

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

**Seventy-Seventh Session
February 14, 2013**

The Committee on Legislative Operations and Elections was called to order by Chair James Ohrenschall at 4:02 p.m. on Thursday, February 14, 2013, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at 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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Karen Pugh, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Scott F. Gilles, Esq., Deputy for Elections, Office of the Secretary of State
K. Kevin Benson, Deputy Attorney General, Office of the Attorney General
Alan C. Wetter, representing Oath Keepers, Henderson, Nevada
Janine Hansen, representing Nevada Eagle Forum
Alan Glover, Clerk/Recorder, Carson City

Chair Ohrenschall:

[Roll was called.] Today we are going to be hearing from the Office of the Secretary of State on Assembly Bill 48. Mr. Gilles, if you would like to come forward to the witness table and proceed with your presentation.

Assembly Bill 48: Makes various changes relating to elections. (BDR 24-383)

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

With me today is Deputy Attorney General Kevin Benson. I am here to present Assembly Bill 48. If it is acceptable to the Chairman, I will make a few comments, discuss some of the key elements of the bill, and then answer any questions.

We have five amendments that the Secretary of State's Office has proposed to clean up a couple areas of potential concern in A.B. 48 ([Exhibit C](#)). One amendment relates to section 27 of and another to section 31, which covers *Nevada Revised Statutes* (NRS) 294A.140 and 294A.210. Those statutes deal with the reporting requirements for groups that make independent expenditures and other groups who engage in political activity.

After multiple discussions on the topic, the Secretary of State's Office was concerned that there may be some unintended consequences of the proposed changes, so we are in the process of reviewing those changes and will come back to the work session with amendments to those provisions if it becomes necessary. Of specific concern were areas in the bill where nonprofit corporations may be impacted in a negative manner. I understand there may be

some testimony from others present today that expresses concern on how nonprofit corporations would be treated regarding reporting requirements. Let me state for the record that the Secretary of State's Office is going to revisit those changes, and if we deem it necessary, and we have done something in the bill that will significantly expand the disclosure and reporting requirements for nonprofits, which was not intended, we will attempt to fix that through an amendment.

Chair Ohrenschall:

Thank you, Mr. Gilles. We appreciate your willingness to work with the interested parties and stakeholders. There are copies of the amendment ([Exhibit C](#)) available for the audience here in Carson City and in Las Vegas. The amendment has also been posted to the Nevada Electronic Legislative Information System (NELIS) website.

Scott Gilles:

Assembly Bill 48 primarily makes technical corrections to NRS Chapter 294A, which pertains to campaign finance, and makes some changes to NRS Chapter 293, which deals with election administration.

A small number of the provisions would result in slight policy shifts, but many of the measures in this bill are similar to the changes proposed in the Attorney General's bill, Assembly Bill 35, which was heard by this Committee on Tuesday, February 12. The goal of these changes is to help clarify, simplify, and shorten NRS Chapter 294A.

The key policy shift that we are making in this bill regards adding an additional report to special elections campaign finance reporting. This bill would ensure that candidates and others involved in special elections report in the same manner and time frame as a regular election on the primary schedule or the general schedule. Candidates in special elections will be required to submit a report four days before the start of the early vote and four days before the actual election. Special elections will retain their final report required 30 days after the special election. This is all with the caveat that if the special election were to fall on a primary election date or a general election date, the standard reporting time periods would apply.

Chair Ohrenschall:

Mr. Gilles, under the current law a candidate in the special election could have a scenario where the funding for that candidate's campaign would not be made known to the public prior to early voting.

Scott Gilles:

Currently the statute requires one report be filed seven days prior to early voting for a special election. With special elections, there is a condensed election cycle with the majority of the activity occurring near the end of the cycle, which would leave almost a full month without any type of disclosure being made as to the contributions and expenses.

Chair Ohrenschall:

Assembly Bill 48 would remedy that.

Scott Gilles:

Correct. It would require the same reporting schedule for a special election as a normal election cycle.

You will see throughout the bill that we are removing references to city elections, as was discussed on Tuesday, February 12, with regard to the Attorney General's bill, Assembly Bill 35. Since the Secretary of State's Office is the filing officer for all contribution and expense (C&E) reports, and since the scheduling of the C&E reports are identical regardless of the type of election, with the current exception of special elections, there is no longer any reason to make a distinction between a city election reporting schedule and a regular reporting schedule. This allows us to repeal section NRS 294A.360, which simply reiterates the same reporting requirements for the city candidates. Along these lines, we have also taken out references made to state, county, district, or township candidates, as all candidates are handled identically by the statute.

The primary statutes for reporting requirements are NRS 294A.120 and 294A.200 for candidates, NRS 294A.140 and 294A.210 for third-party groups and people who do independent expenditures, and NRS 294A.150 and 294A.220 for political action committees (PACs) that advocate ballot questions.

To reiterate, the changes remove the type of office distinction, remove city race distinction, and revise the term "campaign contribution" to "contribution" because, as discussed with A.B. 35, "contribution" itself is a defined term in NRS Chapter 294A.

Chair Ohrenschall:

Mr. Gilles, right now "contribution" as defined in NRS Chapter 294A pertains to monetary contributions, or can it also be in-kind contributions of services or goods?

Scott Gilles:

Contribution is defined as a monetary contribution as well as an in-kind contribution.

Presently the statute stipulates a reporting schedule for elections that are held before July 1 and then repeats the schedule for elections held after July 1. This bill will do away with the duplicative language and note only one reporting schedule, save for the aforementioned additional special election report that we put in to the statutes.

Throughout the chapter we have removed repeated and unnecessary directions that specify reports must be submitted to the Secretary of State, on the Secretary of State's form, signed under penalty of perjury or an oath to God, et cetera. Section 47 of the bill condenses these into one statute, NRS 294A.373, to clarify that all of the reports under the statute are given the same directions and parameters as to how they are filed.

On line 35 of page 13, in section 16 of the bill, we have defined the term "independent expenditure" as "an expenditure which is made by a person who is not under the direction or control of a candidate for office, of a group of such candidates or of any person involved in the campaign of that candidate or group and which is made: 1. For the candidate or group and not solicited by, approved by or coordinated with the candidate or group; or 2. Against any other candidate or group and not solicited by, approved by or coordinated with the candidate or group."

To be clear, this definition represents no expansion or change as to how the Secretary of State's Office has interpreted an independent expenditure in the past when enforcing it for the reporting requirements of the chapter.

I understand this Committee expressed some concern over the term "coordinated" as used in the Attorney General's bill, A.B. 35. We are happy to work with the Committee and the Legislative Counsel Bureau's (LCB) Legal Division to assist in clarifying that term. The one thing I would caution is that efforts to draw specific lines for these reporting requirements tend to result in some individuals or groups trying to find ways to cross those lines, and not within the spirit of the law.

Assemblyman Elliot Anderson:

I am looking at section 14, on page 13, line 26. You have the term "committee sponsored by a political party" and I wanted to know what you mean by that term. I believe, technically, the actual political parties from state

law are those state central committees that operate and are chartered at the state level.

Scott Gilles:

First, let me tell you why we added this definition. A "committee sponsored by a political party" is currently in the law as required to report under NRS 294A.140 and 294A.210. However, there was no definition of it and what it entails, which lead to some confusion, specifically whether it included the legislative caucuses. This section defines the term so it provides some clarity and is more specific, and makes it clear that it does not refer to the legislative caucus but rather, as an example, the Washoe County Republican Central Committee or the Nevada State Democratic Party, which are formal subdivisions of the actual parties registered with the state.

Assemblyman Elliot Anderson:

I believe the way the caucuses work is they are technically an association between all the members and not literally, as we would understand it, the Democratic and Republican state parties.

Scott Gilles:

Correct.

Chair Ohrenschall:

Mr. Gilles, as a follow-up to Assemblyman Anderson's question, pursuant to section 14, if a party caucus would not be caught in the net of A.B. 48, what kind of committees sponsored by political parties might be subject to this bill?

Scott Gilles:

The example I gave earlier, of the Washoe County Republican Central Committee, which we have dealt with in the past, is the type of group that would fall under this definition.

Assemblyman Hickey:

Since the caucuses have been brought up, would you say that currently they have been reporting more or less properly according to the statutes, as they exist now?

Scott Gilles:

I am unaware of any failure to report by any of the caucuses.

To conclude my discussion on the changes we have in the campaign finance chapter, with the exception of adding the additional report prior to the special election, we do not believe our changes make any substantive policy changes to

the requirements of NRS Chapter 294A. Again, I will give the caveat that we will revisit that issue of how nonprofit corporations are treated in our changes to NRS 294A.140 and 294A.210 and throughout the rest of the bill.

Chair Ohrenschall:

Mr. Gilles, you do believe, notwithstanding your statement, that the changes will lead to more transparency?

Scott Gilles:

I believe the changes related to the reports before the special election will obviously result in more transparency for the voter. The rest of the changes throughout the chapter are not intended, in this bill, to expand transparency or the scope of transparency for candidates in campaigns in Nevada.

Assemblyman Oscarson:

I appreciate your presentation, Mr. Gilles. I have received more emails expressing opposition on this particular subject than I had on gun control. It is very interesting to me, and I hope that you are able to revisit the unintended changes to the statutes that this proposed bill could create, and thereby address my constituents' concerns.

Assemblyman Duncan:

I had a question regarding section 1 on page 3 of the bill. What was the reason for making a violation of this section regarding fraudulent voting, a class B felony? I wanted to get your thoughts on what is animating that decision.

Scott Gilles:

I am guessing the bulk of the questions you are getting from your constituents probably relate to those changes. There are, let me be clear, some policy shifts in NRS Chapter 293, so I will begin with section 1.

Chair Ohrenschall:

Mr. Gilles, before you jump to NRS Chapter 293, I think we have one more question on NRS Chapter 294A.

Assemblyman Martin:

On this subject of independent expenditures and their reporting, is there any contemplation within this bill for some of the 527 political action committees (PACs) to do more reporting, or is it not?

Scott Gilles:

The changes contemplated in this bill would not affect the law as it applies to PACs and how we enforce the required reporting. I can ask our counsel to elaborate further, but the law as it exists gives us the ability to demand the type of disclosure from those groups that you are talking about.

Assemblyman Hickey:

In section 24, on page 16, a new section regarding expenditures states, "The term does not include payment of money for any communication." Will this effectively allow committees to not disclose any sums used to hire public relations (PR) groups?

Scott Gilles:

If I understand your question, the expenses from the candidate to his PR firm would still have to be reported under the current law.

Assemblyman Duncan:

Where did the idea for the "for or against" language come from? I looked back through case law at *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 466 F. Supp. 2d 195 (2007); *Buckley v. Valeo*, 171 U.S.App.D.C. 172, 519 F.2d 821 (1976); and *Citizen's United v. Federal Election Comm'n*, 558 U.S. 310 (2010). The way I understand Nevada law is that if there is express advocacy, then an entity has to file a C&E report. Under this bill, if you are a nonprofit, and you are not doing express advocacy, this "for or against" language seems to change that relationship. I was wondering what your thinking was behind it. I know you mentioned some litigation that is going on right now. If you could expand on that I would appreciate it.

K. Kevin Benson, Deputy Attorney General, Office of the Attorney General:

With regard to "for or against," our independent expenditure statutes are in NRS 294A.140 and 294A.210, where it talks about a person or group that makes an expenditure on behalf of a candidate. The term "expenditure" is defined to include express advocacy. The argument that we have seen is that those statutes further constrict who is required to report by limiting expenditures to those that are made on behalf of a candidate. In other words, only positive express advocacy—for example vote for a candidate—as opposed to vote against a candidate.

Assemblyman Duncan:

In *Buckley* and its progeny, it seems that the case law is clear on what express advocacy is, and it seems that the "on behalf of" language that is in the statute now was covering the *Buckley* reasoning. Where in case law did you find the

"for or against" language, because it seems to me that it changes the relationship.

Kevin Benson:

I do not see the "for or against" language to be a matter of constitutional law; it is more the definition of what it is: express advocacy. I do not recall reading any case law that would tend to limit it to whether an ad is a positive ad or a negative ad. The use of the term "expenditure" in NRS 294A.140 and 294A.210 is what limits it to express advocacy because that is a defined term in the statute.

Therefore, to change the language from "on behalf of" to "for or against" in our opinion is not a change in how the statute is currently being enforced. All that is intended is to clarify that language so that someone who perhaps is not familiar with Nevada election law can read the statute and not be confused by the "on behalf of" language, because, as I mentioned, some people think that means as "the agent of." In that case, it is not an independent expenditure in any event. Other people read that to mean only positive ads have to be reported as opposed to negative ads.

Assemblyman Duncan:

How do you interpret "on behalf of" right now?

Kevin Benson:

The way that I interpret that currently is that it means relative to a candidate. As you will recall from *Buckley*, there was some concern about the term "relative to," which was the only description of the speech at issue, and in our statutes that is not the case. We could replace it equally with "relative to a candidate" or "for or against," because the statute only applies to people who make expenditures, and the term "expenditures" is defined to mean express advocacy. Either way, as I mentioned, we enforce it for both positive ads and negative ads.

Chair Ohrenschall:

Mr. Benson, it is my recollection during the hearing on A.B. 35 you mentioned that one of the groups was trying to argue that it was not required to report because it was arguing against the candidate.

Kevin Benson:

That is correct. We have several cases that are still ongoing. One case regards a negative ad, and that is one of the defenses they have raised, that because it is an attack ad, it is not "on behalf of" anybody—even though it is express advocacy—and therefore they are not required to report anything.

Scott Gilles:

Nevada Revised Statutes (NRS) Chapter 293 typically deals with the administration of elections, whereas NRS Chapter 294A is entirely campaign finance and campaign finance reporting. I will now address Assemblyman Duncan's question on section 1 of A.B. 48.

We determined that currently we do not have an explicit criminal violation for someone who votes or attempts to vote knowing they are not a qualified elector, nor for someone who votes or attempts to vote under someone else's name. The reason for the selection of a category B felony is that the Secretary of State takes that type of offense very seriously. If you recall the situation with the woman in the 2012 election in Clark County who voted twice to, quote unquote, "test the system," there is a provision in NRS Chapter 293 for that exact type of violation, and it is a category D. As a result, the woman in this incident pled to a gross misdemeanor. One of the intentions of the category B felony is to make sure that the types of offenses described in this bill could not be reduced to something less than a felony by a judge hearing the case.

Assemblywoman Flores:

I spent a considerable amount of time last session on Assembly Bill No. 81 of the 76th Session and Assembly Bill No. 82 of the 76th Session, and I think you know where I stand on this particular issue. For those Committee members who are new, last session we moved some of the category A and B felonies down to lower categories, given the amount of penalty that was associated with those higher level felonies. I believe for parity purposes I would want to have that same discussion regarding this provision.

Assemblyman Elliot Anderson:

I would like to echo my colleague, as I am looking at some of the other category B felonies, such as burglary and home invasion. I do not know if the penalties under this bill are at the same level as invading someone's house with a deadly weapon.

Chair Ohrenschall:

I would like to express the same concerns and I would like to see parity. I do not disagree that a nonqualified individual who tries to vote is trying to cheat the system, or that trying to vote using someone else's name should be a felony. However, a category B felony, in terms of the graduated sanctions that we have in our criminal law, seems reserved for the worst of the worst.

Another concern I have is that I see a knowing requirement given in subsection 1 of section 1, but do not see the same requirement in subsection 2.

Scott Gilles:

I believe the reason for the distinction is that in the second subsection, if you are voting or attempting to vote under someone else's name, there really is no need to have a knowingly standard. The reason why we have the knowingly standard under the first subsection is there are many cases, I believe, where people may not realize they are, in fact, not a qualified elector; hence the reason for the knowingly standard.

Chair Ohrenschall:

For example, let us say you have someone who used to vote religiously and then took a decade off and stopped voting. She has been purged from the rolls, as she missed two presidential elections. Now she shows up in the next election and tries to vote, and the clerk at the election booth allows her to vote. That person attempting to vote would not be subject to prosecution, correct?

Scott Gilles:

In that situation, if the voter has been purged, and if the clerk mistakenly allowed her to vote, and not in a provisional ballot manner, then I do not see how that would be the fault of the voter.

Assemblyman Duncan:

I echo the sentiment of my colleagues. I believe right now, if I am not mistaken, that tampering with a voting machine is a category D felony, or is it a category B felony?

Scott Gilles:

The violation of trying to influence the election by tampering with the voting machines is a category B felony. I recall that as the one category B that was left over from last session.

Assemblyman Martin:

I am looking at the category B felony, and it seems to cover an incredibly broad range, from 1 to 20 years. Is there any thought about going to a more determinate sentence or somehow stratifying to the offense?

Scott Gilles:

A category B felony is 1 to 20 years. Category C and D also have that minimum threshold of 1 year.

Assemblywoman Flores:

In terms of the logic behind leaving that category B felony for the penalty of tampering with a voting machine, we likened the tampering to trying to throw the entire election. Whereas with a singular person, who has a singular vote,

a voting violation certainly is very serious and we want to try to dissuade people from doing that, but it is probably not on par with trying to throw an election.

Scott Gilles:

If I was not clear earlier, the category B felony is the penalty if you are intending to influence the outcome of an election, rather than just simple playing with the machine. It is when your intent is to influence the outcome of an election.

I will proceed to section 2 of the bill. Here we are trying to clarify the procedure by which candidates are nominated for nonpartisan vacancies when those vacancies occur after the filing period and prior to the deadline to change the ballot. The provision we propose would give the Secretary of State's Office flexibility in setting how that nominating process would occur. We found that there were no established procedures for this particular time period, and we adopted a nominating petition process by promulgating emergency regulations that the Governor's Office signed off on, which said the statute does not dictate how these individuals are going to be nominated. If this situation comes up again, the Secretary of State's Office will have the flexibility to decide how that nominating process will occur. If it is early in the period, there is time to do a nominating petition. If it is at the very end, such as three days before the deadline to change the ballot, the clerk is going to need to do some sort of straight filing period for this nomination process. Mr. Lomax, the Clark County Registrar of Voters, has a friendly amendment ([Exhibit D](#)), which essentially would establish a filing period during this vacancy time frame. The Secretary of State's Office is in agreement with the amendment; however, I will let him discuss it, and if need be, I can answer questions at that time.

Assemblyman Hickey:

Mr. Gilles, I have a question on section 3. There were concerns raised by members of the some of the minor parties that if by changing the deadline when the minor party must submit its presidential nominee, we might be differentiating ourselves from what other states have done. What is the reason for that?

Chair Ohrenschall:

Mr. Hickey is referring to page 5, line 21. The change is from the first Tuesday in September to the last Tuesday in August.

Scott Gilles:

What we found is that the major parties are continuing to push their conventions later in the process, and they are not required to give us their nominees until after they hold their conventions. Typically, we receive the nominees from the major parties in the last week in August. That is burdensome

for the clerks, who then have to finalize their ballots, get them printed, and send them out in time to meet the 45-day deadline as required by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 and the Military and Overseas Voter Empowerment (MOVE) Act of 2009. It is the deadline that drives this type of change. The statute as it exists gives minor parties an additional week on top of the whole election cycle to provide the nominees. As we had no minor parties who were anywhere near close to submitting their nominees that late, it pushed the deadline back a week. They essentially would have that whole election cycle leading up to that point to provide that nominee. It is a very simple process just letting us know who it is.

Moving on to section 4, on page 5, lines 22 through 42. The way the statute currently reads, there are certain provisions, such as filing fees, declaration of candidacy, residency requirements, and written challenges, on how independent candidates are handled. Under current law, that particular block of provisions is not applicable for a special election. Our change is that should the special election fall within a primary or general election cycle, that entire block of provisions will apply to that type of a special election.

Chair Ohrenschall:

This pertains to the argument, which candidates have made in the past, that none of the election laws apply to them because the vacancy that has arisen is a special election.

Scott Gilles:

Section 8 extends our agency's deadline to adopt regulations prior to an election year. At this time we have to have those regulations adopted by December 31, and we would like to move that deadline to the last day in February. The reason for this is purely administrative. It becomes difficult for us to process those regulations following a legislative session, as we have to wait until the statutes are codified and then we can prepare our proposed regulations based on that codification. Those proposed regulations then go to the Legislative Counsel Bureau for review and possible revision. Once we receive them back from the LCB, we must conduct a public workshop, and hold an adoption hearing, and then have the Legislative Commission hear and approve those regulations. In 2011, the length of this process forced us to hold the public workshops, public hearings, and Legislative Commission hearings from the middle to the end of December. A number of people were very unhappy about that, and the accusation was made that the dates were intentional so no one would be paying attention, which is not the case. We are essentially trying to give our office an additional two months to have those regulations adopted and approved by the Legislative Commission, in order for them to be effective for the year's upcoming general election.

Chair Ohrenschall:

Mr. Gilles, one concern expressed to me is that this delay in adopting regulations would affect people's efforts to put an initiative petition on the ballot. Would it hinder or delay that process in any way?

Scott Gilles:

I do not believe so. The regulations, as the statute reads, would not be effective until the date they are adopted.

I will move on to section 9. We instituted statewide online voter registration for this last election cycle. There is a provision, and this is supported by federal law, that someone who registers for the first time, has not voted, and has their driver's license verified, does not have to show their identification (ID) the first time they vote. If you do not have your driver's license verified, you are required to show your ID the first time you vote. We want to make clear that if you register online for the first time, that is an exception, because by the process of registering online you have had your driver's license verified.

Chair Ohrenschall:

Mr. Gilles, just for clarity, it has to be a Nevada Department of Motor Vehicles (DMV) issued driver's license or ID, and not a passport or birth certificate.

Scott Gilles:

Correct. It must be a DMV-issued driver's license or ID card, or you do not have the option of registering online. An argument was made to us that this exception to showing your ID for the first time did not apply to registration online, but federal law would discount that and would support our position.

Chair Ohrenschall:

One question I have is if someone registers by computer and then wants to vote by absentee ballot. They still do that, correct?

Scott Gilles:

Correct.

I am now on section 12 in the bill. This is a definite policy change, as it changes the timelines in which an individual would be able to register online prior to an election. Currently online registration is only available through the same deadline as registering by mail, but there is a ten-day window where registration can only be done in person at a clerk's office. Our bill purposes that during that same ten-day walk-in only period, Nevada citizens be able to register or update their registrations online. It will result in no additional work for the clerks and should, in fact, ease the registration burden on the clerks during that

last ten days. Mr. Lomax, the Clark County Registrar, had testified previously before this Committee that the amount of walk-in registration Clark County receives in those last days is upwards of thousands of people, and it is a burden for them while they are trying to get ready for an election.

Chair Ohrenschall:

The statistics and data you have gathered regarding online registration indicate that there is a minimal amount of fraud, that it is a secure system.

Scott Gilles:

Correct. We are aware of no fraud that has gone on with online registration. The key component of it is that there are essentially five pieces of data that must match with data maintained on the DMV database. An individual registering online must provide his or her first name, last name, date of birth, and driver's license or ID number as well as the last four digits of his or her social security number. If those five pieces of data do not match, the person will not be allowed to register online. That makes it much safer and more accurate than the paper process.

That concludes my presentation of A.B. 48. I am happy to take any questions.

Assemblyman Hickey:

I have a question on section 45, on page 52, at the end of the bill. As this Committee desires greater transparency in campaign finance and reporting, has the Secretary of State expressed any desire to have greater detail required on the candidates' contribution and expense reports? Currently a candidate can simply report their total expenses in the particular categories and not really give a lot of specificity. I now provide much more detail after being challenged to do so in an article, and I think it helped clarify in my own mind and more importantly for the public, what those monies were spent on.

Scott Gilles:

To answer your first question, the issue you are detailing is not addressed by this bill. As for increased transparency in that area you are discussing, I am sure the Secretary would be happy to have that conversation, but at this time we have no provisions in either this bill or the two bills we have before the Senate to expand in that area.

Chair Ohrenschall:

Are there any further questions for Mr. Gilles or Mr. Benson? [There were none.] The Speaker has requested all members of our caucus to meet with her now, so I am going to call a recess, and we will reconvene at 6:15 p.m. I apologize if that causes any inconvenience for anyone. If there is anyone

wishing to testify cannot come back at 6:15 p.m., please submit your testimony in writing to either myself or Susan Scholley, our Committee Policy Analyst. [Meeting was recessed at 5 p.m.]

Chair Ohrenschall:

[Meeting was reconvened at 6:15 p.m. and called to order.] I would like to inform those in the audience, both here in Carson City and in Las Vegas, that we will also be taking testimony on A.B. 48 at our meeting on Thursday, February 21, but for anyone who has waited this evening, we are going to continue with the testimony. Is there anyone who would like to speak in favor of the bill? [There was no response.] Again, we will take more testimony in favor, if there is any, on Thursday, February 21.

Is there anyone who is neutral on A.B. 48 in Carson City or Las Vegas and would like to testify? [There was no response.]

Now we will hear from anyone in opposition to A.B. 48. I see a gentleman in Las Vegas.

Alan C. Wetter, representing Oath Keepers, Henderson, Nevada:

I humbly request you vote no on A.B. 48. More campaign finance laws will not result in more honesty in elections or politicians, but they have limited free speech and created barriers for challengers. [Continued to read from prepared testimony ([Exhibit E](#)).]

Chair Ohrenschall:

Mr. Wetter, I appreciate your waiting for us to come back from that unexpected recess. Are there any questions for Mr. Wetter from the Committee? [There were none.]

Is there anyone else in opposition to A.B. 48 in Las Vegas or in Carson City? Again, I want to remind everyone that we will take testimony on Thursday as well.

Janine Hansen, representing Nevada Eagle Forum:

Even more important than transparency is the right of freedom of speech, participation, and association. These are critical laws to maintaining our liberty, and this particular bill is very important regarding those issues.

In regard to section 1 and the category B felony, it seems preposterous to me that we would be charging someone who went to vote, and perhaps was not even aware of the law, with a category B felony for 1 to 20 years. Although

I am very concerned about honest elections, this type of penalty is completely out of proportion to everything else, and I hope you will reconsider it.

Subsection 4 of section 3, on page 5, line 21, changes the dates by which the minor qualified parties can file their presidential candidates. This is of serious concern to us. I spoke to Richard Winger, who is a leading authority on ballot access, and he told me there is not a single state in the nation that has different deadlines. In addition, he stated that in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) the U.S. Supreme Court established that states cannot have different deadlines for minor and major parties with regard to presidential filing. This section of the proposed bill would violate the Supreme Court decision, and we would respectfully submit to you that our deadlines would be the same as the major parties, which they have been in the past.

Chair Ohrenschall:

Ms. Hansen, we can certainly have the Legal Division look into that.

Janine Hansen:

Thank you. In section 8, there is a change to the deadline by which permanent regulations for an election by the Secretary of State must be adopted, from December 31 to the last day of February. We oppose this, as filing begins the first week of March, and as a minor party, we must hold our convention before we can submit the name of our nominee. With the change in deadline for the regulations for an election, we might not even know what the permanent regulations of the election are when we carry out our convention.

Mr. Duncan brought up the definition of express advocacy. I am concerned about it, because if the definition is not expressly laid out in the law, there can be decisions by the Secretary of State's Office which may be capricious.

Assemblyman Duncan:

Ms. Hansen, did you have an opportunity to look at the amendments that were filed by the Secretary of State's Office? I was wondering if the amendment changed your concerns at all.

Janine Hansen:

I believe I looked at them, but perhaps I missed the specific one. If you feel that does address my concerns, I would be glad to be apprised of that.

In the sections that deal with nonprofits, the Deputy Secretary of State earlier testified that they would revisit this; I do not know what that means. He said also that they might discuss amendments to it in a work session; however, we cannot testify in a work session. In NRS 294A.225 it talks about registration

for nonprofits, and as a part of that in paragraph (c) of subsection 1, it discusses making expenditures "designed to affect the outcome of any primary, general or special election or question on the ballot."

For example, say the Knights of Columbus has a candidate night and they invite the candidates to come and speak. After the event, they send out a newsletter identifying the candidates who were pro-life, which is an issue of concern to the Knights of Columbus. With the Secretary of State's bill, are they then falling under the definition of "designed to affect the outcome of a primary, general or special election"? They have made an expenditure in sending out their newsletter. My organization does not make any endorsements; however, we do put out information on candidates on how they answered our questionnaires.

Chair Ohrenschall:

Ms. Hansen, I do want to remind you that Deputy Secretary Gilles commented that Secretary Miller is committed to address that issue with the nonprofits in section 30 of the bill. I hope all of your concerns will be addressed.

Janine Hansen:

I am very concerned about that issue. If the bill were passed that way, we would simply quit participating in elections, because we are not willing to expose our donors to the harassment, intimidation, and threats that we ourselves have experienced.

Chair Ohrenschall:

Again, I am sorry to hear that, but because our time is limited, if you could focus on the bill.

Janine Hansen:

I am trying to say that is why this is so critical. Many people would no longer be participating in elections. This bill would essentially stifle and eliminate our free speech.

In section 47 of the bill, it removes the requirement that the Secretary of State obtain the advice and consent of the Legislative Commission before making copies of or access to, the campaign contribution forms. This concerns me, as there were differences in what the Legislature had passed and required in the campaign forms and what the Secretary of State's Office, at that time, put on the reporting requirements. I think that is a very good safeguard to have the Legislative Commission review and advise the Secretary of State on those particular reporting requirements.

Chair Ohrenschall:

You are right. I did read that earlier in the bill. That was a concern I had, and it was not addressed during the presentation of the bill.

Janine Hansen:

No, it was not.

Chair Ohrenschall:

Mr. Gilles, do you mind addressing the question of why that is in the bill?

Scott Gilles:

We pulled that section out primarily because there are other sections in NRS Chapter 294A that explicitly restrict us from requesting any information on the forms that is not already laid out in this chapter. I believe one of the reasons we are asking to take this provision out now is because we use the Aurora electronic filing system, and it is very difficult for the Legislature to make changes to the form and for us to go in and rework our system. We are still bound by the law that says we cannot ask for information that is not already set forth in this chapter.

Chair Ohrenschall:

Right now, with the Aurora system, have you had to go to the Legislative Commission to get approval for the electronic version of the form?

Scott Gilles:

No, the last time we received approval, we essentially presented our paper-form, which was then re-created online.

Chair Ohrenschall:

Are there any questions for Mr. Gilles about the deletion of that section on page 54? [There were none.] Please proceed, Ms. Hansen.

Janine Hansen:

In section 52, the Secretary of State is changing another deadline. This one requires his office to make a compilation of reports available for public inspection.

Chair Ohrenschall:

Mr. Gilles, do you mind addressing that? I do not believe it was addressed in the presentation.

Scott Gilles:

Currently NRS 294A.400 exists as a requirement for our office to prepare a compilation of all the money that was spent on elections in the preceding election cycle once all the financial disclosure reports are filed. The reality is that sometimes those reports may not be filed for several months, if ever, depending on whether people file their reports late or do not file at all. What we are trying to do with the deadline is to say, as of February 15, the Secretary of State's Office will give you that compilation, as opposed to waiting some unknown amount of time for all the reports to be filed. Additional changes in that provision pertain to the categories of the contribution and expense compilations that we can easily collect off our electronic filing database. The information that we will be providing, presuming the statute is enacted, is far more extensive than what we are required to compile and report now.

Chair Ohrenschall:

Thank you for clarifying that. Are there any questions regarding section 52 for Mr. Gilles? [There were none.] Please proceed, Ms. Hansen.

Janine Hansen:

I appreciate that explanation and it sounds reasonable that they would have a hard deadline.

I know we have moved toward an idea that transparency is the highest value that we seek, but let me share with you a couple of things that the Supreme Court has said that may give you a different idea about the subject. The Supreme Court, in *Thomas v. Collins*, 323 U.S. 516 (1945), said, "The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind . . . In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the truth from the false for us." I think that is a good understanding of the purpose of free speech, that we are not to be monitored in our speech by the government. The campaign finance issue is essentially monitoring of free speech, because you cannot have free speech in this day and age without money.

When I was running for office last year, people would say to me, what is the maximum I can give and not go on the Secretary of State's list? Well, it is \$100. You cannot run a campaign with \$100 donations. Why is that a problem? Because people feel that they might be harassed, they might lose their job, they might lose business, or they might be censured if they give money to another political party. This is the kind of thing that can happen for some unpopular party or unpopular cause, and that is why these particular laws, requiring this extreme reporting down to \$100, oppress minor political parties.

I would suggest that you can overcome this tremendous weight upon which we try to operate by doing what they did last session for ballot initiatives, and that was to move the amount up to \$1,000.

Chair Ohrenschall:

I appreciate the comment; however, that is not being contemplated in A.B. 48, so that might be a discussion for public comment or for another bill. Our goal is transparency, and the transparency laws we have are equally applicable to minor parties, major parties, incumbents, and challengers. We do have to balance your concerns with the public's right to know who is funding candidates and their campaigns and these political action committees and independent expenditures.

Assemblyman Duncan:

Ms. Hansen, is your concern specifically that members of the public may feel that their speech would be stifled because the provisions in the bill might expose an individual for giving to the Eagle Forum or any group? Does that paraphrase your concerns?

Janine Hansen:

Exactly right.

Assemblyman Oscarson:

Ms. Hansen, I appreciate very much your knowledge of the information that has been presented to us. Quite honestly, I think what you are saying about the campaign contributions, and the \$100-limit situation, makes it nontransparent, and what we are looking for is more transparency, not less. Therefore, I respectfully disagree with you. I believe whatever level is set, whether it is \$1,000 or \$100, there needs to be some reporting of those funds that are committed to campaigns. Having just run a campaign myself, I understand what you are saying about the \$100 donations, but I believe it is important that there is some accounting for that money and where it comes from.

Janine Hansen:

Mr. Oscarson, I appreciate your position. The reason I bring this forth is because of the persecution that takes place for minor parties under this, which has been recognized by the U.S. Supreme Court.

Chair Ohrenschall:

This has been an interesting discussion, but because of the lateness of the hour, Ms. Hansen, if there are any other comments you have on A.B. 48, please make them and we will proceed. I believe we have one more person who would like to testify here in Carson City.

Janine Hansen:

I appreciate the opportunity to testify, and I appreciate that many of the concerns expressed by the Committee were the same as mine. I reserve the opportunity to speak next week if more information comes forward with regard to the issues in this bill.

Chair Ohrenschall:

Ms. Hansen, we appreciate your taking the time to be here and all the knowledge and the history you can bring to this committee. Please do not hesitate to bring forward any other ideas you have and submit them to Ms. Scholley or to myself for consideration.

I believe we have Mr. Glover, the Carson City Clerk/Recorder, here to testify. I do not believe you are in opposition. We already passed testimony in support of the bill, but since you are here, we will go back and hear what you have to say.

Alan Glover, Clerk/Recorder, Carson City:

I appreciate your accommodating us. Our office has proposed an amendment ([Exhibit F](#)) to section 9, which is on page 10 of the proposed bill. *Nevada Revised Statutes* 293.505 states that when an agency registers someone to vote, which includes the DMV, you shall not register a person who fails to provide satisfactory proof of identity and the address at which the person actually resides. Our issue is that when a person registers online, the system uses the DMV database, which requires an exact match in the data provided, which we like very much. However, when we send out the person's registration card, in many instances it comes back to us as undeliverable. What we would like to do, when the person comes in to vote for the first time, is have him or her provide identification for proof of residency so we can get the person in to the right precinct.

In addition to my office's amendment, I would like to go on record stating that we support the amendment to the bill regarding nonpartisan vacancies proposed by Mr. Lomax, the Clark County Registrar ([Exhibit D](#)). Carson City is affected more than any other county because, by charter, we all run here as nonpartisan candidates, so the scenario presented by Mr. Gilles earlier this evening can happen to us.

Chair Ohrenschall:

Mr. Glover, are you referring in section 9 to the ten-day in-office period and the extension to online computer registration?

Alan Glover:

Yes, paragraph (b) of subsection 2 of section 9 in our amendment states if the address is not verified and the voter's card is returned by the postal service, the voter must provide proof of residency before casting his or her ballot.

Chair Ohrenschall:

And you are going to get that card out in the mail and potentially have it returned prior to the election?

Alan Glover:

Yes, we are doing that now.

Chair Ohrenschall:

Regarding the address verification that you do in Carson City, is that done in the other counties?

Alan Glover:

Yes, it is. The issue we have with the DMV is that, as I understand it, they have a program that simply runs the applicant's address through the postal system and says, yes, that is a legitimate address. However, it does not tell us if it is a commercial location or residential. It just confirms it is a legal address. I believe, by law, the clerks are required to have the person prove not only who he or she is but where he or she lives. The statute clearly says that, but it does not quite work that way, and we are trying to accommodate what is truly happening.

Chair Ohrenschall:

This amendment ([Exhibit F](#)) is available here in Carson City and in Las Vegas as well as on NELIS. In addition, the amendments provided by Mr. Lomax ([Exhibit D](#)), and the Secretary of State's ([Exhibit C](#)) are also available.

Are there any questions from the Committee for Mr. Glover? [There were none.] Is there anyone else who wants to speak in support, in opposition, or as neutral on A.B. 48 in Las Vegas or Carson City? [There was no response.] Again, for those who had to leave because of the recess, we will take additional testimony on A.B. 48 on Thursday, February 21.

Is there any public comment either in Carson City or in Las Vegas? Not seeing any, I will close the hearing. We will meet again on Thursday, February 21, as we are not having a hearing on Tuesday, February 19.

Meeting adjourned [at 6:48 p.m.].

RESPECTFULLY SUBMITTED:

Karen Pugh
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: February 14, 2013

Time of Meeting: 4:02 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
48	C	Scott Gilles	Proposed amendment to AB48
48	D	Larry Lomax	Proposed amendment to AB 48
48	E	Alan Wetter	Letter in opposition to AB48
48	F	Alan Glover	Proposed amendment to section 9, AB 48