and ethics. In 2012, the Center for Public Integrity ranked Nevada forty-second in the nation with a grade of D. Specific areas that were graded by the Center for Public Integrity include lobbying disclosure, F; legislative accountability, D; ethics enforcement, F. That same survey ranked Iowa seventh overall. Again, the language in this bill as it relates to gifts is modeled after the Iowa provisions. These grades, as I am sure everyone here will admit, are unacceptable. Nevadans do deserve better. We ask for your support on S.B. 49 (R1) because Nevadans deserve to have their public officers and candidates held to a higher standard and have the knowledge that those standards are consistently being met.

Vice Chair Flores:

Are there any questions for Mr. Gilles?

Assemblyman Elliot Anderson:

The bill requires action be brought in the First Judicial District Court. The same provision exists in many current laws, but does it make sense to have a public officer from the other end of the state come up to defend themselves in Carson City? Why not simply say a court of competent jurisdiction?

Scott Gilles:

The Attorney General, who brings these cases, and Secretary of State, who is the party of interest in these cases, both reside in Carson City. We have not dealt with many situations where that has been problematic.

Assemblyman Elliot Anderson:

You have offices in Las Vegas and in Reno where you could go to the Second Judicial District Court. Is that difficult for your office to manage?

Scott Gilles:

Is it impossible? No. However, with the exception of one individual who takes care of the Help America Vote Act duties in Clark County, the entire Elections Division, which is responsible for the financial disclosure statements and C&E reports; the Secretary of State; and the Attorney General are all found in Carson City.

Assemblyman Elliot Anderson:

All elections-related violations are brought in Carson City. It is a concern of mine that this small pool of 50,000 voters is electing judges that decide these questions. It appears that Carson City has a weightier say on important points of law for election-related issues.

Vice Chair Flores:

I remember having this discussion last session. It was more in the context of any type of redistricting litigation that might come up, or things related to that. Essentially, it boiled down to the fact that we have parties that could probably bear the cost of having to travel to a different jurisdiction. In this context, I think it makes more sense to consider the choice of forum simply because this is applicable to every elected official in Nevada, including the Legislature. Most elected officials in Nevada are considered citizen legislators, and we are no longer talking about parties who have a substantial amount of resources or who have generous legal defense funds. Maybe we are talking about a different type of situation where there is more of a burden than a citizen legislator might be able to bear. I think that is a valid concern.

Assemblyman Munford:

You are talking about gifts. I equate in-kind contributions as gifts, which we are required to report. Is an in-kind contribution actually considered a gift?

Scott Gilles:

An in-kind contribution is not considered a gift. One of the changes in this bill clarifies within NRS Chapter 294A the broad definition of a contribution that does not include a gift. An in-kind contribution and a gift are two separate things.

Assemblyman Thompson:

The survey you mentioned gave Nevada a D on transparency. Is that an annual survey, and, if so, who administers it? I assume it covers the entire United States.

Scott Gilles:

Correct. The Center for Public Integrity conducts the survey. They are a national organization made up of individuals and groups, many of them journalists, who are concerned about public disclosure and transparency in these types of issues. I do not know how often they put out this report, but I am happy to provide you a copy of what we have and direct you to their website.

Assemblyman Thompson:

Who will answer questions on the survey? Who gets to make the grade?

Scott Gilles:

The Center for Public Integrity controls whatever criteria they use to come up with the grade. I do not know if that criteria is publicly available. I am guessing it would be since it is a transparency group. I do not know if they conduct the actual survey; I do not recall our office being asked any questions about what our law entails or what is required as far as disclosure. From my experience, these types of groups typically have staff that will research state and local laws to see what type of disclosure is required and then will gather information together and ultimately make their determination from the laws that are on the books. I do not know whether this group made any survey of local offices or any division of our state government, or even simply asked Nevadans how they feel about it.

Assemblyman Thompson:

Has your office received many complaints from constituents saying that they want more transparency?

Scott Gilles:

We have received them in the form of formal election integrity violations reports that allege somebody did not disclose this or that. Many times our response to those violation reports is that the candidate is not required to disclose that type of information. Then we receive emails to our general election email address or phone calls to staff, asking why that information is not required to be disclosed. Why has this political action committee not had to do this? Why has this candidate not been required to tell us about this particular business venture? We do have a handful of complaints on these issues.

Assemblywoman Kirkpatrick:

I like things to be noted on the record regarding legislative intent. In sections 29 and 30 I think there is an issue with the definition of "gift." Sometimes I receive a gift and immediately donate it to a school in my district for them to use as a raffle prize. However, I would be subject to report that gift and donation of the same, but there is no mechanism for me to do so. That is where it becomes an issue with the public; they think we keep all these gifts and we do not. How would that be handled?

Scott Gilles:

You are correct. Presumably, if the gift, as received by you, fell under the definition, you would have to disclose it. If it met the \$200 aggregate over the year, you would be disclosing it as a gift and, unfortunately, there is no mechanism for you to disclose that you donated that gift to a different entity or to the public or for the public good.

Assemblywoman Kirkpatrick:

How is that different from what Mr. Munford was asking? For example, I call a lobbyist and say I need 25 apple pies for a Thanksgiving dinner at the community center. You told Mr. Munford that is not considered an in-kind donation. How is that different from the other scenario?

Scott Gilles:

I do not think it is different. What I should have explained was that you could, in that scenario, treat that gift of the 25 pies as an in-kind campaign contribution and report it that way on your C&E report and then report it as an outgoing expense to the community center. The one distinction in treating it as an in-kind campaign contribution and as a gift, presuming it is an allowable gift, is that the value of the in-kind campaign contribution of those pies is going to go toward your \$10,000 limit from that particular donor.

Assemblywoman Kirkpatrick:

Section 29 says that even a spouse cannot receive a gift from a restricted donor. What happens, if before you were elected into office, you developed a friendship with someone who would now fall under the definition of a restricted donor? I know we had this discussion before but I do not remember how we rectified it. It seems as if we are undoing what we tried to fix. In a citizen legislature you are expected to have a day job, friends, and a life outside of government. I have a very dear friend that I have known for 30 years. She is now a school board trustee and I am in the Assembly. Does that mean we can no longer exchange birthday gifts because she would be considered a restricted donor based on your definition?

Scott Gilles:

Let me be sure I understand your question. What I interpreted from your description is that a woman who is sitting on a board in Clark County is giving a gift to you; a public officer giving a gift to another public officer. If your friend, whom you have known for years, were to come before this body in a generic sense, to talk to you about a particular bill that affects her, trying to advocate a ruling in a particular way, that type of behavior could put that friend into the restricted donor category. Once she is a restricted donor, she can only give you those gifts if they fall within the exception.

Assemblywoman Kirkpatrick:

As a school board trustee she does lobby this building, whether or not she lobbies me directly. It appears that I am required to claim any birthday gifts and Thanksgiving exchanges. My last comment is that this bill does not mention the face value of a gift. For instance, if I buy a ticket to a Girl Scout charity event, a portion of that money is deductible and a portion is not. So what is considered within this definition?

Scott Gilles:

Our intent would be to look at the face value. A ticket to a charitable event that you are allowed to accept may be \$250, but the reality is \$150 of that is benefiting the charity; \$100 is for the drinks and the food that you are going to have there. We have not, at least at this point, thought about making any distinction between those two. We have discussed looking at the face value of that gift and requiring you to disclose the \$250 item of value on your annual financial disclosure statement.

Assemblywoman Kirkpatrick:

So if the value of the dinner is \$1,000, that would count toward the aggregate of campaign contributions throughout the process, correct?

Scott Gilles:

Correct. If you are going to treat that receipt of the \$1,000 dinner ticket as an in-kind campaign contribution, which you have the right to, then yes, it is going to go toward your \$10,000 limit under NRS Chapter 294A for your campaign contributions. If that \$1,000 ticket falls within one of the categories of an allowable gift and you want to treat it as a gift, you can still take it, but would need to disclose it on your financial disclosure statement at the end of the year. That does not go against your campaign contributions.

Assemblywoman Kirkpatrick:

I am trying to make sure the record is clear because we can all have private conversations but then it is not clear what the legislative intent was.

Vice Chair Flores:

Is it your intent that on every one of the charity galas or dinners that we go to throughout the calendar year, if it is either worth more than \$200, or aggregates to more than \$200, then we must report it as a gift with all of the details that you just stated?

Scott Gilles:

To clarify, if you are going to treat that ticket to the charitable event as a gift, then you will disclose it at the end of the year on your financial disclosure statement and will only need to list the donor, date, and value of that ticket. If you are going to treat it as an in-kind campaign contribution, then it is going to be reported under NRS Chapter 294A.

Vice Chair Flores:

And, because it also applies to spouses and relatives, if your spouse goes with you to that dinner then you are reporting two gifts.

Scott Gilles:

Yes. You would need to report the amount of both tickets as a gift to you. I can look into this to clarify before we have a work session on this bill, but I believe the concept would be that your spouse would not be getting that free ticket if you were not a public officer. For an acceptable gift, you just have to disclose the full amount.

Assemblyman Hickey:

I see in the bill that there are provisions allowing your office to investigate and enforce violations of Senate Bill 49 (1st Reprint). This would broaden the scope of what is reportable, how often it needs to be reported, and possible violations. As there is no fiscal note, one has to assume you are going to be doing this with the existing staff, during the heat of the election season. I think you

would agree with me, it certainly has been my experience with your office, that is the time of year you are the busiest. I question your ability and your office's ability to enforce all of these new rules and regulations. Who is going to be looking at this? Is it the media or the public? Do you have the capacity to enforce these?

Scott Gilles:

We have taken into consideration our staff resources and delegation of duties, particularly during an election cycle, and feel confident that we can handle this. If we find that there is an onslaught of complaints against public officials, we may revisit that down the road with the Interim Finance Committee (IFC) or this body. I am fully confident that public officers in this state are all doing the right thing and we are going to receive very few complaints related to this bill.

Assemblyman Hickey:

This bill originated in the Senate and while they do not have as many members as we do, they seem to have quite a number of cooks in the kitchen. I am wondering about section 2, regarding the question that came up in the Senate about clothing. It was referred to in the press as the Armani clause. Is that still in there?

Scott Gilles:

The Secretary of State's amendment that we are submitting today does take out subsection 2 in its entirety.

Assemblyman Hickey:

But as you understand it now, where does the whole issue of the purchase of clothing stand for members of this body?

Scott Gilles:

The way it is left now, it will be determined on a case-by-case basis. What we have left in this definition of "personal use" is "any use that fulfills a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a public officer," but it does not include "the ordinary and necessary expenses incurred in connection with holding a public office." Under this interpretation, there could be scenarios where it would be appropriate to use your campaign money to purchase clothing for the session, but it will be limited by the "ordinary and necessary expenses incurred in connection with holding public office."

Vice Chair Flores:

Mr. Martin, do you still have a question?

Assemblyman Martin:

I am looking at sections 5 and 6. The real-time reporting has me very concerned. Is it 72 hours, or is it 72 calendar-day hours to report contributions? I think the most difficult aspect for me is the aggregation of certain expenses. It seems like this could be overly burdensome. The flip side to this is the unintentional mistakes that candidates who do not happen to be CPAs invariably make. There are some relatively high penalties at stake here. Is your office going to be adding more accounting people to help candidates with the reporting? Is there going to be some kind of forgiveness for mistakes because I see a lot of potential for problems here, particularly with the short windows of timing and the aggregation of the expenses. If you could talk more about that, I would appreciate it.

Scott Gilles:

We do make our staff, our entire Elections Division staff, available to assist with the campaign finance filings. In fact, right around the deadlines, sometimes my staff will spend the better part of their day answering phone calls. We also provide guides online in Aurora to help as much as possible. We are always there to answer any question.

To answer your question about an accidental mistake, we do not audit reports, but if a mistake was brought to our attention and we deemed it accidental, we could provide the opportunity to amend that report. Sometimes there is no penalty or a very small penalty; sometimes it is a very big penalty. That is why the chapter gives our office the discretion to make that determination. Once our office exercises its discretion as to how to handle a particular violation, whether it be egregious or accidental, we cannot just go and subject someone to a civil penalty. If there is an objection to what we believe is the appropriate remedy, we have to send it to the Attorney General's Office which would file the lawsuit. Once they have made a determination on whether they agree with our analysis, then a judge will make the decision as to whether it was accidental or egregious and determine the appropriate remedy for that filing error.

Vice Chair Flores:

You made some comparisons to other states and I was wondering if you had information of how that grade was furnished. Can you tell us about the structures of the legislatures in Washington and California? Are they full-time legislatures and how do they compare to the structure of our Legislature?

Scott Gilles:

I do not have information on that right now. I believe California is full-time. I do not know about Washington, but I will provide that to you before we have a work session on this bill.

Vice Chair Flores:

It is my understanding that California's legislature is full-time and has an annual salary that is close to \$100,000 with about eight to ten staffers per person. I believe Washington is at least annual, and I believe that they have more staff and operate as a full-time legislature. It is an interesting comparison to make to the way that Nevada functions; how on par could we possibly be when government is so different in these various states? If you do have more information, I would be happy to see it. Do we have any further questions from the Committee for Mr. Gilles? [There were none.] Is there anyone who is in support of S.B. 49 (R1) who would like to speak?

Barry Smith, Executive Director, Nevada Press Association:

We are in support of S.B. 49 (R1), particularly the improvements in the disclosure requirements and most significantly, the cash-on-hand annual reporting. I think it should be fundamental to the disclosure reporting and is something reporters will find helpful when explaining to the public what is going on with campaign finances.

Vice Chair Flores:

Are there any questions for Mr. Smith? [There were none.]

Martin Dean Dupalo, representing Nevada Center for Public Ethics:

My organization supports Senate Bill 49 (1st Reprint) as amended. Many of the questions brought up by the Committee in the last half-hour I can address as I was the peer reviewer for the Nevada section of the report by the Center for Public Integrity that Mr. Gilles mentioned in his testimony. The survey was a nationwide study. It was made up of prominent journalists in the state. I can only speak specifically about my portion as a peer reviewer to verify the findings that were brought before me. As a minor correction, the grade was not a D; it was a D-, close to the threshold of an F. I have spoken to this Committee before about this so perhaps sometime tomorrow I can contact Assemblyman Thompson's office and provide more details.

Vice Chair Flores:

He is nodding his head yes, so you can definitely provide that information. Do you have any further comments?

Martin Dean Dupalo:

None other than reemphasizing that we are in strong support of S.B. 49 (R1).

Vice Chair Flores:

Do I have any questions for Mr. Dupalo? [There were none.] Seeing no one else in support of S.B. 49 (R1), I will go on to opposition. Is there anyone in opposition to S.B. 49 (R1) here in Carson City or in Las Vegas?

Janine Hansen, representing Nevada Families for Freedom:

We used to believe in America, in free speech, and now we believe in something that has no constitutional basis, but is nebulously called transparency. What it requires is becoming more complicated, confusing, and restrictive. It reminds me of what Senator Townsend said, that the time would come when no one would be willing to run for office because there will be so much reporting and penalties that people need to fear. This bill is subject to interpretation and I do not know who is going to decide what it means. How are we to be sure we are inside the parameters of the law without putting ourselves in jeopardy? I know Assemblyman Martin is an accountant. I am not. So now we have more paperwork and more government. I am worried about the requirement for more reporting during the busiest part of the election year. Aside from your opponent, who is concerned about this? Perhaps the press, but most people do not care. Many people in small communities are going to say, "I am not going to serve my community because it is too much to do." I do not think we have a lot of corrupt people in government. I think we have a lot of good people that are trying to do their very best.

Vice Chair Flores:

Are there any questions for Ms. Hansen? [There were none.] Is there anyone else in opposition to the measure? [There was no response.] I will move to those in neutral. Do we have any neutral testimony?

Craig Madole, Senior Associate, Nevada Chapter, Associated General Contractors of America, Inc.:

I just wanted to thank the Secretary of State's Office for working on this bill with us and accepting our amendment.

Vice Chair Flores:

Do I have any questions for Mr. Madole? [There were none.] Seeing no further testimony, I am going to close the hearing on S.B. 49 (R1). I will open the hearing on Senate Bill 325 (1st Reprint).

[Senate Bill 325 \(1st Reprint\)](#): Revises provisions relating to elections.
(BDR 24-953)

Senator Pat Spearman, Clark County Senatorial District No. 1:

Senate Bill 325 (1st Reprint) could easily be called the plain language ballot act. How many of you, I wonder, have contemplated the language on a ballot question and asked yourself, what does this mean? Voting is hard work. It requires that we understand complicated public policy questions. Senate Bill 325 (1st Reprint) proposes to do something to help you with those questions. [Read from prepared text ([Exhibit E](#)).]

I have provided for you a copy of an article from *State Legislatures Magazine* that summarizes a review of the average reading level of measures on the ballot between 1997 and 2007 ([Exhibit F](#)).

I have provided for you a couple of examples of ballot questions that left voters wondering. The first one is the Moapa General Obligation Park Bond Proposal from 1994. [Read from prepared text ([Exhibit G](#)).] That was one sentence.

Vice Chair Flores:

I am sure a lawyer did not write that.

Senator Spearman:

Job security. The second one is from 2002—an amendment to the *Nevada Constitution* proposing to repeal the rule against perpetuities. [Read from prepared text ([Exhibit H](#)).] It goes on for another four sentences. I am not sure how many people understand what "perpetuity" is. These are just some examples of what our ballot questions look like and when you stop and you think about the average person trying to read that, if it is that intimidating, many times they will just skip over it.

Vice Chair Flores:

I can certainly say from an attorney's perspective there probably is not a single attorney in this building who knows the rule against perpetuities. I did not learn it in law school and I do not know it now.

Senator Spearman:

We have improved our understanding of access to voting and to the ballot in a number of ways in recent years. [Read from prepared text ([Exhibit E](#)).]

Vice Chair Flores:

I certainly agree with the intent of the bill. The only thing that I do not know is how you would ensure that what you are intending to do actually is done. As I read the language of the bill, I wonder who is going to be the judge of what concise and clear means. I guess it depends on who is doing the judging and who is doing the writing. I think that we can all agree that the examples you

have provided are incredibly confusing and hard to understand. At the same time, who turns the examples that you gave us into something that is more digestible?

Senator Spearman:

Ordinary citizens that comprise the community board will look at what the intent is and then come up with the language. I think you will see that Mr. Lomax had proposed a friendly amendment which we did accept, and that was in addition to the plain language, just to make sure that the legal loopholes, if there are any, are closed. We are not looking at hiring anybody, just to use local people.

Vice Chair Flores:

And where is that in the bill?

Senator Spearman:

I do not have the mock-up in front of me.

Assemblyman Elliot Anderson:

I think it depends, Madam Vice Chair, on what type of question it is. For example, if it is a legislatively initiated constitutional amendment or ballot question, I think it is approved through the first committee of reference or the Legislative Commission, depending on if the Legislature is in session or not. If it is people-initiated, it goes through a committee in support and opposed, and it is finally approved before it goes on the ballot by the Secretary of State. I think it just depends on the question; if you look at different sections, it is laid out in each section who would approve those.

Senator Spearman:

And if you look at the first page it is requiring the governing bodies of certain counties and cities to appoint committees to prepare arguments for and against approval of advisory questions and providing other matters properly relating thereto. It is really designed for ordinary folks that use ordinary language so that people do not need a Ph.D. to understand a ballot question.

Vice Chair Flores:

So you are not changing the structure because that already exists. You are simply emphasizing that the language needs to be clear and concise.

Senator Spearman:

To say what you mean.

Vice Chair Flores:

I agree. I just do not know how you would enforce something like that because you are essentially telling these folks, depending on what kind of measure it is, to be clear and concise. That is certainly not a reason for me not to support the bill, I just wonder if it is truly going to have the kind of impact or changes that we really want to see.

Senator Spearman:

This will be covered in another bill that I will present later on, but when you have just regular ordinary folks writing the ballot question or initiative question, I think that it emphasizes the fact that you want to improve the voting process. As I said before, with the exception of using the lens of the legal language that has to be there, there will be less elaborate verbiage. Certainly, you will not have one ballot question that has 19 lines and it is only one sentence.

Vice Chair Flores:

Are there any questions for Senator Spearman from the Committee?

Assemblyman Thompson:

Could it be as simple as us asking what academic level other states write their ballot questions for? Nevada's questions are written at a 19-27 academic level. Maybe if we brought it down to a tenth-grade level.

Senator Spearman:

I think if you look at this handout ([Exhibit F](#)) which is on the Nevada Electronic Legislative Information System (NELIS) you will see it talks about what the average grade level is. It is somewhere around the eighth grade. I know when I was in the military they used to tell us to write like you are writing for a fifth grader—that way everybody would understand it. And certainly there are some doctoral programs that tell you, even though you know the embellished language, do not use it all the time because not everybody will understand.

Assemblyman Oscarson:

Senator Spearman, thank you for bringing a commonsense approach to ballot questions that sometimes seem so convoluted and mysterious. I cannot tell you how many times during the last several elections, even before I was a candidate; we had discussions about what the heck does this mean. Even at the polling places you will see those kinds of conversations going on where people are discussing these questions and not knowing how they should vote.

Assemblyman Hickey:

Thank you, Senator Spearman, for applying the simplicity principle here. Would you tell me a little bit more about what it means by applying a fiscal

note? How do you expect that to be formulated and described in an understandable way?

Senator Spearman:

Many times, there are ballot initiatives, particularly bond issues that will require some financial investment either up front or at some point during the process. When people are voting, they need to know that and they need to know that up front. In the Army we used to call it BLUF, bottom line up front. Tell me what this will cost up front and then I can get into the meat of the details. If you bury it somewhere in the middle or at the back, I may not realize that is what you are talking about. This is a commonsense approach to how we make available the voting process to all of our citizenry and not just those who possess a Ph.D.

Assemblyman Duncan:

I echo the comments of Mr. Oscarson. Even this last election when we were knocking on doors, people were really trying to understand what was going on. I do appreciate your taking a military perspective on it. Will this appear in the voter guides as well? The summary and the digest?

Senator Spearman:

It is designed to say throughout the whole process, let us make it readable and understandable. So everywhere that we can do that, let us do that.

Assemblyman Martin:

I was thinking of my time in Washington doing federal government auditing and I remembered that even the federal government came up with something they called the Plain Writing Act of 2010. You can find it at <plainlanguage.gov> and there are all kinds of models for language and everything. Did you happen to stumble across that in your research? It may be a very good tool. The federal government is actually ahead in something.

Senator Spearman:

I wish that I had been that astute. I did not. I basically came up with this from talking with people. I, too, was one of those folks standing in line saying, I have no idea which way I am going to vote on this because I do not really understand it. I had my little voting guide with me and it just makes sense. Why do we go through all the problems and the hassles of putting together ballot questions and/or initiatives only to see them fail or not turn out the way we hoped they would, because people did not understand what they are being asked to do?

Vice Chair Flores:

Are there any further questions for Senator Spearman? [There were none.]
I will call for anyone else in support of S.B. 325 (R1).

Janine Hansen, representing Nevada Families for Freedom:

We are pleased to be able to support this. For many years, Nevada Families for Freedom has published a voter guide, which is one of the most popular things that we provide. We now even provide it on our website. We used to just publish it on our Nevada Families Voter Guide newspaper. We feel that this is important. I participated on one of the citizen advisory committees that was involved in the explanation of one of the ballot questions that was on the Washoe County ballot and we worked very hard to make sure that it was easy to understand. I think that people really do want to be responsible in the way they vote and they do want to be able to understand these things. I think this goes a long way in its intent to try and accomplish that simple goal of helping people to be informed voters and know what they are doing and feel confident that they understand what the question actually means.

Vice Chair Flores:

Are there any questions for Ms. Hansen? [There were none.]

Stacey Shinn, representing Progressive Leadership Alliance of Nevada:

Senate Bill 325 (1st Reprint) will help ensure ballot initiatives are not driven by an agenda concealed in confusing wording. Instead, this ensures that initiatives do what they say they are intended to do—give voters an opportunity to participate in direct legislation. To accomplish this, it is essential that voters have the opportunity to fully understand what their vote means. Voters may be inexperienced, stressed, have limited English proficiency or low literacy, or have some reading, learning, or cognitive disability. None of these reasons is justification for disenfranchisement. Enacting a statewide set of standards would go a long way in adding transparency and restoring citizen confidence in the process. Senate Bill 325 (1st Reprint) is an improvement upon our current system and helps level the playing field for all Nevada citizens.

Vice Chair Flores:

Are there any questions for Ms. Shinn? [There were none.]

John Wagner, representing Independent American Party:

It is very nice to be able to agree with Ms. Shinn. We support simple language. I used to write tech manuals and I kept it as simple as I could so the audience would be able to understand it. But I would also like to add one other thing that you might want to consider. Keep it short. If you send me a long email I am not going to read it. I think short, sweet, and precise.

Vice Chair Flores:

Are there any questions for Mr. Wagner? [There were none.] Is there anyone else in support of S.B. 325 (R1)? [There was no response.] I will move to opposition to S.B. 325 (R1). Is there anyone in opposition to the measure? [There was no response.] I will move to neutral. Is there anyone wishing to speak who is neutral to S.B. 325 (R1)? [There was no response.] I will close the hearing on S.B. 325 (R1) and open the hearing on Senate Bill 457.

Senate Bill 457: Revises provisions relating to certain city elections.
(BDR S-706)

Senator Pat Spearman, Clark County Senatorial District No. 1:

Senate Bill 457 proposes to revise election provisions of certain city charters. As you know, there are still cities here in Nevada that elect members of the city governing boards at citywide elections. That is to say, even though a candidate must reside in a certain geographic area—a ward—all of the qualified voters of the city get to vote on who will represent that designated portion of the city on the governing body. [Read from prepared text ([Exhibit I](#)).]

I would like to suggest that the Reno advisory question ballot language was confusing. I have provided for you a summary of the ward voting in Reno on the advisory question ([Exhibit J](#)). I asked the Information Technology Services Unit of the Legislative Counsel Bureau (LCB) to correlate Census Bureau data with ward election results obtained from Washoe County. [Read from prepared text ([Exhibit I](#)).]

I have provided for you a summary of "Reno City Elections from 2002 to 2012" ([Exhibit K](#)). You will note that in 2002 in both Ward 2 and Ward 4 the winner of the primary election did not subsequently win in the general election. So you can see the will of the ward residents can be thwarted by the rest of the city voters. [Read from prepared text ([Exhibit I](#)).]

That concludes my comments with the exception of this one editorial note. As I looked at the data that was collected regarding the elections across all four of these cities, it was stunning to see that it looked much like the data that would have been collected during the Reconstruction era, the data that would have been collected immediately after the 1964 Civil Rights Act. You have more affluent and educated people from one ward who are voting for candidates who live in a different ward. One of the things that I am mindful of and I believe that is why we, as members of the Legislature, run in specific districts. That is, we have a unique understanding of the communities that we serve, an understanding that someone from another part of the state might not have. If I were to vote for a legislator from the north, I do not really have a true

understanding of some of the nuances there, but I think someone representing them might. As I thought more about this, it reminded me of a story that my grandmother told me.

I am fourth-generation free. My great-grandfather was a slave when the Emancipation Proclamation was made. My grandmother was born free. My father was born free. I, as the fourth generation, was born free. But my grandmother told me of times when she wanted to vote and when her parents wanted to vote and she would show up and she would get questions like, so how many jelly beans are in this jar? Alternatively, how many red jelly beans are there or how much does a bucket of steam weigh? It did not really matter what the answer was, because the answer was always no. You got it wrong so you cannot vote. And so when we disenfranchise people, whether it is by design or default, when we disenfranchise people, I think it has the same effect. That is why I would really encourage your support for this piece of legislation.

Vice Chair Flores:

Your point is well made. Do we have any questions for Senator Spearman?

Assemblyman Hickey:

I guess in an interesting kind of way your previous bill sort of set the stage for this one, and being from Reno, I am pretty familiar with what you are referencing. I think there was quite a high percentage of voters in Washoe County that decided to use the ward-only approach in the primary. I would only add to your reference of the sad history in our country and disenfranchising folks, it is also true that the Reno City Council currently has six council members, four of whom are women and one is a minority.

Senator Spearman:

What you just stated is prima facie evidence, but when you drill down, I happened to be on a flight going to Las Vegas a few weeks ago and sat next to some ladies who were from Reno and I simply asked them what did they think about the ballot question. They both said they had no idea what they were being asked to do. They appeared to be educated, but it has not been just them. I have talked to people not only from Reno, I have talked to people from Henderson, and I have talked to people from Carson City. When you look at it on the face it looks like it is even, but when you drill down and you look at the statistics, you find out that Wards 1 and 2 are electing everybody from the city, or to represent the city. I do not take issue nor is this legislation designed to impugn the integrity or intentions of anyone; I am simply saying that the facts are there and when you look at it, whether by design or default, that is what is happening.

Assemblyman Duncan:

In your opinion, has there been any Voting Rights Act violation here, or has that issue been looked into?

Senator Spearman:

I did not look at it through the lens of the Voting Rights Act per se. What I did look at, I wanted to see the statistics, I wanted to see who was voting, and I wanted to see who was elected. If you stop and you think about it, someone who starts in the primary, they can win in the primary but they cannot run in their ward in the general. They have to run citywide. Unless you have a campaign which allows you to introduce yourself to the voters citywide, your chances of being elected are minimized, and as I said before, it is really a fairness issue. It is about refranchising people who need people on the city council that can speak to their needs.

It is interesting because while we were crafting this bill, there were several incidents that really spoke to this. One was a friend of mine from Henderson who is in his late 70s; his wife is in her early 80s and she is in the early stages of Alzheimer's. They woke up one Friday morning and sewage was backed up into their house. They called a plumber and the plumber looked at it and, based upon certain criteria, it looked like it was something from the city. It looked like the city sewer had backed up. To sort all of that out, he had to spend money, get somebody to come out, clean the rug, disinfect it, et cetera. He called City Hall and asked to speak to somebody to let them know what had happened. He said that he called just about everybody he knew. I said, who is your city council member? He said everybody. What do you mean everybody? He said everybody. Oh, okay. Can you do anything to help us? I said I would try. I got back here and I called. The person who answered the phone assured me that they would call this gentleman and would take care of it. Two weeks later, it was not taken care of. It did not get taken care of until I went directly to some folks from the City of Henderson and said I think this is wrong and they promised me that they would look into it and fix it and yes, they did.

My point is this: there should have been a person that they could have called, a specific name, a designated person that they could have called from their ward, and that person could have been held accountable for answering the questions of their constituent. Just like we are held accountable for answering the questions or the concerns of our constituents. That was not the case.

Assemblyman Duncan:

So, is it your understanding that in Reno, and maybe the Reno folks can speak to this, that if someone is in Ward 3, they are not going to be designated as being represented by a person in Ward 3? Does it just list all the folks?

Senator Spearman:

Currently, you can run in the primary and win in Ward 3. You live in Ward 3. You are raising your kids in Ward 3 and that is where your life happens. However, in the general election, you run at large, and so the person who wins may or may not know your neighborhood. If you look at the stats, for the most part, the people who are elected in the general are usually not the same people who have won in the primary. So my point is, we have 14 other incorporated cities that have ward voting, that have districts. As recently as 2004, it happened for North Las Vegas. The benefit of running in a ward or running in a district where you know people and people know you is that you know the issues. It would be very difficult for me to represent or to say that I know what is happening in Anthem. It is Clark County but I do not live there. I do not work there.

Assemblyman Duncan:

I guess I do not understand. If Mr. Martin and I were in the primary in Ward 3 and Ward 3 decides who will represent Ward 3, and we both go to the general election, it is all voters in Reno at large who vote, correct? And the winner represents Ward 3?

Senator Spearman:

No. Not necessarily. The premise is that whoever is elected when you elect them at large will represent the whole city. But the preponderance of evidence contained in the data shows that you could have someone who wins the primary from Ward 3, but when they run at large, it could be somebody from Ward 2 who wins. And so the person who won the primary in Ward 3 does not represent Ward 3; it is the person who wins at large in the general.

Vice Chair Flores:

I think I can clear up the confusion. Technically, yes, that person is the representative of that ward. The same way I am a representative of Assembly District 28 in northeast Las Vegas. However, after I win the primary in my district, and you win your primary in your district, then at that point everyone in the entire city now votes in that election. And I think that is the point that Senator Spearman is making. Technically, yes, I am still a representative of District 28, as is the person in whatever ward that they were elected in Reno. However, because every single person in Reno voted for you, I think in a way I agree with Senator Spearman, that you are a representative of the entire city because every single person voted for you. Therefore, you are accountable to all voters in the city because they elected you. I think Mr. Duncan, you might fare a little differently in northeast Las Vegas. I do not know how much time you have spent in my district, but you might need some time to get used to my community, the same way that

I might have to adjust to your community or the community that is in Anthem because that is vastly different from the people that I represent. I think they are very different interests. However, you are held accountable to all of those interests because every single person decides whether or not you are going to be elected to office. I do not mean to speak for you, but if that is not accurate, then please disagree, but I think that is what Senator Spearman's point is.

Senator Spearman:

You are absolutely right, and Assemblyman Duncan, I think you have really proven my point because I have talked to some people who ran for office, won in their ward, and then had to run citywide. Trying to explain that process to people was confusing, not just for them but it was confusing to the voters they talked to at the door. The point of S.B. 457 is not to, as I said before, impugn, question, or mischaracterize the intentions of the people who prepared that ballot initiative; that is not it. What I am simply saying is that whether by design or by default, the effects are still the same. The turnout is low among the voters in the economically disenfranchised communities or parts of the city. Many of them do not feel that they have a stake in it. In Texas, we say they do not have a dog in the hunt, and so, why vote?

Assemblywoman Kirkpatrick:

I do not want to belabor this issue; however, I would like to add a little historical background to this discussion. Senator Atkinson and I brought this bill up in 2005 for North Las Vegas. At that time, the crux of the problem was that city councilpersons in North Las Vegas all lived in the same general neighborhood. If they were from Ward 1 they lived on Decatur, and if they were from Ward 2 they lived a couple streets over on Valley. It was a very hard-fought bill with the local government telling us to mind our own business and stay out of their business. It was an ugly situation for Mr. Atkinson and me. However, we did get the votes and it went to the ballot so that people could decide whether or not they wanted to vote for the person who lived in their ward.

One of the arguments we used was the city council receives additional money to spend, but, if you run at large, where do you spend that money? Do you spend it in your ward or do you spend it at large because that is who elected you? Another argument involved staffing issues. Do you have a staff to handle calls from constituents like the mayor has, where they answer every single call, or do you have a staff that only answers the calls within your ward? We tried to include Sparks and Reno as well.

Unfortunately, it was lost in the shuffle and came back in another session to try and get the question on the ballot. People are looking for more representation than they have had in the past. They want to know specifically who their elected official is. People want to know who to reach, and they do not want to call the main number and be lost in a roundabout circle. If we are going to be consistent, we must be consistent across the board.

Vice Chair Flores:

If there is anywhere we know persistence matters, it is in the Legislature. Do I have any other questions for Senator Spearman? [There were none.] Are there any others in support of the measure who would like to speak?

John Wagner, representing Independent American Party:

I am a resident of Carson City and I fully support this. I have always questioned why we have districts and wards if everyone in the city can vote for who represents which ward. It does not make any sense to me. We know that those in the Assembly and Senate have to run in their districts, and only the voters in your districts can vote. In the 2010 election in Carson City, I was informed that the person who won the overall vote in the general election was not the same person who won the vote for Ward 1 in the primary, so it does make a difference.

Vice Chair Flores:

Are there any questions for Mr. Wagner? [There were none.]

Howard Watts III, Field Director, Progressive Leadership Alliance of Nevada:

We are in support of S.B. 457. The Progressive Leadership Alliance of Nevada (PLAN) considers this a potential Racial Equity Report Card bill and I am going to try and address in my testimony some of the questions and concerns brought up previously. Ward-only voting gives groups with a geographic base, particularly minority groups which are often clustered in certain geographic areas, a better chance of being represented by their city council member. For example, the City of Reno's population is roughly 40 percent people of color. Prior to the most recent election, its city council was 100 percent white. Its minority population had no representation until Mr. Delgado was elected last year. The city council remains 86 percent white, even though only 60 percent of the population is white. So there is still a disparity. It has been determined that in citywide municipal elections minority candidates are unlikely to win seats according to <fairvote.org>. For this reason some cities using this method have been subject to Voting Rights Act lawsuits. A city may be forced to abandon its method of voting if a class of voters protected under the Voting Rights Act can show that their voting strength has been consistently diluted. Now, related to that, several court decisions have actually forced

jurisdictions to switch from at-large elections to ward-only elections and in most cases, the reason was to allow better representation by specific ethnic and racial groups. If the current system remains in place, Reno especially could expect future scrutiny from the Department of Justice for potential Voting Rights Act violations. At-large elections force candidates to run a citywide campaign rather than focusing their efforts just on their ward. This invites the involvement of larger interests, and it makes it harder for candidates to run to represent just the community they are supposedly representing. It would be as if one of you ran in a primary election in your district and then were voted on at the statewide level to represent your district. What we are looking for is consistency in the different municipalities. Both Las Vegas and North Las Vegas already have this system. The ward voting system provides the structure in which new leaders have the opportunity to emerge. You have heard testimony that some candidates had won in their ward primary only to lose in a citywide general election. It is possible that the voters changed their mind, but, with the frequency it occurs, I think you can draw the inference that what happened was people in the rest of the city did not support the winning candidate. For those reasons, we urge you to support S.B. 457.

Vice Chair Flores:

Thank you. Do we have any questions for Mr. Watts? [There were none.]

Theresa Navarro, Board Member, Progressive Leadership Alliance of Nevada:

I am an activist and have lived in Reno for 45 years. As Mr. Watts mentioned, this is the first time that a Latino has been elected to the Reno City Council. Early in the 2000s I ran for election. I won in the primary with zero dollars, but when I ran in the general election I lost by 300 votes, most likely because I did not have any money to run ads. This is what is going on now in our community. That is one reason why this is so important. When you have someone from a diverse community and they are able to run in that ward in the primary and again in the general election, it gives them an opportunity to serve the neighborhood they know so well because they live there.

I was on the ballot advisory committee for the City of Reno. It was frustrating the way the question came out. After the election, I had people calling me day and night to say they did not understand the question and were not sure how they should vote on it. This is a very important bill and I ask you from my heart to support this bill.

Vice Chair Flores:

Are there any questions for Ms. Navarro? [There were none.]

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:

I am a resident of Reno and a voter and I also found the ballot initiative very confusing. The American Civil Liberties Union (ACLU) of Nevada does election protection work on Election Day, and we heard a lot of anecdotal information that the ballot question was confusing. As discussed, in Reno, Sparks, Henderson, and Carson City, the city council members are elected on a citywide basis. The top two winners in a ward go on to the general election and what can happen, and what did happen to Ms. Navarro, is if one of those candidates does not have enough money or is not appealing to the majority of the city, they may not win.

Maintaining this method of the status quo could potentially lead to a violation of the Voting Rights Act because prohibited voting practices and procedures have the purpose or the effect of discriminating on the basis of race, color, and membership in a language population that is a minority. I think that is particularly important for the City of Reno because we do have a minority population that is not primarily English-speaking. A potential violation was avoided in this past election, as we discussed, by the election of Mr. Oscar Delgado. However, with a 40 percent population of color and a large Spanish-speaking population, we could face that violation because we have traditionally had an all-white council. The ACLU is not alone in this belief. The City Attorney of Reno is on record warning the city council that they could potentially have a Voting Rights Act violation.

I went on the Department of Justice website and I looked at what was typically used in these types of cases to determine if there has been a voting rights violation. In 1982, the federal Senate Committee on Judiciary issued a report that had seven factors the courts will consider in a totality of the circumstances test. I will just read a couple of them to you. One factor is the extent to which the state or political subdivision has used voting practices that tend to enhance the opportunity for discrimination against the minority group. Arguably the ward voting procedure does that currently. Another is the exclusion of members of the minority group from candidate-slating processes. And the last I will mention is the extent to which minority group members bear the effects of discrimination in such areas as employment, hindering their ability to participate effectively in the electoral processes. There is a substantial basis to consider a possible Voting Rights Act violation.

Ultimately, just because a violation has not yet occurred does not mean that the state should not take preventative measures to prevent it from happening in the future. If we do come under surveillance from the Department of Justice, it will be the state that is on the hook. It is important for the state to consider this question. Therefore, we urge your support of S.B. 457.

Vice Chair Flores:

Are there any questions for Ms. Spinazola?

Assemblyman Duncan:

How many majority minority districts do we have right now?

Vanessa Spinazola:

The only majority minority district we have in Reno that I am familiar with is the district Oscar Delgado represents. That is why they were able to avoid the Voting Rights Act violation.

Assemblyman Duncan:

Under the Voting Rights Act, how does it work if you have majority minority versus your one minority majority?

Vanessa Spinazola:

I do not recall who the other candidate was that ran with Oscar Delgado, but if that other candidate was white and they had won, even though it is a majority minority district, it could be the one factor that would be considered in the totality of the circumstance test that could lead to the violation.

Vice Chair Flores:

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

Donna DePauw, Private Citizen, Carson City, Nevada:

I was a chairperson and vice chair of the charter review committee in Carson City for over 20 years and, for that entire time, we have been requesting ward voting. During the last joint meeting with the board of supervisors, there was a ballot question accepted by both groups that will go on the ballot in 2016. That ballot question stated that even if a candidate won in the primary at 50 percent plus 1 vote, he still had to go to the general election. I was very hesitant on voting for this but finally voted yes because I was tired of all the baby steps we had tried to take over the last 20 years to get ward voting established in Carson City.

Vice Chair Flores:

May I ask, as a voter in Carson City, do you find that it is difficult to be knowledgeable about all of the candidates who run in Carson City? How much extra time does it take for you to familiarize yourself with all the candidates citywide, as opposed to just those who are in your district?

Donna DePauw:

It does take a lot of time, but I consider myself well versed in all the options available. However, right now I am a 24/7 caregiver so I do not have the time that I used to have. Many times I have not been able to contact the person who supposedly represents my ward, but I reach a different supervisor who would at least talk to me. I believe there is a responsibility for the councilperson or supervisor representing your ward to take care of you and vice versa. We need to be able to go to that person and that person needs to come to us and see what our needs are and then work within the city and the whole citywide community.

Assemblyman Hickey:

My remark here is not necessarily related to you but rather what you, and others, have said. We have heard Mr. Delgado spoken about quite a lot today. He, in fact, as has been mentioned, is a minority candidate, who won the support of the establishment.

I understand the arguments for ward-only elections as being local representation, but when we make everything about class and race, I just hope for the day that we get beyond that. Mr. Delgado won over a very established person because he was able to get the support of the "establishment." I would like to hear arguments on the merit of those things and not swerve into this with every reason and every argument.

Donna DePauw:

I can appreciate your point of view and that is why I believe it is important that we work together as a community. We need to have representation from one ward and have an individual that we can contact and who can contact us as a sounding board.

Vice Chair Flores:

Thank you, Ms. DePauw. Are there any further questions? [There were none.]

Robert F. Joiner, Private Citizen, Carson City, Nevada:

I am a native of Nevada and until recently I worked in local government for 32 years in both Nevada and California. I am pleased to be here again to support Senator Spearman in her efforts to get this long overdue piece of

legislation through. Some of you may know I represented local government entities on the other side of this argument, but I am here now speaking as a citizen of Carson City.

Mr. Wagner spoke a moment ago about the 2010 election in Carson City and I was that candidate in Ward 1. I ran in a six-person primary and then we ran citywide in the general. I came in second to the person that won in the general election; however, I won the primary in my ward. And this has happened quite often in the City of Reno. We are a subentity of the state and you do have the authority and, I believe, the obligation to correct this today.

I had a phone call from Marv Teixeira, the former mayor of Carson City. He was mayor for 12 years and has gone back and forth on this issue. He now supports ward voting as he sees the wisdom of government being close to the people—knowing that person down the street you can talk to and having them advocate at the board of supervisors or city council on your behalf—that is a good thing. This has been controversial. Carson City has promised to put this issue before the voters, but it is only to make it as Reno has it today, with ward voting in the primary but again, not going in to the general. If you win 50 percent plus 1 vote, you still do not win.

Vice Chair Flores:

Are there any questions for Mr. Joiner? [There were none.] Do I have anyone else in support of S.B. 457? [There was no response.] I will open the hearing up for those in opposition.

Cadence Matijevich, Assistant City Manager, Office of the City Manager, City of Reno:

Joining me today are the Honorable Mayor Bob Cashell and Council Member Dwight Dortch. We are here today in opposition to this measure. Specifically, we are opposed to sections 7 through 10, as well as 13 and 14, as those are the sections that pertain to the City of Reno. Our city charter, indeed, as Senator Spearman shared with you, the will of our electorate, provides that city council candidates representing our five wards be voted on in the primary only by the voters of the ward that they seek to represent. In the general election, the candidates are voted on by all the qualified voters of the city.

I would like to clarify something that was discussed earlier, particularly Assemblyman Duncan's question. I live in Ward 1. In the primary election, I am going to see as many candidates as are vying to represent Ward 1. I am only going to see Ward 1; I will not see any of the other wards that may be up for election. Two of those candidates from Ward 1 will move on to the general election. When I get to the general election, I am going to see

two candidates from Ward 1, and our terms are staggered, so I am going to see two candidates from Ward 3 and two candidates from Ward 5. I can only elect those representatives in that ward. So it is not as if someone in Ward 1 could then be representing Ward 3, as had been indicated previously.

As you have heard, the city did place an advisory ballot question on the November 2012 general ballot asking our voters if they wanted to retain the current system for electing members to the city council at large in the general election. That ballot question was drafted by a committee of our citizens. They did meet jointly with our city council and the majority of that committee voted to approve the question that went on the ballot in November of 2012. The ballot question was answered by 87,162 voters. The results were 76 percent in favor of retaining the current system, 24 percent in favor of changing to ward only. As you heard earlier, there has been a lot of discussion today that the question was confusing. But you heard testimony earlier in this committee that when voters are confused, they either vote no or they do not vote. If that were, in fact, true, you would have had more people voting for a change in the process or simply not voting on the ballot question at all. We do not believe that our voters were confused. We believe that they sent us a clear message that they are overwhelmingly in support of our current system. They wanted a system that gives the voters in each ward the opportunity to nominate their candidates for council, but also gives every voter in the city the ability to hold all of their local elected officials accountable. I believe that Council Member Dortch and Mayor Cashell can provide you with some additional information on that issue.

Something that has not received a lot of discussion today is that this bill would eliminate the at-large member of our council and require us to create a sixth ward. We just completed the redistricting process in 2011, and as I am sure the members of this body know, it can be a lengthy and expensive process. We have not yet heard any valid arguments for why we need to change and eliminate that at-large seat and why we would need to create that sixth ward.

Another item that I would like to address from previous testimony was the comment that the attorney for the City of Reno has opined that we have a potential risk with respect to the Voters Rights Act. I want to note for this Committee that he has since rescinded that opinion. Following the most recent election, he advised the council that he does not believe that we are at risk of coming under investigation by the Department of Justice.

I feel it is important to correct the error made with regard to the history of minorities serving on the Reno City Council. It was represented to you today that Council Member Delgado was the first Latino to have ever been elected to

the Reno City Council. That, in fact, is not true. Gustavo Nuñez, who many of you may know as a state employee, served our city for ten years as an elected official. He was first appointed in 1983, elected in 1985, and reelected in 1989. Sherrie Doyle, who is of Korean descent, was elected and served on our council for four years. The esteemed former Senator Bernice Mathews first served on the Reno City Council. She was elected in 1991, and served Ward 4 until she was elected to the State Legislature and resigned her council seat. I felt that it was important for the history of our city, and the history of our state, to not overlook the service of those members and correct the record on that measure.

Vice Chair Flores:

May I ask, when did Reno come into existence?

Cadence Matijevich:

Our current city charter was adopted in 1971.

Vice Chair Flores:

Since 1971 you have had one black woman, one Latino who was first appointed, and one Korean woman on the city council. A total of three people since 1971.

Cadence Matijevich:

Four now, with the election of Oscar Delgado.

Vice Chair Flores:

And the population of your city is how many?

Cadence Matijevich:

It is 225,000.

Vice Chair Flores:

Out of 225,000 people over the course of 30 years, you have had four people of color on your city council.

Cadence Matijevich:

That is correct. Again, my point there is not to, as Mr. Hickey said, delve into this as a class or race issue.

Vice Chair Flores:

I understand; however, I wanted to put it in perspective because I think that facts are important. It is important to note that, given context, it is still a very minuscule number.

Cadence Matijevich:

I appreciate that very much. I also agree that facts matter and I thought it was appropriate to correct the record when someone stated that Mr. Delgado was the first, when in fact he was not.

Vice Chair Flores:

I think if they would have said first elected then that would have been true. I have heard that statement before that Mr. Delgado is the first elected because originally Mr. Nuñez was first appointed. And, as we all know, there are advantages to being an incumbent.

Cadence Matijevich:

That concludes my remarks. Council Member Dortch would like to share with you some additional reasons why the majority position of our council is that we should retain our current system.

Vice Chair Flores:

I have a question first. If I live in Ward 1, then I am voting for the two candidates from Ward 1, as well as those from Ward 2 and from Ward 3, correct? So I live in Ward 1 and I am voting for three different wards.

Cadence Matijevich:

In the general election. In the primary you are only voting for your ward and then in the general you are voting for all of the seats that are up. In our last election it would have been Wards 1, 3, and 5 and the at-large seat.

Vice Chair Flores:

But I did want to be clear that in the primary you vote in your ward, but once you get to the general you are voting for every single city candidate out there, whoever is up.

Cadence Matijevich:

That is correct. My intent was to clarify previous testimony that essentially said what you are seeing on our ballots is a long list of names that does not specify where they are from so you could potentially end up electing two candidates that were from Ward 1, or no one from Ward 1, and that is not a possibility. The member that is being elected to represent that ward will also live in that ward. They have a council liaison that is specific to that ward so if there are constituents who want to contact them, they can contact the council member directly. The council members have their own phone numbers, it is not just a main line, and they have a council liaison that represents them. The constituents know who their representative is and how to contact them.

Assemblyman Thompson:

Can you tell us a bit more about the demographic makeup, the ethnic makeup of the committee that drafted the ballot question?

Cadence Matijevich:

I certainly can. That board was a nine-member citizen board that was appointed by the Reno City Council from members of our community. They, in addition to crafting the ballot question language, served as our charter review committee. They did a comprehensive review of our city charter and made a number of recommendations, which resulted in a bill that is before the Legislature this session.

The only requirement to serve on the committee was that you were a resident of the city. The council, when reviewing the applicants, tried to make sure that there was representation from each of the wards. Again, the board was a nine-member board, and included one female member, Ms. Navarro, who spoke before you earlier and identifies herself as Latino or Hispanic, and another gentleman who is also Hispanic and was a representative of PLAN. Our city is not a partisan city so it was not something where we asked people what their political affiliation was, but the council did try to make efforts to ensure that many different aspects of the political spectrum were represented on that board.

Assemblyman Thompson:

Were there any African Americans on that committee?

Cadence Matijevich:

No.

Assemblyman Thompson:

Why?

Cadence Matijevich:

They did not apply so we did not select them. I should also add that our current council member, Councilman Delgado, who had not yet been elected to the city council, was also a member of that charter review committee.

Assemblyman Thompson:

Once you had drafted the ballot question, to what extent did the City of Reno do public outreach to inform and educate the public about the upcoming election and this ballot question?

Cadence Matijevich:

As the council was contemplating this ballot question, it was noted on our public agendas, and the meetings of the charter review committee were all noticed in accordance with the Open Meeting Law. I would note that local governments and local government elected officials are prohibited from advocating for or against the passage of any ballot measure. So we were not in a position where we could necessarily publicize and educate the populace. There were public meetings to discuss the ballot question and agendas were posted and an opportunity for public comment was included. All this information was presented to our neighborhood advisory boards. There was information posted on the city's website as well. I will admit we were cautious, so as to ensure that there was not a potential violation of that statute that prohibits us from advocating for or against any ballot measure, but there was outreach to our community. I think you heard today that the media was covering it. I do not believe when our voters saw this question on their ballot they were surprised or confused, and we believe that they understood exactly what they were voting on and that was to continue the current system.

Assemblyman Hickey:

We heard earlier testimony about confusing language. Do you have a copy of your ballot question?

Vice Chair Flores:

I believe the ballot question is on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit L](#)).

Assemblyman Hickey:

Well then, I will just ask this simple question. Has it been the opinion of some in the community that it was confusing?

Cadence Matijevich:

Yes, I think we have heard today from voters in our city that they believe that question was confusing.

Vice Chair Flores:

Are there any further questions for Ms. Matijevich?

Assemblywoman Kirkpatrick:

At what point do we get to talk about the amendment from the City of Reno on this measure ([Exhibit M](#))?

Cadence Matijevich:

Thank you, Assemblywoman Kirkpatrick, for the reminder. We do have what I would call a technical amendment to the bill. We have spoken to the bill's sponsor about it. Strangely, I would say, that in some ways the bill's sponsor might consider the amendment friendly, because the amendment is not actually friendly to our position. But recognizing that it may be the policy decision of this Committee to move this bill forward, there is some language that we are seeking to harmonize with that charter bill that I mentioned earlier. It has to do with the dates of our election. What we are proposing is to amend language in section 9, page 8, starting on line 22. We are simply looking to strike the specificity that the election be held on a Tuesday after the first Monday, and simply state that the election will be held on the date fixed by the election laws of the state for the statewide general election. The intent of that in both this measure and our charter bill is so that if there ever were a circumstance where the statewide general election date had to be moved, due to an emergency, or some such thing, we could still have our election on the date originally fixed by the state. If it is a decision of this Committee to move this bill, we would ask that you look favorably upon that amendment.

Vice Chair Flores:

Understood. Are there any questions on the amendment? [There were none.]

Dwight Dortch, Council Member, City Council, City of Reno:

There was a reference made that in the City of Reno someone could win the primary and lose the general. Well, that could happen in any election. In fact, it was referenced for the 2002 election that the person in Ward 4 took second in the primary and then won the general election. I am that person. I did take second in the primary and I did win the general. No one in the City of Reno has ever lost in their ward and then won the general election. The person who has always won the general has also at least placed second in their ward. I think our system is the best system. You have to represent your ward or you do not make it out of the primary. You have to go in and you have to take care of the people within your ward. You have to address the issues that are brought up in your ward, or you will never make it out of the primary.

The reason that a city election is different from a state election is we are making very personal decisions that affect your neighborhood. We are making land use decisions that impact everyone in your neighborhood. Under the system that is being proposed, only two people on that council would represent you—the person in your ward and the mayor. You would have no way of holding the other five council members accountable.

I want to give you an example of a case that came before us a month or so ago. There was a rock-crushing plant that was planned for an industrial-zoned piece of land directly adjacent to some residential property in my neighborhood. Our homeowners' association (HOA) had hired an attorney to oppose the rock-crushing plant so our city attorney made the determination that I recuse myself because I was paying into the HOA and, therefore, had a financial impact on hiring the attorney. In that situation, the only person on the city council that my neighbors could hold accountable for their vote regarding that rock-crushing plant would be the mayor. The other five members of the council have no accountability to that neighborhood. These are very personal decisions.

For the most part, the decisions that you make at the Legislature impact everyone in the state equally. But in this situation, we are trying to put forward something that I think is the best system for our city's governance, and I think that is why 76 percent of the people of the City of Reno want to hold everyone at that table accountable for those types of decisions.

Vice Chair Flores:

Do I have any questions for Council Member Dortch?

Assemblyman Thompson:

I understand what you are saying. You created the relationships, got to know the people in your community, probably walked your entire ward at least once, maybe twice. Noting that, why would you not want, in the general election, that same community that voted in the primary to vote also in the general? The people at large may not even know you. There may be other factors that may get you in, or may defeat you. I understand your example about the HOA and the mayor, but is that not also a part of relationship-building with your colleagues? Here in the Legislature we do the same thing. Mr. Duncan does not live in my Assembly district, but it is incumbent upon me to share with him what my district is like if there is a bill that I am very passionate about so I can gain his support.

Councilman Dortch:

Unlike a legislator, if I have to recuse myself in a situation, I am not allowed to lobby, so I cannot try to influence the other council members to vote a certain way. I cannot be predetermined on my vote before the hearing. I cannot bring that influence to the other council members so I do not have that ability. I know that the Legislature operates differently than a local government in that sense. I can ask the mayor to come out and look at the site but he is going to have to draw his own conclusions. And that does happen and we try to get as aware of the issues as we can, but I think in that sense we do operate a little bit differently.

As far as the election process, I think the reason I said that ours is the best system is because we have to not only take care of our wards, but the entire city as well. My neighbors know to call me because I represent Ward 4. There was some testimony earlier that there might be some confusion as to that. In the City of Reno there is not. When people call in, if they are calling from Ward 4, they ask for me. The City of Reno is a whole community, and we are making decisions that impact everyone within that community and they all want to hold me accountable. I believe we saw that through the ballot question, and now if the Legislature is going to turn around and say they are going to change it anyway, I think that is disenfranchising. It is hard to get 76 percent of the people to agree that the sky is blue, so to get 76 percent to say no, we want to keep our system the way it is, the Legislature cannot say we heard your opinion but we do not care. I think that is disenfranchising.

Vice Chair Flores:

If there are no further questions for Mr. Dortch, Mr. Mayor, please begin your testimony.

Bob Cashell, Mayor, City of Reno:

We have two candidates come out in each ward to the general election and one of those two people is going to be elected to represent that ward. It is not like it was stated where there could be somebody in Ward 5 representing Ward 1. And we have a very good communication system in the City of Reno. If a citizen calls Mr. Dortch and he does not call them back, they call me and I call him.

Many of the questions being raised seem to come down to recruiting of candidates. We need to recruit candidates from the minorities who are not represented. In the last election, Mr. Delgado went out and sold himself and he proceeded to beat a well-funded individual. I saw three women elected to my council this time and two of them beat well-funded people. I am a little offended that somebody thinks 76 percent of the people in Reno are not intelligent enough to understand what the ballot question said.

Vice Chair Flores:

Are there any questions for Mayor Cashell?

Assemblyman Ohrenschall:

What about the scenario where one candidate wins the primary getting that 50 percent plus 1 vote? Does that not happen in Reno?

Bob Cashell:

No, it does not. That is a state law and it does not happen in Reno. I have run four elections, I have had more than 50 percent every time, and I always have to run in the general election.

Vice Chair Flores:

Ms. Matijevich, did you have a comment?

Cadence Matijevich:

If I may, Madam Vice Chair, I just wanted to clarify that it is specified in our city charter that the two people who gain the most votes, it could be 99 percent to 1 percent, move forward, unlike in other cities where if you have a majority in the primary you do not have to go to the general.

Assemblyman Munford:

Did you at one time have a black city manager?

Bob Cashell:

Yes, we did, for 13 years.

Assemblyman Munford:

What was his name?

Bob Cashell:

Charles McNeely. I talked to him night before last. We still have a relationship and are friends.

Vice Chair Flores:

Are there any further questions? [There were none.] If there is anyone else in opposition, please come forward. We still have another bill to hear so if something has been said, please feel free to say "me, too."

Adam Mayberry, Community Relations Manager, Community and Government Relations, City of Sparks:

We are in opposition to Senate Bill 457, particularly sections 11 and 12 that are specific to Sparks. Our city council did take a position of opposition to this a few weeks ago. Additionally, the city has a charter committee and that committee is independent and autonomous from the city council. Each member of the city council appoints a member to serve on the charter committee, as does the mayor, the five legislators who represent Sparks—two members of the Senate, and three members of the Assembly—also appoint Sparks residents to serve on the charter committee so there is a total of 11 members. They did discuss ward-only voting in April 2012 in preparation for this session. They

talked a little about a ballot question as our sister city to the west, Reno, did. They also talked about perhaps amending the city charter for the Legislature's approval and in both cases they opted at the end of the day to take no action on ward-only voting for the general election. That is fundamentally the basis for our opposition.

Geno Martini, Mayor, City of Sparks:

Unlike my esteemed colleague from Reno, I will be brief. The council of the City of Sparks took action, as Mr. Mayberry has said. If this is to change, it is something that should be up to our charter committee. Our council voted 4 to 1 to oppose this. We do not believe there is anything wrong with each council member representing the whole city. We have people who work hard on our city council and represent all of the people and most of the business we do has to do with everyone in the city, not just a particular ward.

Vice Chair Flores:

Do I have any questions for Mayor Martini? [There were none.]

John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc.:

We are opposed to the bill. We also agree with what was said before.

Vice Chair Flores:

Do I have any questions for Mr. Madole? [There were none.] Is there anyone else in opposition to the measure who would like to speak?

Lawrence A. Werner, City Manager, Carson City:

We are in opposition to Senate Bill 457, sections 1 through 3. The basis for my opposition is the fact that the Carson City charter review committee debated this very issue June 25, 2012, and made a recommendation to the board of supervisors that there be a ballot question at the next general election. On August 16, 2012, the Carson City charter review committee and the Carson City board of supervisors met in joint session to discuss the charter review committee's recommendation. The Carson City board of supervisors did adopt the recommendation to provide for a ballot question to amend the city's charter to provide for ward-only voting in the primary election with the top two winners in each ward advancing to the general election. The public policy that I am concerned about is having government decisions made at the level of government closest to the citizens. I am asking that Carson City be removed from the bill and allow the citizens of Carson City to exercise their right at the next general election to determine the supervisor election process they feel most appropriate.

Vice Chair Flores:

Are there any questions? [There were none.]

Alan Glover, Clerk/Recorder, Carson City:

There are a couple of issues that make Carson City unique. First off, Carson City is not a city; it is a consolidated municipality. We are a county that happens to have a charter. We operate as a county. We are not a true city so we are different from Henderson, Las Vegas, Reno, and Sparks.

Now the issue has come up about the cost of running by ward as compared to citywide. The average cost to run for the board of supervisors in Carson City is \$9,693. Compare that to what expenses each of you had in your last election. One thing you should also know, in Carson City when you pass from one ward to another, you will note that Carson City is a rather homogeneous community. We do not have any real pockets of poverty, or a single dominant minority, nor do we have areas that are separate from the rest of the community.

Carson City does not have a history, at least in modern times, of racial discrimination. We have elected African Americans, Native Americans, and Hispanics to different offices in Carson City. Back in the days when there were no minorities in Carson City, when I was young, this town had three or four people of color in it. We elected people to public office because they were qualified candidates and they did an excellent job.

Now the question that Mr. Ohrenschall asked, under our charter, you can be elected in the primary and, if you have three or more candidates and you get 50 percent of the vote plus 1, you are elected. For example, 691 people could elect you to the board of supervisors if you run for election in Ward 2. In Ward 4, 909 people could elect someone there. Henderson has a population of 260,000; Reno has 227,000; Sparks has 91,000; Carson City has 55,000. We have 26,000 registered voters. An average ward in Henderson has 33,000 registered voters. The comment was made earlier that we should try to make everybody alike and I disagree with that. How you elect people in Sparks or in Wells, Nevada, is totally different from how you elect them in Las Vegas. It is a matter of size.

For those reasons, and because we are going to put this issue on our ballot, I think it best if Carson City were amended out of the bill. I also would like to say that we do support the amendment that Reno has proposed. As an election clerk I think that is a good idea to make those election dates conform to state law. We should do that with everything.

Vice Chair Flores:

Are there any questions for Mr. Glover?

Assemblywoman Kirkpatrick:

You said that Carson City is unique. If it were the case that I only represented the people who are registered to vote in my district, I would have a lot less work to do. So, if that was your intent, I want clarification, because at the end of the day I think my intent is to represent 64,900 people who live in the district that elected me, whether or not they vote.

I get that this is a case of the state stepping in and telling local governments what to do, but I am going to go back to the situation in North Las Vegas in 2005. We did not have representation. We had elected officials living in the same neighborhood who only cared about that neighborhood. I do not know specifically how it works in Carson City, nor do I know specifically how it works in Reno, but what I will tell you is that I have always received complaints from Carson City residents on things they want fixed. They want to be closer to their elected officials so, if they are not feeling that way, then something has to change one way or another.

I have listened to all the arguments today. I am elected by a certain number of people, but I come to the state to make good decisions for everybody. We all do that regardless. On the city council, it is no different.

I really think it was not your intention to say that public officers only represent the people who are registered to vote. I just want to give you an opportunity to clear that up.

Alan Glover:

The districts have around 14,000 people residing in them, but of the people that are voting, I think we are unique because we are so much smaller than Henderson or Reno. What I think makes us unique is that it is a matter of size.

Larry Werner:

On the issue of being a ward representative versus at large, there are several instances that come to mind, including one involving Assemblyman Livermore when he was a supervisor in a certain ward. He was contacted when the board representative was not responding to the citizens of that ward. They then called Mr. Livermore because they knew that every supervisor was responsible to all the citizenry. He took up the action, which had to do with a land use issue. This is not quite the same as the City of Reno, but very similar. Had it been simply ward representation, it may not have had quite the same response from the other supervisors, because all of the supervisors have to be responsible

to all of the electorate. In that case, it worked better not to be specifically from a ward.

Vice Chair Flores:

Are there any questions?

Assemblyman Ohrenschall:

I had someone contact me in support of this bill and they brought up an example from Henderson where a councilman was reelected. Apparently he received 50 percent of the vote plus some in the primary. However, in the ward he represents he did not attain 50 percent. I am wondering, have you seen that in Carson City and do you think that is fair, if someone wins in that primary 50 percent citywide, but does not attain that in his or her ward?

Alan Glover:

Frankly, in my 25 years I think we have only had one member of the board of supervisors elected that way. I believe there were six candidates and it caught her and everyone else by surprise, but she carried every ward. Remember, we only have four wards. So any given election we only have two offices up for election. In 1969 our charter was amended so that a candidate could win in a primary if they attained 50 percent of the vote plus 1. This was on behalf of our local assessor, Homer Rodriguez. Homer's English was a little limited, but he was very well qualified and would win 90 percent of the vote in a primary and then have to go to the general and he got tired of doing it.

Larry Werner:

I believe Mr. Joiner ran for supervisor and received the most votes in his ward, but did not make it to the general. There were six candidates in the primary so the top person had around 24 percent to 25 percent of the vote in the primary. Even had it then gone to the top two in the primary, there is no guarantee that those people who had not voted for him would turn around and now vote for him. So there is no guarantee in that situation even though he was the top candidate of the six, that the one that became the second candidate of the six actually received the most votes in the general election.

Vice Chair Flores:

Mr. Glover, from your perspective as the Clerk/Recorder, is this going to be something that would be incredibly difficult to implement?

Alan Glover:

Unlike Reno, which would have to redistrict, we would not. But we would have a cost, because of how we do our ballot styles. We would double our number of ballot styles. But technically, it is not a problem.

Vice Chair Flores:

Thank you. Are there any further questions? [There were none.]

Andrea "Ande" Engleman, Private Citizen, Carson City, Nevada:

In 1992, I was running the Nevada Press Association and I could not do much publicly, but Professor Don Carlson and I managed to get this ballot question put on the ballot because we believed in vote by ward. Even back then, we felt there was not enough attention being paid to neighborhoods. We got it on the ballot, and we pooled what little funds we had and we took out one display ad in an election magazine from the newspaper and it tied. After that, the board of supervisors would not allow another ballot question on this subject to go forward. Two years ago, when Senate Bill No. 304 of the 76th Session came along, I supported it. If the board was not going to let the public vote on it, then I wanted this bill to require it.

Since that time when it was vetoed by the Governor, the board came back and said okay, and the charter review committee also agreed that yes, we should go forward with the ballot question and let the public vote on it. The ballot would require that it be nomination by ward. It would remove the 50 percent winning in the primary so that automatically it would be a nomination and two people would go forward to the general and everybody in the city would vote on the general. Now I think that is appropriate for Carson City. Our population is approximately 54,000 people with about 9,000 people in each ward. Who knows what it is going to be in the future. This is why I believe that nomination by ward is good, but that the general should be citywide, because I think we are too small otherwise. I think it could be too divisive.

There is one other thing I wanted to mention. Back in 1991, there was a big hullabaloo here at the Legislature called "fair share." That was when Clark County discovered that a lot more money was going to Washoe County than was going to Clark County and it got ugly and bitter. The fact of the matter is they had to raise all kinds of taxes in Reno and Washoe County in order to repay Clark County. Now Clark County did not have enough votes, but it was Carson City who stood with Clark and gave them the votes they needed in order to pass Assembly Bill No. 104 of the 66th Session. So Carson has always been very loyal to Clark County. I think this is a situation where all Carson City is asking for is a chance to decide its own destiny.

Vice Chair Flores:

Are there any questions? [There were none.]

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:

We are opposed to this bill. We do agree that the Legislature has the authority to change city charters; however, our position is that the role of the Legislature should be to review, amend, adopt, or sometimes reject changes to charters that are brought from the cities themselves.

Vice Chair Flores:

Are there any questions? [There were none.] Is there anyone else in opposition to S.B. 457? Seeing no one, I will move to neutral. Seeing no one in the neutral position, I will ask Senator Spearman for closing remarks.

Senator Spearman:

I believe that all of the persons who have spoken in opposition have been quite eloquent in articulating their opposition. However, I find it rather ironic that the kernel that holds the argument together is actually the thing that supports what I am asking for. They are saying that they already have ward voting. If what Reno says is true, that the person who wins from Ward 3 in the primary is the same person who wins in the general, it seems like they are calling it something else. But I would also like to call your attention to the exhibit I submitted on the ward summaries for Reno ([Exhibit J](#)). It shows by ward what the turnout is based on population. If you look here at Wards 3 and 4, the voter turnout is not even one-third of Wards 1, 2, and 5. I would submit to you that, although very earnest in her testimony, and the charter committee and the nine people that voted, the one thing I did not hear from Ms. Matijevich was how many people were actually on there demographically. I think that was what Assemblyman Thompson asked; demographically, how many people were on there and was it representation across all wards. I did not hear that. It is laudable that there would be a city manager of color as Assemblyman Munford noted, but I am not sure that is an accurate reflection of participation by the African-American community. I constantly am in awe of former Senator Bernice Mathews, but quite frankly, if you are talking 30 years of history, then you do not have representation across the board. And to Assemblyman Hickey's concern, that perhaps we are talking too much about ethnicity and class, I agree with you. I wish we would not have to. But this is not a perfect world. People have been systematically disenfranchised for many years, and I am not just talking about this instance, but cultures and ethnicities that have been systematically disenfranchised.

I would simply submit to you again, if indeed people who run from Ward 3 and win in their primary are also elected during the general election, then they have ward voting. So let us call it what it already is. You would have to look again at the question that was on the ballot. If you do not answer the question about demographically speaking, and if you have less than a third of the people in

each of those wards, Wards 3 and 4, participating in the voter process or intellectual process, then imagine how many people are going to even know that there is an opportunity to serve in an appointive position. I think that argument deflates itself, even as the balloon is rising. I would just say again that I think it is time. Fourteen other incorporated cities have done this, and I think it is the best thing to do. Someone once said, if everything is working okay for you, you really are not inclined to change.

Vice Chair Flores:

With that, I am going to close the hearing on S.B. 457 and open the hearing on Senate Bill 458.

**Senate Bill 458: Enacts the Uniform Faithful Presidential Electors Act.
(BDR 24-704)**

Senator Pat Spearman, Clark County Senatorial District No. 1:

I have with me former Senator Terry Care, who is going to be testifying with me on Senate Bill 458. Senate Bill 458 proposes to enact the Uniform Faithful Presidential Electors Act, which has been drafted by the Uniform Law Commission. [Read from prepared text ([Exhibit N](#)).]

Vice Chair Flores:

Does this bill require that whoever the nominee is, the person actually go and cast their vote for that nominee? Is that what this does?

Terry Care, Private Citizen, Las Vegas, Nevada:

Senator Spearman has basically given the Committee the framework, but to the heart of your question, yes. Section 9 addresses a vacancy created by an elector who either refuses to sign the pledge, does not show up, or in fact votes contrary to the party that elected this person as an elector, if it is inconsistent with the popular vote of the presidential and vice presidential nominee of that party. It is section 10 that says if you do not cast a conforming vote, then you just created a vacancy and then section 9 kicks in and the Secretary of State goes through that exercise until he gets somebody who has signed the pledge and, in fact, votes consistent with that pledge.

Vice Chair Flores:

I see. So that is the accountability portion. Are there any questions?

Assemblyman Ohrenschall:

In states that have not adopted this act, what do they do when an elector does not want to follow the wishes of their party?

Terry Care:

That is an interesting question. Nevada is one of those states that says electors must cast the vote consistent with the party, but there is no sanction if they do not. It has happened, if you want to go all the way back in American history, 157 times where somebody has cast an inconsistent vote. But it has never happened in Nevada. It could have happened if you go to the year 2000; only five electoral votes separated Vice President Gore with Governor Bush. You can see if three electors had gone the other way, we would have had a different result altogether.

Vice Chair Flores:

Are there any other questions?

Assemblyman Elliot Anderson:

It is probably a good idea because if you have a situation where some rogue electors end up throwing the elections, not literally because it would be legitimate under the constitution, but if they were to change the election that should have gone one way if everyone was faithful, we are talking about a cataclysmic political crisis that would shake the constitution to its foundations.

Terry Care:

That is entirely correct. We may never have to use this, but there is so much at stake. Again, we all sat on the edge of our seats on election night 2000. So you can see the gravity of it.

Senator Spearman:

Although it has not happened in the state, we have a graphic example of what it might look like if it happens in a party during a primary and wreaks havoc throughout the whole process. I think if you look at what happened here in Nevada during the last election cycle, that gives us a pretty good indication of what could happen.

Vice Chair Flores:

Do I have any further questions? Seeing none, do you have anyone else here in support?

Terry Care:

The Secretary of State actually testified in favor in the other house.

Vice Chair Flores:

I will move on to support unless there are any further questions from the Committee. [There were none.] Is there anyone else in support of S.B. 458? [There was no response.] I will move on to opposition. [There was no

response.] Is anyone neutral for S.B. 458? [There was no response.]
Senator Spearman do you wish to make any closing remarks?

Senator Spearman:

Thank you.

[Senator Spearman submitted two articles from the Uniform Law Commission as exhibits, specifically, "Why States Should Adopt UFPEA" ([Exhibit O](#)) and "Faithful Presidential Electors Act Summary" ([Exhibit P](#)).]

Vice Chair Flores:

I am going to close the hearing on S.B. 458 and open it up to public comment, if we have any here. [There was no response.]

Assemblyman Ohrenschall:

I want to thank you for running this Committee. I had a very long bill to present down in the Senate. You handled this as ably as I knew you would.

Vice Chair Flores:

My pleasure. Meeting adjourned [at 7:48 p.m.].

RESPECTFULLY SUBMITTED:

Karen Pugh
Transcribing Secretary

Nancy Davis
Recording Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: May 7, 2013

Time of Meeting: 4:13 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 49 (R1)	C	Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State	Proposed amendment by Secretary of State Ross Miller
S.B. 49 (R1)	D	John Madole, Executive Director, Nevada Chapter Associated General Contractors	Proposed amendment
S.B. 325 (R1)	E	Senator Pat Spearman, Clark County Senatorial District No. 1	Presentation
S.B. 325 (R1)	F	Senator Pat Spearman	"What the H*%# Does That Mean?"
S.B. 325 (R1)	G	Senator Pat Spearman	Moapa General Obligation Park Bond Proposal
S.B. 325 (R1)	H	Senator Pat Spearman	Question No. 5, Amendment to the <i>Nevada Constitution</i>
S.B. 457	I	Senator Pat Spearman	Presentation
S.B. 457	J	Senator Pat Spearman	City of Reno Ward Summaries
S.B. 457	K	Senator Pat Spearman	City of Reno Elections, 2002 to 2012
S.B. 457	L	Cadence Matijevich, Assistant City Manager, Office of the City Manager, City of Reno	City of Reno Advisory Ballot Question, 11/6/2012
S.B. 457	M	Cadence Matijevich	Proposed amendment
S.B. 458	N	Senator Pat Spearman	Presentation
S.B. 458	O	Senator Pat Spearman	"Why States Should Adopt UFPEA"
S.B. 458	P	Senator Pat Spearman	"Faithful Presidential Electors Act Summary"