

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

**Seventy-Ninth Session
February 28, 2017**

The Committee on Legislative Operations and Elections was called to order by Chairwoman Olivia Diaz at 1:35 p.m. on Tuesday, February 28, 2017, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Olivia Diaz, Chairwoman
Assemblyman Nelson Araujo, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Skip Daly
Assemblyman John Hambrick
Assemblyman Ira Hansen
Assemblyman Richard McArthur
Assemblywoman Daniele Monroe-Moreno
Assemblyman James Ohrenschall
Assemblyman James Oscarson

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Carol Stonefield, Committee Policy Analyst
Brenda Erdoes, Committee Counsel
Kevin Powers, Committee Counsel
Julianne King, Committee Secretary
Melissa Loomis, Committee Assistant



OTHERS PRESENT:

Ron Knecht, State Controller, Office of the State Controller
Geoffrey Lawrence, Assistant State Controller, Office of the State Controller
James Smack, Chief Deputy Controller, Office of the State Controller
Lisa Mayo-DeRiso, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Henderson, Nevada
Julie Hereford, Private Citizen, Las Vegas, Nevada
Robert Rupert, Private Citizen, Las Vegas, Nevada
Bonnie McDaniel, Private Citizen, Las Vegas, Nevada
Dan Schwartz, State Treasurer, Office of the State Treasurer
Grant Hewitt, Chief of Staff, Office of the State Treasurer
Tara Hagan, Chief Deputy Treasurer, Office of the State Treasurer
Janine Hansen, State President, Nevada Families for Freedom
Lynn Chapman, State Vice President, Nevada Eagle Forum
John Wagner, representing Independent American Party of Nevada
Fred Voltz, Private Citizen, Carson City, Nevada

Chairwoman Diaz:

[Roll was taken. Committee rules were explained.] It has been an exciting day so far. Today is the American Heart Association of Nevada's Wear Red Day, and it is also the last day of National African American History Month. We are going to keep things lively with our next order of business, which is to hear Assembly Joint Resolution 6. I will open the hearing on A.J.R. 6, which is a proposal from Assemblyman Elliot T. Anderson to amend the *Nevada Constitution* to abolish the Office of State Controller and the Office of State Treasurer and to transfer those duties to the Executive Branch.

Assembly Joint Resolution 6: Proposes to amend the Nevada Constitution to abolish the Office of State Controller and the Office of State Treasurer. (BDR C-67)

Assemblyman Elliot T. Anderson, Assembly District No. 15:

I represent Assembly District No. 15 in Las Vegas, and I am here today to present Assembly Joint Resolution 6. Imagine an obscure elected constitutional office. Imagine that voters paid scant attention to that office, even after electing people to it repeatedly. Imagine that the officeholder engaged in questionable behavior and, instead of competently and ethically managing the affairs of the office, positioned himself to run for a more noteworthy office: the Office of Governor. I am not sure what you imagined, but I am referring to the state Surveyor-General, which the Legislature and voters abolished in the 1951 and 1953 Sessions and the 1954 general election. The Surveyor-General argued against this closure at the time, stating that, among other arguments, abolishing the office would take power away from the people. Despite this very self-interested argument, Nevada voters abolished the office by a 2 to 1 vote when given the chance. Madam Chairwoman, the arguments today are not a lot different on either side of the debate.

As for the resolution before us, A.J.R. 6 proposes to amend the *Nevada Constitution* to abolish the Office of the State Treasurer and the Office of the State Controller, at least as constitutional offices. The proposed amendment does not self-execute. It requires the Legislature to provide by law in the future, otherwise known as enabling bills, for the transition of the duties of both offices to the Executive Branch in some form, although that form is left up to future Legislatures, where it belongs. It does not belong in our state constitution, nor will you see me proposing more structure in the *Nevada Constitution*.

Furthermore, A.J.R. 6 provides that both offices will continue until the Legislature provides for this transition by law. Whoever serves in both offices at the time of transition will be able to finish their terms without interruption.

First, I want to dispel all the chatter around this resolution saying that this was brought forward because of politics. I would note that the provisions of this resolution will not affect the current Treasurer and Controller. The earliest the Legislature could provide for the abolishment of the offices would be 2021, after two consecutive sessions and the 2020 general election. Therefore, if the current Treasurer and Controller are reelected, they will be able to finish out their terms.

Conversely, this resolution might prevent a Democrat from running for reelection in 2022. This is an important point because this resolution should not be looked at through the prism of politics. Those who know me and have served on this Committee with me know my firm belief in granting more flexibility to officeholders by revising the *Nevada Constitution* and by preventing new policy from going into the *Nevada Constitution*. This has been a constant and unshakable belief of mine throughout my career in office, no matter the cause seeking to amend policy into the *Nevada Constitution*. For example, I voted against the victims' rights bill [Senate Joint Resolution 17 of the 78th Session] being put into the *Nevada Constitution* last session. I was the only member. It was solely because of the issue of putting policy into and restraining lawmakers too much in the *Nevada Constitution* for basic governmental structure and administration.

Furthermore, it will be better for Nevada if we appoint these offices. Collectively, the Treasurer and Controller's Offices manage the money of the state. I have provided you with an exhibit on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit C](#)), which details the different duties of both offices for your review. I am not going to get into the details of every single one of those duties; you are more than capable of reading and understanding these duties and exactly what they entail. If you review the exhibit, you can see that many of these are ministerial and technical in nature. Furthermore, these duties do not entail much discretion. Throughout Nevada law, we restrict the types of investments the state can enter into. These duties are in contrast to other elected positions, such as the Governor, Attorney General, and the Legislature, which include much broader political decision making.

Too often, members of both major parties seek to build a statewide portfolio by seeking elections to these obscure state offices in order to seek higher office. We all have plenty of

people from both sides of the aisle in mind. We should not leave politicians to make the financial decisions about the future of Nevada. We should not have them distracted by campaigning. They should be focusing on returning investments to the state, not climbing up the ladder. Furthermore, voters do not necessarily have a background in understanding many of these duties. They are highly technical and highly financial, and it is not a good system to vet candidates to manage these offices and duties.

I want to briefly address the arguments against this measure that you have been likely receiving in your email inboxes. Two arguments that were mentioned are checks and balances and the right of the people to vote for these offices. Taking the voting argument first, Nevada history is replete with examples of policymakers removing the requirement to have elections for offices that we have elected in our past. I have already mentioned one, the Surveyor-General, which was a statewide constitutional office. At times we have also elected the state superintendent of schools and the state superintendent of printing. We used to elect people to print things. These same arguments were made each time we have gone through this process. Furthermore, as a constitutional amendment, the people will get to choose whether they like this change. Surely, those who are going to sit here and say that we ought to let the people choose and have a say will not be against voters having a say on whether we should elect these people.

As for checks and balances, these concerns are warranted. However, the argument is a mile wide and an inch deep. In the accounting and financial world, internal controls are, without question, important. This amendment preserves the ability of the Legislature to design those internal controls, which could be done through independent boards, such as the Public Utilities Commission of Nevada and the Nevada Gaming Control Board, or through independent appointments of qualified and well-vetted financial managers. I would ask you to think creatively when you hear these arguments.

In fact, in terms of the constitutional structure, on April 29, 1995, Robert Erickson, then the research director of the Legislative Counsel Bureau (LCB), provided a memorandum that attached a state controller's technical activities and functions, which detailed some of the different structures in different states. Although this is a bit dated, at that time, Nevada was one of five states that provided for the controller on a constitutional basis. We are part of a larger group that provides for the treasurer on a constitutional basis; however, it is not an overwhelming amount. I will get some of those documents to you later.

When you start to think about internal controls for accounting, we have companies that bring in gross revenues of billions of dollars that do not need a constitution to design internal controls. They do not need to elect people to have internal controls. They have a chain of command. With modern financing, this perceived separation is just not necessary. In my opinion, the constitutional elected status hinders rather than helps internal controls and accountability. One need only look at our history for those examples.

The state's first Treasurer fled with the state's money to San Francisco in order to feed a cocaine habit. We did not find out about this habit until we found him dead in

San Francisco in 1869. In the 1980s, former Treasurer Patty Cafferata determined that the crime continues to cost us \$30 million a year in interest, and the *Nevada Constitution* did not stop that. We have been told we have this grand history of 153 years of the *Nevada Constitution* somehow wondrously stopping bad things from happening with the state's finances. Modern accounting principles and procedures are the safeguards to keep us safe, not the *Nevada Constitution*.

In 1927, the Controller and Treasurer conspired to rob the state of half of the state's annual budget, which at the time was \$516,000. This is significantly less than our annual budget today; however, to act as though the *Nevada Constitution* is somehow a barrier that stops this from happening is simply not true. If we could have always guaranteed licensed, well-supervised, financial professionals using modern accounting practices, it would have lessened the opportunity for graft. These are the practices that keep our funds safe today, not necessarily having a constitution that separates these into two elected offices. With these constitutional provisions gone, we would have the authority to put together boards to manage the state's investments and to check and balance each other, like how 63 legislators hold each other accountable internally every day, rather than leaving it to one elected constitutional officer.

Elections offer an illusion of accountability. Can you recall the last time the candidates for Treasurer and Controller debated generally accepted accounting principles and investment strategies? Does anyone think for a minute that the average voter takes in a debate about these principles rather than just reviewing the party affiliation before voting? I reviewed all of the statewide totals for the 2010 to 2014 elections. There is very little variance from the first constitutional officer, the Governor, all the way down to the Controller. What is more likely, with that little of a difference in vote, is people are simply checking Republican or Democrat and moving down the line without really thinking about it.

That is my personal opinion. I do not have any data to back that up, but it makes more sense than acting like there has been a grand debate over differences in Controller or Treasurer candidates. Can anyone tell me what the Democratic and Republican platforms say as to state debt collection? I have no idea what this debate is and what the differences are between most candidates. These races have always been low-information elections, requiring more money than most candidates can raise to get out a message statewide, but with a district that is too large to do personal contact like we can do in lower-turnout elections for Assembly races.

I do not need to tell you that a lot has changed since 1864 when the *Nevada Constitution* was adopted. Since then, we have grown by leaps and bounds. We are no longer the little territory that could; we are a bustling state with billions of dollars at stake. We used to not require judges to have law degrees. We used to not have an appellate court. We used to elect a superintendent of education, a person to head the state printing office, and a statewide elected official to manage and sell state lands. These positions were created

before the advent of civil service reforms. It is time for Nevada to keep pushing into the future by ensuring we have the most qualified financial managers and divorcing these responsibilities from politics.

The Legislature should take the opportunity to pass A.J.R. 6 and make government smaller, more efficient, and more competent. We should not miss the opportunity to take financial management out of the hands of politicians and put it into the hands of vetted and qualified financial managers.

That concludes my prepared remarks. I will stand for questioning if that is appropriate.

Chairwoman Diaz:

Are there any questions?

Assemblyman Hansen:

You do a magnificent job in these presentations. Your drone bill from last session was one of the best bills I have ever seen. I disagree with you on this bill, though. One of the reasons the offices you mentioned are abolished are because they became outdated. I am laughing because this is kind of like a Democrat against democracy. What we are talking about is an election of a statewide, constitutional office. If this thing passes, the office would still exist but would be appointed by the Governor. That would expand the power of the Governor at the expense of the other branches of government. When there is the State Controller, the Treasurer, and the Attorney General, in many cases, I have seen them have a certain amount of debate between the various branches of government. I think that is healthy and good. I do not want the Attorney General or the Controller or the Treasurer to all be appointed by the Governor because, in many cases, we want them to have a certain amount of checks and balances in the process. Right now, the Governor and the Attorney General have several cases where they are butting heads, and, in most cases, I am happy to see that because of being on one side or the other.

I like the whole concept of streamlining and cleaning things up, but I cannot help but ask how is it that we would remove something from the election process? I think this is a healthy thing to do, but I do not like seeing people appointed. Why do you think having the Governor appoint those people would make it less likely that the defalcations you mentioned in the past would not happen? Considering human nature, would not that continue to be a potential issue?

Assemblyman Elliot T. Anderson:

First of all, you jokingly mentioned that this is a Democrat against democracy. This is a bipartisan initiative throughout the history of Nevada. There have been resolutions on this topic in 1991, 1995, 1997, 1999, 2003, and 2005. The person who was most known for trying to do something to clean this up and streamline it was Bob Seale, the former elected Treasurer. He proposed a finance office that was then elected but had two appointed people below him. There has always been recognition that politics is not serving this office well. There are some things that entail a lot of discretion. You mentioned the Attorney General.

The Attorney General makes charging decisions. Prosecutorial discretion is one of the greatest areas for discretion in politics. You cannot divorce that from an election. However, an investment strategy is the sweet spot between low risk and high return. That is not something that is political. When you talk about democracy, I want to give the voters choices that are conducive to democratic elections.

I will talk about democracy again. The United States of America asks more of its voters than any other democracy on the face of the planet. We have primary elections, general elections, presidential elections, midterm elections and municipal elections. Other countries that have industrial democracies have one election; they do not have the number of elections that we have. We ask more of our voters than anyone else, and when you elect every single position, it takes away from the importance and the attention that people give to it, because you are overloading people with the amount of choices.

Assemblyman Hansen:

You mean too many long-winded politicians?

Assemblyman Elliot T. Anderson:

That is exactly right. There are too many elections to make choices about, especially when we do not see debates about Treasurer or Controller candidates. I have never seen a Facebook post saying, "Not my controller," or "Not my treasurer." I have never seen that sort of desire for people to get engaged in this process. As for the Governor having too much power, I guess I am looking for an example where the Treasurer and Controller saved the state from a rogue Governor doing all sorts of bad things. I understand the idea, but if we were to compare the name recognition of the constitutional officers and any given legislator, I guarantee that more people know who the Governor is and are more willing to hold that Governor accountable, because there is more recognition that that position actually exists. At some point, voters get lost in all that we do. As much as I go out and talk to my constituents, I do not think most people know who I am.

To wind up the answer to your question, the reason that I bring up the cocaine habit and the 1927 conspiracy between the Controller and the Treasurer is because we are acting as if the *Nevada Constitution* is somehow stopping every bad problem that could ever happen to Nevada by having these people elected. More important are the safeguards we have built in at a non-constitutional level that provide for good accounting principles. I feel more confident in licensed, qualified professionals who have requirements they have to meet. That is something the Legislature can provide for. We can be creative by statute.

Assemblyman Hansen:

We have quite a debate going on right now over Education Savings Accounts (ESAs). Our State Treasurer is taking a very aggressive and active role in being a promoter of that, and in some ways, he is actually in conflict with the Executive Branch because he feels it was substantially underfunded in the Governor's budget. That is an example of where there is a check and a balance that is done through an elected process, and a State Treasurer is doing something very positive by bringing this to the attention of the voters of Nevada. I think

there is a substantial element of public involvement that is much appreciated when you have constitutional officers who go beyond the most basic, fundamental principles of accounting. Overall, I love what you are saying. I love your passion. I love your thoughts and your work on these things. It is always a privilege to work with you. We do not always agree, but I have complete respect for what you do. You did a wonderful job.

Assemblyman Araujo:

I took issue with a comment that was made in terms of whether we were questioning our democracy and putting it at risk. Am I not correct that this would go to the vote of the people in five years? Would not this be a part of that process to have them choose whether they want to have the ability to vote for the Treasurer and Controller or not?

Assemblyman Elliot T. Anderson:

That is correct. That is the simple answer. We have to recommend it twice, and the voters can have their say. For everyone who is going to oppose this bill about the voters having their say, the voters are going to have their say. The argument that I would make when the voters are making their say is that if someone can list three duties of the State Treasurer and Controller, then maybe they should vote against this. If most people say, "I do not even know what the Treasurer and Controller do," I think maybe that is not the most informed decision making. That is the argument that I would make to the voters. They will have their chance to say yay or nay, so we are not the last word on this. We simply say, "Here is a good idea. What do you think?" I think we are more than capable of creating an accountable financial management system for the state by statute.

Assemblyman Ohrenschall:

If this passes into the *Nevada Constitution*, how will we be assured that whoever is Governor appoints people who are qualified in accounting and finance, and that the Governor does not just appoint yes-men and yes-women? I understand what you are saying. We want people with expertise in these areas. We do not want whoever is the best campaigner; we want someone who is very qualified in these areas. The qualities of a good candidate may not be the qualities of a good Controller or Treasurer. I wonder what your thoughts are.

Assemblyman Elliot T. Anderson:

I would bring your attention to page 5 of the resolution. It is an amendment to Section 19 of Article 5, the proposed Subsection 3. We would provide for it by law. The Legislature could, for this time, determine the best way for that to happen. I would bring you the example of the Nevada Gaming Control Board. That is an appointed body that serves independently. We have structures that can ensure the qualified financial managers have some independence from the Governor. Just because some things in the *Nevada Constitution* are in statute does not necessarily make them independent. I think what makes them independent is when people know that they have the space to make the correct decision and do what they think is right. The Legislature, by statute, would have to construct a way to give them that space and to get rid of those concerns.

Everyone here who knows me knows I believe you should do what you think is right—without fear or favor. I would support mechanisms that would give people that space. It is just a matter of vetting those candidates going into those positions that I am really in favor of accounting for through that sort of process. The Legislature could even create some requirements and defer to a Treasurer selection commission, like we do for other appointments. There are a number of ways to do that. That is what we do for Nevada Supreme Court appointments before they go to the Governor. I would ask the Committee to think creatively about these things and not be tied down to what we have done in the past. This session we have Assembly Bill 51, which is transferring the debt collection provisions from the Controller's Office to the Office of the Governor. There is already a recognition that we can do some of these things better internally because a lot of these things are just not that political.

Assemblyman Oscarson:

I have to agree with my colleagues. It is a pretty passionate, pretty impressive argument for what you have proposed. I, on the other hand, have received a significant number of emails from my constituents to not support this. I have listened intently to what you have said. I think that my challenge with this is that while you say we take it back to the people to make a decision in five years, the people that I am hearing from are practically begging me to leave it in the way it is and to allow them to continue to vote for those individuals. I may have some challenges with some elected officials, but that does not preclude me from continuing to do what my constituents have asked me to do. I will listen intently to the discussion, but I will tell you that I hear from my constituents who tell me to leave this alone and not change it. Assemblyman Anderson, we have always had a great relationship, and I just want to share with you the information I am getting from my constituents. In this case, while it is difficult for me to disagree with you, I support what they want to do right now.

Assemblyman Elliot T. Anderson:

I appreciate your kind comments. I would just note that we are all receiving those emails. Change is always stressful. If you are not getting at least a little bit of pushback, you are not doing anything. Whenever you do anything that substantially changes the way that we have always done things, you get this feedback. When I mentioned the state Surveyor-General, that was a 2 to 1 vote. Many of those people were also probably very loud when the Legislature pushed forward with that. Many of these same arguments have happened. It is important to keep our eye on the future. It is important to think about making our government smaller, more efficient, and more accountable.

The system that we have now is not a guarantee of that. When we bring more people in the room; when we can design boards to manage the state's money rather than one person in one office; and when we can consider other measures to keep things independent, we get the same benefit of having the separation from, say the Governor's office, but we think about it more creatively and are not tied down to it. Some of the positions that we have had through our history have been relics from our early days of statehood. We are one of five states that have a constitutional basis for a controller. That is a really striking statistic. That information is a bit dated, but I do not think it has changed much.

I know that it can seem like there are many loud voices in the room, but many of those voices are looking to you for what you think is the right thing. You have taken tough chances in this building before. You have gone out and made your case, and you have been returned to this body. I would advise you to think about the future of Nevada, where we came from, and where we can go.

Assemblyman Oscarson:

It is the quiet voices that are compelling me to do the right thing, to do what they ask me to do. It is my constituents that I am hearing from. We all, in this building, know what it is like to get a barrage of emails from folks across the state. We still represent everyone, but we specifically represent those in our constituency and our specific areas. Those are the people I am hearing from. It is the quiet voices. This is not a big, boisterous kind of procession that they are doing. This is almost a pleading to continue to do this. I heard your statistics, but in my research, it says 37 states' treasurers are still elected by the voters.

Assemblyman Elliot T. Anderson:

That is correct.

Assemblywoman Bilbray-Axelrod:

You clearly did a lot of research and gave us a lot of great information. Regardless of how this vote goes, I think it is a great conversation to have. Do you anticipate any elimination or change in classification for jobs within the Treasurer's or Controller's Office?

Assemblyman Elliot T. Anderson:

Those details are not provided for by the resolution in front of you. That is left to future Legislatures. I have not anticipated that. I will use the example of Assembly Bill 51 and the debt collection. My understanding of those provisions is that it is going to be done without a whole lot of change. It is cost-neutral to the state and, as far as I am aware, there is not that contemplation for that transfer. I can only use that as the example of what we have going on at this time. I have a strong belief against figuring out those sorts of details on a constitutional basis because it makes it harder for the Legislature to be creative in designing strong governance systems that are capable of adapting to modern time.

Chairwoman Diaz:

Are there any further questions from the Committee? [There were none.] Before we open it up to any supporters, Assemblyman Daly has a question for our legal counsel.

Assemblyman Daly:

I know we can put requirements in the law. For instance, the Attorney General has to be a lawyer. Judges have to be attorneys. Could you do something like that and put qualifications for the specific offices we are discussing in the law, or would that go against the legal precedent that people can run for whatever office they want?

Brenda Erdoes, Committee Counsel:

I am sorry; I am not sure I understand the question. Are you asking if you could put qualifications into the *Nevada Constitution*?

Assemblyman Daly:

No, not in the *Nevada Constitution*, but in the law that states the requirements to run for these particular offices. To run for president, you have to be 35 years old. To be the Attorney General, you have to be an attorney. Could you say, to be the Controller, you have to be an accountant or have certain credentials?

Brenda Erdoes:

Absolutely. You can do that whether you are going to use a committee or an individual. The Legislature has the authority to dictate the requirements and any qualifications that you wanted, and then whoever appoints the person would have to comply with those provisions in making that appointment.

Chairwoman Diaz:

At this moment, I will invite those who are here to testify in support of A.J.R. 6. Is there anyone here or in Las Vegas? [There was no one.] Seeing no one, we will go to opposition here in Carson City.

Ron Knecht, State Controller, Office of the State Controller:

I will make a few brief overview comments, and then the Assistant State Controller, Geoffrey Lawrence will get into some of the detailed technical issues. Chief Deputy Smack, to my left, is available to answer any questions or add anything.

First of all, let me make clear that I agree with Assemblyman Anderson. I do not have a dog in this hunt because my second term will be over at the time this could become effective. It will not make a personal difference to me.

I do not believe that this constitutional amendment would result in any net savings whatsoever for the taxpayers, and it might result in higher costs. Assemblyman Anderson made a point about the difference between votes for the six constitutional offices. In our last election in 2014, the votes were substantial. The winning candidate for Governor got something over 400,000 votes, and the winning candidate for Attorney General got somewhere in the 250,000 range. It was almost 60 percent more for the Governor, which is a very substantial margin in terms of number of votes. I do not know if that is dispositive.

I think that there are important reasons we have a separate Controller and Treasurer. The duties of the Controller are to be the state's chief fiscal officer and handle the accounting system. Most importantly, the statute provides that the Controller has a charge to recommend plans for the support of public credit, promoting frugality, economy, and better management and understanding of the fiscal affairs of the state. This would perhaps continue even if the Governor appointed both offices, but you would not get the diversity of opinion. You would not get the independence that substantially benefits the voters and the state.

I think you would lose something by having both officers appointed by the same person: the Governor. I will turn it over to Mr. Lawrence so he can go through the technical details, which are up on the PowerPoint slides.

Geoffrey Lawrence, Assistant State Controller, Office of the State Controller:

Our opposition to this bill is entirely structural. Both incumbents who might be affected by this would be termed out, so there is no self-interest in this opposition. That structural opposition centers around what, in accounting, is referred to as the segregation of duties. The segregation of duties is a fundamental internal control principle that protects an entity from intentional fraud or error [slide 2, ([Exhibit D](#))]. The idea is that transactions that require the authorization, validation, or verification of multiple individuals make fraud more difficult. You heard the story earlier about how decades ago there was a Treasurer and a Controller who colluded to embezzle money from the state. That is an example of a failure of the control, but it is actually the point that you are requiring people to collude if they are going to commit a fraud. The more people you have to involve in a fraud to make it successful, the less likely it is going to occur. It becomes more likely that someone is going to say, "This is fraud. I am going to turn you in, et cetera." That is the way a control is designed. That is what the segregation of duties is designed to accomplish.

You heard that we do not necessarily need this segregation anymore because current accounting standards provide adequate protection. In a way, that is true. The way the current accounting standards provide protection is by requiring a segregation of duties along similar lines to what Nevada already practices. We were ahead of the curve in splitting these between the Controller and the Treasurer. If you look at accounting standards today in the for-profit sector, the Sarbanes-Oxley Act of 2002 requires all publicly traded companies to segregate accounting duties and to certify that the chief executive officer and the chief financial officer have been segregated as a way of helping to protect investors against fraud.

In the government sector, Generally Accepted Government Auditing Standards require external auditors to assess the strength of an entity's internal controls, whether it be a city, county, state, or anyone who is reporting under government standards [slide 3, ([Exhibit D](#))]. A lack of segregation of duties could result in the auditor reporting a material weakness. In addition to susceptibility to fraud, this could substantially impact the market's assessment of the state's creditworthiness. This has implications for the assessment by credit rating agencies, investors, and other market participants that could lead to the deterioration of our credit rating as well as higher financing costs for when the state issues bonds and other things on the market. Likewise, the American Institute of Certified Public Accountants (AICPA) is part of the standard-setting process. Their Statements on Auditing Standards No. 78 also emphasizes the segregation of accounting duties as a fundamental control activity that should be required of all entities.

Let me give you some examples of how we segregate the duties between the Office of the State Controller and the Office of the State Treasurer. The way the wire transfer process works is that the Controller's Office reviews and accepts a payment voucher in our accounting system, which is called Advantage, and authorizes the wire to go through

to the bank [slide 4, ([Exhibit D](#))]. The Treasurer's Office then enters the agency wires on behalf of state agencies with the bank and verifies that the payment voucher entered by our office matches the wire amount. The fraud risk is that if the same person is entering a payment voucher into the accounting system and processing the payments, they can manipulate the amount going into the accounting system or create a payment to a fictitious vendor. For example, they could set up a business under their name with the state, list it as a vendor, create a payment voucher, and process the payment. These are exactly the types of fraud risk that a segregation of duties is designed to avert. That is how we currently do it in Nevada.

Our checking system is called Bottom Line. The way that process works is the Office of the State Treasurer verifies and approves information for all vendor checks, advices, payroll, and welfare checks. The Office of the State Controller, after review and approval by the Office of the State Treasurer, prints all vendor checks, advices, payroll, and welfare checks, and then the distribution checks are sealed, mailed, and are sent back to the Treasurer's Office. We are able to check each other's work. The risk is not always fraud; sometimes it is error. Occasionally humans entering information into accounting systems make errors. On a day-to-day basis, we have disagreements between our two offices at the staff level and the operational level. That is not a shortcoming; that is a sign that our system is working as it is intended. We are supposed to have those disagreements, and we are able to avoid errors as we work through them.

The way our electronic payment system process works is the Treasurer's Office reconciles exceptions between bank records and uploaded cash receipts into Advantage. The Controller's Office receives the digital file from merchant services and documents them into the Advantage accounting system to be reconciled with what the Treasurer's Office is doing [slide 4, ([Exhibit D](#))]. The fraud risk is that if not all the cash the state is receiving makes it to the bank because you have one person in charge of that whole process, they might be skimming some off the top. If you have different people managing the accounting side versus the cash management side, it makes it much more difficult to perpetrate a fraud or lose money.

The Treasurer's Office receives the bank report for all electronic funds transfer return transactions and sends payables to the Controller's Office [slide 5, ([Exhibit D](#))]. The Controller audits the return payables, and cancels, corrects, or reissues payment for those vouchers.

The Automated Clearing House reversal and deletion works by the Treasurer's Office receiving notifications from agencies that state electronic payments were made in error. The Treasurer's Office then reverses the payment and notifies the Controller's Office that the bank has the money that can be returned to the originating agency. The Controller's Office then goes into the accounting system, modifies the original payment voucher, and returns the money to the agency, so that this is all documented throughout the process.

The reconciliation of bank records is a very important function. The Treasurer's Office receives and reviews files for Temporary Assistance for Needy Families and payroll, and then releases these files to the bank. Our office runs those jobs in Advantage, and we create a file that is sent to the Treasurer's Office for their review and approval.

The Treasurer's Office receives voided checks from the Controller's Office and retains them for reconciliation. Our office receives requests from the agencies to cancel the checks and processes them with the bank and the Advantage accounting system.

Chairwoman Diaz:

Instead of speaking about why you are opposing the bill, you are going into the duties of the Controller's Office. We need to be talking about why you are in opposition to A.J.R. 6. I understand all this background information is important in making your case. I have a question from Assemblyman Araujo.

Assemblyman Araujo:

You are building a technical case, but I do not hear evidence. What are the sources? Have you seen anything to justify your claims? Can you give us more meat to the presentation? I would appreciate more evidence to back the claims of what could potentially happen.

Geoffrey Lawrence:

I can skip over the rest of this. I think you get the idea. Our purpose is to prevent fraud or error from occurring. I think that the evidence I am presenting is at the beginning. Accounting standards require this form of segregation of duties. The danger is that if these offices and functions are prospectively moved within the Executive Branch, you ultimately have one person, or multiple people, having the authority to both process the accounting side and the cash management and banking side. I would hate to suggest that a future Governor or gubernatorial staff member might subject Nevada to fraud or the misappropriation of funds, but consolidating these offices into the Executive Branch creates what, in auditing terms, is called a fraud risk. This is generally looked on unfavorably in the financial markets when it is done intentionally by leaders.

Assemblyman Araujo:

Maybe I need to clarify my question. I am going to bring it back to the current Office of the Controller. Does the Office of the State Controller have examples of fraud claims that you have settled? Do you have any that you could shed some light on? I hear you, but I am trying to get back to the root of the claim and see where the evidence lies.

Geoffrey Lawrence:

The point we are making is that if our office is doing its job, there is not a case of fraud that occurs if those are appropriately segregated. It is not to say that you could not have an appointed controller and still segregate duties adequately; however, if you look across the states, about 36 state treasurers are independently elected and are independent of the Executive Branch. Only nine state controllers are elected, and the norm is that in states

where there is not an elected state controller, there is a different position called an elected state auditor who reviews the financial input process. The state auditor normally does the federal single audit, which our office currently does as the elected controller. You still have a segregation of duties. Nevada is unique in that the internal audit function is actually housed in the Office of Finance in the Office of the Governor. Not to disparage the job they do, but structurally, you want at least two of these functions to be independent. This bill would consolidate all three functions within the Executive Branch.

Assemblyman Araujo:

Could there potentially be a case made for combining both offices? I thought I heard a reference to 36 states having that in place and there being a case to be made for that. I am just trying to find out where you are going.

Geoffrey Lawrence:

Thirty-six states have an independently elected treasurer. Those that also have an appointed controller have different methods of appointing a controller. It is usually a staggered term. For example, the controller's term is seven years, whereas the Governor's term is 4 years. There are different provisions, such as being removed by cause, but there is also usually a separate, independently elected agency—the auditor—which we do not have here.

Ron Knecht:

Let me amplify that, if I may. There are three functions here. There is the chief fiscal officer, which is the Controller; there is the chief financial officer, which is the Treasurer; and there is the audit function. Right now, the audit function reports directly to the Governor, but the other two do not. As Mr. Lawrence said, the states that do not have an elected controller oftentimes have an elected auditor or even an inspector general. In big picture terms, having these three functions separate and separately accountable to an executive, and not all appointed by the same person, is the better path. It is the path that assures more of the public interest. We have talked to the Clark County Democratic Party about bringing a measure for an inspector general. We think this is going in the wrong direction in trying to consolidate this as if it was all technical stuff that no one is concerned about. I think there are serious public policy issues, and the right direction would be to go with an inspector general in the Controller's Office. That would be stronger than what we have.

Assemblyman Araujo:

I am going to hold off on the rest of my questions because I have a list of about 15 more. I just want to reiterate that I do not know that we have that evidence in place that would back the claims that are being made.

Geoffrey Lawrence:

I would like to wrap up with two more points. Once we saw this bill, we contacted the state's external auditor to ask for their opinion on this resolution, and its potential impact on internal controls. Their response to us is not necessarily an official opinion but still carries a lot of weight with us. Their response was that they would have a big issue with the

deterioration of our segregation of duties and would likely report that as material weakness on the internal controls audit. That is something that we are concerned about, and it is possible you could work out some way to get around that.

The other issue I would like to bring up is that the Controller's Office currently houses all the hardware, software, and support functions for Advantage. Within our office, we have our server room and dedicated staff who do the upkeep on that system. It is imperative that the system works on a day-to-day basis and does not have any downtime. If the functions of this office were moved to the Executive Branch, it would be maintained by the Division of Enterprise Information Technology Services in the Department of Administration. Enterprise IT has competing objectives and may not be able to make this the forefront of their operation, which really has to be done if the duties of the office are going to be moved.

Chairwoman Diaz:

Mr. Smack, do you have any comments you would like to get on the record before I open it up to questions from the Committee?

James Smack, Chief Deputy Controller, Office of the State Controller:

Mr. Lawrence covered everything very well. I am here in case there are any questions that go a little bit further into the weeds. I may be the best authority on answering them. I also might have an answer for Assemblyman Araujo on what a couple of states do. I have examples of that.

Assemblyman Araujo:

I would love to hear them.

James Smack:

Let us look at three examples, the Commonwealth of Massachusetts being example one. The treasurer is an elected official elected to a four-year term. I do not believe they even have term limits in Massachusetts at this point, unless that has changed recently. The state auditor is also elected. The comptroller is appointed to a lifetime appointment by whoever the sitting governor is at that point in time. They can only be removed for cause or upon their own resignation or retirement. The protection is that there is a sitting governor who appoints that person, but the next governor cannot replace them.

Let us look at the State of Maine. In Maine, the governor is really the only constitutional officer that is elected. Every other constitutional officer, cabinet-level officer, treasurer, controller, and auditor are all elected by the legislature. They are not generally elected.

Idaho pretty much operates as we do. They have an elected state treasurer, an elected controller, and an appointed auditor.

In most of these cases, there is a check and balance with the legislature. There are 139 members or so in the Maine legislature who are making that decision every two years on

who the state treasurer, state controller and the state auditor are, even though the governor is elected to four years. In Massachusetts, there is only one of those positions appointed, and there are protections within their law that it cannot be turned into a political position. Idaho is very much like us. Those are the examples that I have.

Assemblyman Araujo:

There was a continuation to our question, and that was asking for Nevada-specific evidence that would help back the claims that were made. We are here to prevent fraud, so I would love to hear more meat in terms of what we are doing to get that done.

James Smack:

I did not bring any specific evidence as far as individual claims or fraud claims brought by the Controller's or the Treasurer's Offices. That is the reason behind the internal controls and the check and the balance between the Controller's and the Treasurer's Offices.

Going back to the wire transfers, wire transfers can be tens of millions of dollars at one time. There is an awful lot of opportunity for fraud if you do not have some kind of dual control process built into that. My overarching concern is that having the same person, without appropriate protections, appointing Treasurer, auditor, and Controller within the same state guidelines would open up an opportunity for the two appointed heads to decide they want to get together, run off to San Francisco, and feed a cocaine habit. They would be able to do so because they would have more of an opportunity to work together. What if we get the wrong person elected as Governor? I think that is the overarching question we need to look at here. I am pretty happy with the Governor that we have now, and I would hope that the governors going forward would continue to be ethical, honest people. We could look at Louisiana as an example where sometimes the governor is elected and ends up trading in a business suit for an orange jumpsuit. There is also that concern as well. When you have all the eggs in one basket, it certainly provides a greater opportunity and vehicle for fraud.

Chairwoman Diaz:

I have a question along the same lines. Massachusetts appoints people, but they have very strict guidelines on how to do so. I was just informed that Nevada does not really have guidelines that state someone needs to have some accounting experience in order to run for the position. You just have to meet an age requirement and be registered to vote in order to run. Can you speak to ensuring that we have a qualified candidate who is capable of the duties that Mr. Lawrence just laid out before the Committee and that the person is competent in making those decisions for Nevada?

James Smack:

The comptroller of Massachusetts and I have become friends, so I have talked to him a little bit more at length about how his appointed position works. There are some really strict guidelines for professionalism. I am not positive on the Certified Public Accountant (CPA) requirement. There may be one, but I do not recall him telling me there was a CPA requirement. He was a district attorney in one of the counties in Massachusetts at one point in time. One of the requirements is that the person appointed to that position cannot have

made a reportable political donation in the previous years. They are trying to ferret out someone who has no political affiliation or no political footprint whatsoever. That could be something, if this were to become law down the road, that would be the kind of protection that someone like me would be fighting for. We are not thinking that is a great idea, but if that is the endgame years from now, we would certainly be here in front of this or another committee arguing that a similar model to the one they utilize in Massachusetts would be something that should be utilized here. It would provide at least enough of a level of autonomy for that individual to be able to do his or her job without having to worry about the Governor becoming displeased and removing them.

Assemblywoman Monroe-Moreno:

Over the last two weeks, I have seen the three of you before me in another committee where you talk about separation of powers. On two other occasions, however, you have talked about moving duties that were in the Controller's Office to the Office of Finance, Office of the Governor. If you are willing to give up power in those areas, why this separation now?

Ron Knecht:

Let me make a distinction between the debt collection activities, which are essentially a ministerial function. I think that is the kind of thing that you can reasonably move around. We gave you a very good reason, which was provided by the auditors, as to why we want to move those around. It is a whole other thing when you talk about the Controller's statutory charge to recommend plans for the support of public credit, for promoting frugality in the economy, and for better management and understanding of the fiscal affairs of the state. That is not a ministerial function. That is a substantial discretionary function. You need to preserve that kind of independence when you structure these three offices. What you do not want are three yes-men or yes-women parroting the Governor's viewpoint, no matter how sound it is. You want some diversity of opinion on substantial issues. Right now, we have that.

Geoffrey Lawrence:

Debt collection functions are tertiary functions to the agency. The core function is maintaining the integrity of the information in the financial accounting system, and then doing the reporting based on that information. Our concern is that you could ultimately have the same people handling cash and processing transactions in that accounting system, so it would be subject to manipulation by people with unscrupulous motives.

Chairwoman Diaz:

Are there any further questions? [There were none.] We will switch to Las Vegas to hear from the folks testifying in opposition.

Lisa Mayo-DeRiso, Private Citizen, Las Vegas, Nevada:

I am here in opposition to A.J.R. 6. This bill is plain and simple. It really is a consolidation of Nevada's government. Thomas Jefferson asserted that the separation of powers was essential to prevent the consolidation of government and the formation of a centralized, authoritarian government, to which all governments are prone.

Jefferson has often been referred to as a proponent of states' rights, but his main intent was not so much in the rights of states in and of themselves, but rather the division of powers in order to prevent the destruction of liberty.

I want to thank Assemblyman Anderson for his service to this country. I am a mother-in-law of a current military Army captain who will soon be deployed somewhere in a far-off place. I think Assemblyman Anderson should know, more than anyone in this room, what the dangers are of consolidated governments. He has served in countries that exist under a consolidated government, and he should know the dangers that moving toward this can create within our government.

I believe that Assemblyman Anderson said to us in his testimony that we ask too much of our voters. He said there are too many elections and too many reasons for voters to come to the polls, yet he wants to place a constitutional amendment on the ballot that will consolidate our government. I think many people across the state will have a difficult time understanding why we want to do this consolidation.

We have seen consolidation happen with our economic development, which is now under our Governor. I would argue it is not working out really great for us. We have had three initiatives from the Governor's Office of Economic Development. Tesla was \$1.25 billion in tax credits. Faraday Future was \$259 million in tax credits. The Raiders stadium was \$750 million in tax dollars as taxpayers in this community. Tesla is working out pretty well, but the other two are circling the drain. We still do not know if Faraday Future is even going to happen, and my inside business knowledge tells me no. The Raiders stadium is a bad deal from the beginning to the end. That kind of consolidation of economic development under the Governor has not worked out very well for us yet. I urge you to not consider this type of consolidation under the Executive Branch of our government. Respectfully, I think this bill is neither necessary nor beneficial to Nevada, and I would urge you to not support this bill.

Robert Frank, Private Citizen, Henderson, Nevada:

I am a retired colonel from the United States Air Force. I am representing Nevada Can, a grassroots organization in Nevada. It is based on the constitutional and traditional principles. This is a constitutional issue in my mind. As a retired senior officer with more than 30 years working in both the United States Department of Defense and the National Laboratories environment as a chief scientist, I feel that this is a very bad move toward government consolidation. I think it is a very bad move from a point of reducing accountability. One of the things that I feel the writers of the *Nevada Constitution* were very committed to was putting the people in charge, allowing our people to stay in charge. If they cannot elect their leadership, particularly their leadership for controlling their funds, they have no control.

I stand here today testifying on behalf of those who cannot be here; those who have sacrificed their lives and their families for decades to protect our constitutional principles; those who have lived in Nevada who protected our *Nevada Constitution* for the

past 150 years, and those who would be appalled at the idea of removing these constitutional elected positions, particularly the positions that directly relate to how we manage our money and serve the taxpayers' interest. I strongly urge you to trash this bill. It is a bad idea. It should not have any more time wasted on it. I urge you on behalf of the hundreds of thousands of veterans and their families living in Nevada who depend on you to protect their constitutional rights and basic interests, and not those of others who seem to want to consolidate government and go away from our unique American form of government.

Julie Hereford, Private Citizen, Las Vegas, Nevada:

I reside in Assembly District No. 2 and Senate District No. 8. As a taxpayer, I think this is an irresponsible and illogical amendment to propose to dismantle the check and balance measures established among the constitutional offices for Nevada ever since the *Nevada Constitution* was passed 153 years ago. This bill is designed to deny the taxpayers their right to an accountable and transparent financial reporting process independent from the Governor's Office. I cannot think of any government, organization, or private corporation in the world that does not have controller or treasurer functions to independently handle the financial reporting on revenue, spending, and investment on behalf of the taxpayers, voters, and shareholders. How should we, the taxpayers, trust the Governor's Office to set their own budget and oversee their own spending and investment with seven plus billion dollars of taxpayers' hard-earned money? The answer is not no, but absolutely no. As a Nevadan, I do not want this state to be the laughingstock of the world for going backwards to become a banana republic. I respectfully submit this opposition ([Exhibit E](#)).

Robert Rupert, Private Citizen, Las Vegas, Nevada:

I live in Assembly District No. 42 here in Clark County. I stand in opposition to this bill wholeheartedly on the principle that it is strictly unconstitutional. Having been born and raised in Hollywood, California, I recently saw what the potential of the fraudulent risk could be, even given a well-known accounting firm's handling of the Academy Awards there in Hollywood. We saw the fiasco that unfolded on national television. Can you even imagine the outcome of what would happen in state government if such an accounting fiasco happened with the taxpayers' monies? I absolutely am stunned that this is even being considered to be a bill put forth on your panel to the citizens of Nevada. Truly, you should be ashamed of even considering this. I stand in opposition against this bill. I hope each one of you will seriously consider this.

Bonnie McDaniel, Private Citizen, Las Vegas, Nevada:

I am a 57-year resident of Las Vegas. I stand opposed to this bill. It is unconstitutional. It has been in the *Nevada Constitution* for over 153 years. We need this to be two separate offices, and we need to have our right to vote for these offices. We need these checks and balances. We do not need one branch of government in our state doing everything there is. Next, they are going to say they want all of you appointed by the Governor, and all we will vote for is the Governor. That is not going to happen as long as I live in Nevada, and I am sure as long as the rest of us live in Nevada as well. Today I do not want to have you make

the Governor a king, because he will not be a king in my eyes. It is time that you recognize that you are taking away the rights of the people of Nevada if you pass this bill. I urge you to vote no on this bill.

Chairwoman Diaz:

When we switch back to Carson City, I would appreciate it if we did not accuse fellow legislators of ill intent or shame anyone. We are here to have an open and frank discussion on measures that this body has before it, and I do not think we need the lack of respect.

Dan Schwartz, State Treasurer, Office of the State Treasurer:

One fine day, I was sitting in my easy chair reading my copy of the *Nevada Appeal*. I saw this headline, "Assemblyman says Treasurer, Controller should be appointed." It caught my attention. The article goes on to say,

Assemblyman Elliot Anderson D-Las Vegas has filed a proposed constitutional amendment that would remove both the Controller and the Treasurer from the list of elected constitutional officers in Nevada. He said the positions would, instead, be put under the governor's finance office or a cabinet level department created by the Legislature. "You don't need to elect someone to do accounts payable and accounts receivable," he said.

I sat back in my chair, and I thought about that for a moment. I said, "We at the Treasurer's Office do not do accounts receivable and payable." I then began to think about what was going on here. I said, "Come to think of it, I do not think there is anything here that would provide a basis for me on which to support this amendment."

For starters, I think we have done a pretty good job. If you look at investment incentives, we have distributed \$14.3 million in 2016 [slide 4, ([Exhibit F](#))]. The previous holder of this office distributed \$5.9 million. This is money earned on the general portfolio. We are up nine times in the Local Government Pooled Investment Fund. I think we have done a pretty good job. I do not know that an appointee would be able to improve on this performance. Contrary to what Assemblyman Anderson stated, there are actually a lot of debates on this office. I remember in 2014, I had at least five or six debates with then-Controller Kim Wallin, on the Office of the State Treasurer. I think that there is no guarantee that the Governor is going to appoint someone who is able to handle this office, which brings me to my next point.

I do a lot more than accounts payable and accounts receivable. I am a member of the State Board of Finance, the Administrator of the Municipal Bond Bank, Chair of the Board of Trustees of the College Savings Plans of Nevada, and Chair of the Board of Directors of Nevada Capital Investment Corporation [slide 2, ([Exhibit F](#))]. There are quite a number of things that I do. To consolidate this in the Governor's Office would infringe upon the point that has been made by several people who have spoken today, not necessarily separation of powers, which is a doctrine between branches, but within the Executive Branch itself. As Assemblyman Hansen suggested earlier, there have been differences between the

Attorney General and the Governor and between myself and the Governor. It is well known to many. There were differences on the budget. I have been a strong proponent of the ESAs. I have questioned the proclivity of the Governor's Office of Economic Development to proceed with Faraday Future, and I have questioned the stadium. To include all of this within the Governor's Office would violate one of the fundamental tenets of our democracy, which is checks and balances.

Finally, the Treasurer's Office is a very broad and expansive office. Why would you consolidate this with the Governor's Office? The Governor already has a lot to do in this state. He is a very powerful man. To include this within his powers and his responsibilities does not make a lot of sense. Contrary to Assemblyman Anderson's point, this would lessen our democracy. The people of this state are very good judges of who should be elected to public office. I personally would ask you to put this bill in the file and allow the people of this state to make the judgment of who should be the Treasurer and the Controller.

Grant Hewitt, Chief of Staff, Office of the State Treasurer:

There are a couple of points that I want to touch on. Unclaimed property is handled by one of the divisions of our office. By consolidating this under the Executive Branch, you find yourself in a precarious situation where there is no real incentive to hand back Nevadans' hard-earned property that they may have forgotten about or has fallen unclaimed. The monies that are not handed over each time go back into the State General Fund as a loan. It would be very difficult to ask the same office to strategically try to advocate giving away more money while at the same time looking at the Governor's recommended budget and saying, "We would really like to not give away a ton of money because it adds more money to the General Fund every year." I think it is important to keep these duties separate, and it is one of the reasons that the Treasurer's Office has the ability to advocate handing out unclaimed property instead of handing it back over to the General Fund.

The other piece is we heard a lot about putting a requirement on maybe some tenures of financial experience or setting a standard. There is a board in the state that has a financial standard to it, and that is the Nevada Capital Investment Corporation, where the Treasurer sits as the Chair. The members of that board must have 10 years of financial background to become eligible for the board. This is very difficult to find members for. It is very hard to find folks who have a diverse background, whether it is in the investment or banking field, to serve on this board. I think it is important to realize that if you establish too many criteria, you are going to limit yourself in the pool that you get of people who are qualified. We recently had some vacancies on the board and had to work with members of the Legislature to find qualified candidates. It is very difficult, so I would encourage you to tread cautiously down that path.

The other point that Assemblyman Anderson made was that this would make government more efficient or smaller. I do not see how you remove any members of staff and make the process smaller. In fact, if you are going to appoint the Treasurer and the Controller, the staffs are still going to look very similar in the expertise levels that come with it.

With that, I want to turn it over to Chief Deputy Treasurer, Tara Hagan, to talk about some of the complexities of the regulatory environment, and why having this Treasurer's Office all under one makes it a little bit easier to administer and more cost-effective for Nevada.

Tara Hagan, Chief Deputy Treasurer, Office of the State Treasurer:

I want to talk a little bit about some of the efficiencies on slide 6 ([Exhibit F](#)) and the regulatory complexity. We do not have any specifics in terms of where these divisions would go underneath the Governor's Office. We wanted to talk a little bit about the divisions within here and some of the regulatory complexities that cross each division. It is important to note that, underneath these divisions, there are deputies who are professionals in their fields with each of these divisions. You can see, in terms of the Securities and Exchange Commission, what we do in college savings in terms of monitoring the 529 investments. You can see what the Treasurer's Office does in terms of the general portfolio, the Local Government Pooled Investment Fund, the personal investments that we do for fixed income, and monitoring the equities that we have in the Permanent School Fund or the Prepaid Tuition Program.

It also applies to some of the arbitrators requirements that we have in the debt division. We also have the Achieving a Better Life Experience. We are also responsible for the investment options in that program as well. In addition, there is the Internal Revenue Code that goes across college savings, the 529s, Internal Revenue Code, as well as the Achieving a Better Life Experience. In terms of some cost efficiencies, we have to hire outside auditors. Generally, we do one bid; therefore, we can hire one auditor for the various portfolios, be it under college savings, investments, the ESAs, or the Achieving a Better Life Experience program. We have financial professionals who are able to read some of those financial statements in order to determine a surety bond necessary on the ESAs. We feel like there are a lot of efficiencies in keeping all these divisions under the Treasurer's Office.

Assemblyman Araujo:

Mr. Schwartz, this question is for you. You mentioned that you feared that an appointee would not be able to build on the set accomplishments that have been reached through the Treasurer's Office, but you left it at that. Could you expand on why an appointee would not be able to meet those?

Dan Schwartz:

We are not addressing the question here, and we have tried to get at it. All of these various functions could be handled by someone in the Governor's Office. It is not impossible. What is difficult to maintain is the checks and balances that our system provides. We are an independent branch of the government. I am an elected state official. Nominally, I stand in the same position as the Governor, Lieutenant Governor, and the Attorney General. My responsibility is not to the Governor, as it would be if you put this under the Governor's Office. It is to the people of this state. As some of the people in Las Vegas suggested, the fiscal and financial responsibility is one that should be elected by the people.

It is conceivable that you could find someone to appoint, but that is not the point. The point is that you want someone who not only has those abilities, but has the independence to act on those abilities. Does that answer your question?

Assemblyman Araujo:
Vaguely.

Grant Hewitt:

Nevada Revised Statutes (NRS) 355.145 requires a prudent person's standard to consider probable income and safety of capital. When we are talking about investing the state's money, there is no incentive for a state government appointee to want to grow those portfolios. They could easily put them in a money market account and let it sit. This is the safest type of investment you could have. There is no risk but no return. What we see on slide 4 ([Exhibit F](#)), is that in calendar year 2014, there was \$5.9 million distributed in interest to the state agencies versus \$14.3 million. These are two different Treasurers, two different styles as it relates to investing, and two different knowledge bases. What we find is when someone who has the expertise and has an incentive to grow, that comes with an election. If you are reelected, there is an incentive every time you come up for election to do better. We see ourselves striving to grow those returns and bring more money back to the state. It is more of a setup of an incentive. If you are just going by the NRS standard, you are going to sit back and put it in a money market account, and it will not grow very quickly. Treasurer Schwartz has taken the opportunity to bring in outside managers to the investment funds to take our internal investments out longer, to grow that portfolio, and to bring back more money to the state.

Assemblyman Araujo:

I take issue with winning elections serving as enough to be able to do your job, which you are elected to do and do well. I want to bring to light the fact that we are raising the question of democracy. If I understand this bill correctly, we are simply asking the people of Nevada to make the decision as to whether they want to elect their Treasurer and Controller or whether they want that to be an appointed position. I take issue with that because I think that is democracy at its finest.

Dan Schwartz:

Some may take issue with your statement. I am not disagreeing with you on that, but this Legislature has an enormous amount of work to do. The question is not whether this is democratic or not; it is whether it is a good use of your time and resources to be spending on something which ignores the fact that the people of Nevada, rather than the Governor, should be the ultimate body to which the Treasurer and the Controller are responsible to.

Assemblyman Hansen:

First of all, it is an irony that it is Democrats against democracy. If this thing passes, this would become an appointed position rather than its current elected one. I was thinking about the several times in my life when similar issues have been on the ballot. For example, Senator Raggio had a pet issue for years about pushing the Missouri Plan, which is to

eliminate the election of judges. That was overwhelmingly defeated once or twice on the ballot. You look at the history and see people typically are not interested in changing these into appointed positions, whether it is the judgeships or the Treasurer. I have not had a single person the entire time I have been in politics come to me and say, we need to eliminate the Controller and the Treasurer from being elected and make them appointed positions. The genesis of this is interesting to me because I do not see it.

The bill sponsor brought up the idea that many people only vote Democratic or Republican when they go into the ballot box. In reality, most of the constitutional officers of my lifetime have been divided between both parties. Right now is unusual because of the red wave in 2014. The Controller, Secretary of State, Treasurer, Attorney General, and Governor are all one party. That has been an exception to the rule. That would indicate the idea that these offices are not critical, and the election cycle is false. The people have traditionally placed the balance of power in these constitutional offices for whatever reason.

Has anyone approached you or anybody else about switching these positions from elected to appointed? I have not seen anyone ever. I would like to know if you, Mr. Schwartz, are familiar with that at all. Also, was your predecessor a Democrat?

Dan Schwartz:

You are absolutely correct. No one has come to me and complained about the fact that I was elected. Contrary to what Assemblyman Anderson said, there was a pretty vigorous debate and a pretty vigorous electoral process in which I was elected. To your second point, my predecessor was a Democrat. I understand that Democrats comprise a majority of this Committee, but that was very much what that election was about. It was about electing an accountant who counts the numbers to the Treasurer's Office, which is an investment office. As one very nice lady said to me, "Controller Wallin was good, but you were better." That is what our democracy is about.

Assemblyman Hansen:

I was involved in that election cycle. I have watched these constitutional offices frequently go to various parties. I think your point was extremely important, and that is that you were not elected to do the will of the Governor. You were elected to do the will of the people, and that includes what the Attorney General and the Secretary of State were elected to do. You write down the list of people who are in those offices, and that is their responsibility. This would eliminate at least two current constitutional offices from that very important function. I am amazed that we are taking the time to pursue this because I can see on the ballot where this is going to go, just like the Missouri Plan. I know right where that thing went at least twice.

Assemblywoman Monroe-Moreno:

I just want to reaffirm what was said earlier by Assemblyman Anderson. If this passes from our house to the Senate, makes it to the floor, and it passes, it goes to a vote of

the people. It is not our decision. As for the election that did happen, the person who held your position before was a Democrat. In all due respect, and I may be out of line, but there were many people who stayed home during that election. Let us just point that out.

Dan Schwartz:

First of all, you are right. I am not disagreeing with you on that. This house operates on democratic principles, so there are many things you can do and that can be done. I am not suggesting a pay raise, but you have a lot on your plate. The real question is, do you want to spend your time and resources on a measure of really questionable validity?

Assemblyman Araujo:

With all due respect, Mr. Schwartz, I think we can make that decision ourselves. I can only speak for myself, but we love the work that we do, and we do it diligently. We are willing to work around the clock to make it happen. I appreciate your concerns, but let us make that decision.

I did note, Mr. Hewitt, that you mentioned that there would be potentially added costs to an appointment process should this move forward five years from now. Where is the proof? Where is the justification? Are we speaking in hypotheticals, or are we basing this off information that has merit? I do not want to get into a conversation around assumptions, have that on the record, and not have it be cleared up.

Grant Hewitt:

I apologize if I misspoke. I was merely saying I do not see how it shrinks the process, so I do not see how positions go away. As it relates to the cost of the transition, I cannot speak to that. There are many hypotheticals. Part of what we talked about on slide 6 ([Exhibit F](#)), is that there are many questions. I think it is important that we point that out, and you already acknowledged that. This goes from here to the Senate, to the floor, back to this group, then to the people. Then, you get to decide how we break it up after multiple stages. That transition is going to be very complex. I think the regulatory environment that we talked about and the expertise we are able to centrally house in the Treasurer's Office is an important piece to that transition. I can easily see a situation where the Nevada System of Higher Education (NSHE) comes to the table and says, "college savings 529 plans and the Millennium Scholarship should come to us. That is in our wheelhouse. We can cover that." Suddenly, you have taken that out and need more regulatory expertise at NSHE to deal with these issues instead of keeping it together. All of these are questions. To your point, they are hypotheticals, but I think they are important to ask today.

Assemblyman Araujo:

I am just going to reiterate. I have shared this with the Controller's Office, and I am sharing it now with you folks. If we are going to come to the table, and we are willing to make assumptions, I think there would be a lot of merit in having a healthy discussion that has

evidence behind it. I would just respectfully caution that we not jump into that hypothetical world. Right now, we are having this thorough conversation, and it would be much more valid if we had some proof to go with the claims.

Grant Hewitt:

I will tread cautiously. I would love to see a plan that Assemblyman Anderson might have in his head to break this up, so we could talk about actuals.

Dan Schwartz:

I second Mr. Hewitt's remarks. This bill has no evidence behind it other than a belief that somehow this will improve the democratic process in our state. There are no facts or evidence.

Grant Hewitt:

I would like to read page from 2, lines 14 through 19 of A.J.R. 6. "Whereas, Abolishing the Office of State Controller and the Office of State Treasurer and allowing the duties of those positions to be carried out by others within the Executive Branch of State Government will improve the fiscal management of the State, reduce costs to taxpayers and reduce the overall size of State Government, now therefore, be it." Where is the evidence?

Chairwoman Diaz:

The bill sponsor will have the opportunity to come back and defend why he is bringing forth the measure. If, in fact, he does have a plan, maybe it has been beat into his brain. All of these sessions we have been coming and hearing that a lean government is an efficient government. Maybe he has finally bought into this notion. Seeing no further questions, I will ask for the next three people in opposition in Carson City to testify.

Janine Hansen, State President, Nevada Families for Freedom:

We oppose this bill. We support the Offices of Governor, Treasurer, and Controller. We do not think there should be any further consolidation in the responsibilities of the Governor. We like the fact that there are checks and balances and separate people we can vote for. Last session, we opposed a bill to make the Lieutenant Governor unelected. I think this movement towards a greater administrative state is of great concern. I have been concerned for many years over the idea of administrative courts, where I found that people's constitutional rights were completely obliterated.

When you have appointed people, they are not nearly as responsive to the concerns of the people as elected people are. I am significantly concerned about the fact that they would not be as responsive to the people of Nevada. Central to the idea of American constitutionalism are the concepts of representation, the rule of law, separation of powers, and checks and balances. The administrative state, which moves us towards administrative, unelected people in charge, does damage to these American constitutional principles. Most of my concerns have been well brought up today, so we support the things that have been said previously. We support electing the Offices of Controller and State Treasurer.

Lynn Chapman, State Vice President, Nevada Eagle Forum:

Our city, county, and state governments are closest to the people. I think it is important the people are able to vote for the people who represent them in the city, county, and state. We are having our liberties taken away from us every time we are not allowed to vote for these different people such as the Lieutenant Governor, the judges, and the school board members. The appointment of judges versus the election of judges has been on the ballot a number of times, and the people have said no over and over again. I have people who call me when there is an election because they know I know many people who are running. They ask me why we are voting on this again. I tell them it is because the people have not said No loud enough.

I would like to bring up something that somebody said in Bismarck, North Dakota. He is a representative named Vernon Laning. He said, "Eliminating the treasurer's office would only create more work for another agency, or create an additional layer of government between the people and their money." I think that says a lot. That is exactly how we think. I would like to say one more thing. The top of the chain of command should be the citizen, but the citizen is being shoved off the mountain to the lowest rung of the ladder. That should not be happening. We would be able to vote on this, but that might be the last time we would be able to vote. That is not the way it should work.

John Wagner, representing Independent American Party of Nevada:

The checks and balances have been pretty well debated, but problems can arise in the Governor's Office just the same, or even easier, than between two competing departments across the hall from each other in the Capitol Building. Last year is a good example of separation of powers. We had a big debate about the commerce tax. That would not have happened if the Governor had been in charge of the Controller and the Treasurer. He would have silenced it right away, and there would have been no debate about that at all. As far as I can see, the system works now. The system is not broken. When I was in engineering when I was professionally working, we had a rule that said if it is not broken, do not try to fix it.

Fred Voltz, Private Citizen, Carson City, Nevada:

I would echo everything that has been said in opposition to this very misguided proposal. I think there are a couple of points that have not been brought up yet that I would like to bring to your attention. First, the power concentration in the Executive Branch is already almost overwhelming the Legislative and Judicial Branches of government. We have 200 boards, commissions, and councils in this state that are all unilaterally appointed by the Governor. There is no advise and consent function by any other body. That gives whoever is the Governor an incredible amount of power without any offset or check. I think that is a very critical point to note.

Secondly, I do not believe that there can be any cost savings expected in spite of the language that has been included in the resolution because the accounting and investment functions are still going to be performed by someone in state government. We have to pay those people to

do it, unless there is someone in the Governor's budget office who is underemployed and has extra time to pick up the slack. We are still going to need those people. That is not going away if this change was to succeed.

One point I have also not heard mentioned in the entire bill is that there is a new construct called the Citizens' Commission on Compensation for Certain Elected Officials. This would seem to violate the one subject limitation to any piece of legislation. It calls for a new commission to be created. Insiders are favored. Salary increases of up to 15 percent or decreases of up to 15 percent could be awarded by this commission. There is no local flexibility at the city-county level. There is no check on the commission's decisions. School districts and cities are not specifically mentioned in this feature.

Chairwoman Diaz:

I do not recall that being in A.J.R. 6. It sounds like another measure.

Fred Voltz:

I am looking at what I printed off this morning from the NELIS website. I am seeing an extension, and it is showing up under A.J.R. 6.

Chairwoman Diaz:

I have the bill sponsor who is going to come up and clarify for me.

Assemblyman Elliot T. Anderson:

He is referring to the commission that former Assemblywoman Victoria Dooling passed last session through this Committee. My understanding is that it is basically transitory language for if this measure were to take effect because the previous version that was passed in last session mentioned the references of the State Controller and Treasurer, which I have proposed not be included going forward with A.J.R. 6.

Chairwoman Diaz:

Is there anyone else wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] Assemblyman Anderson would like to close our hearing with his final comments.

Assemblyman Elliot T. Anderson:

I would like to briefly respond to a few of the things you heard. I agree with much of what the Controller and Treasurer have to say. We talked about having checks and balances in our financial management system. That is something that I mentioned that I agreed with in my opening presentation. However, we do not have to constitutionalize these offices in order to guarantee independence. We have the gold standard of gaming regulation done by independent appointments from the Governor's Office. We have rules against them being too political. This is what I am trying to get at with this amendment.

In terms of cost savings, former Treasurer Bob Seale ran the numbers back in the 2000s and found a \$1.5 million cost savings. That is a Republican former Treasurer who ran those

numbers. Those are not my numbers. Those numbers are a bit outdated. It is hard to get into specific cost savings because that discussion does not belong in the constitutional realm. Those are questions for statutes and how future legislators choose to organize this.

In 1951 and 1953, we had a similar process where the Legislature, on its own, recommended Governor Russell's idea to get rid of the Surveyor-General because it was an inefficient and obscure office that sold state lands. People were not paying attention to it. It led to better reforms with how we manage state property because we have more flexibility under the statutory scheme rather than a constitutional scheme. It is hard to get into the numbers at this point, and it is not the correct discussion at this point. It is my firm belief that this will lead to cost savings if, for no other reason, than you can consolidate the IT functions of these offices. There is duplication of state services when you deal with IT, public information officers, and a number of other functions. That is where those cost savings start to come out. That is not a discussion for this Committee. This is about the *Nevada Constitution*. I feel very confident that, in getting rid of those duplicative state services, we would see savings. When you start to look for efficiencies upon consolidation, you would likely do it. The recent example that we have is Assembly Bill 51, which is the transfer of the debt collection. There is no fiscal impact from transferring that over, so there is no increase by simply putting them under the Governor's Office.

I would just remind the Committee to think creatively. It is not like the Governor is going to be sitting there and saying, "Hey guys, I need you to fudge these numbers for us." You can put these functions in different silos that have some independence. You are not shackled anymore by the *Nevada Constitution* in terms of having these functions done a certain way. Constitutions are not for developing policy. That is for statutes. We can do much better in terms of vetting candidates with selection commissions that interview CPAs. By the way, CPAs have disciplinary boards that will help keep them accountable. By putting in those qualifications, people will have a professional financial reputation. You will have accountability. You are going to get more accountability from those disciplinary boards than you get from the voters. Most voters are not arguing about generally accepted accounting and financing principles.

Lastly, the Treasurer brought me up. I was trying to not make this personal, but everyone knows that I have taken a strong interest in modernizing the *Nevada Constitution*. It is not about him, and it is not about me. Since he brought me into this, with all due respect, it is not in the Treasurer's job description to be intervening with the stadium, the state budget, the commerce tax, or Faraday Future. That is not what we are looking for from our financial managers. We are looking for stewards of the state budget who make sure we avoid fraud and do not get involved in politics. This is exactly my point. It is an agreed-upon principle that we need protections against fraud. These are not political positions. I would just ask the Committee to think creatively and look at where we came from and how much we have changed since 1864. Think about that. Other legislatures have had the same

discussion that we are having today. We have had the same arguments about electing state printing offices and state surveyor generals. In that respect, this should be looked at as a modernization moving forward into a new and more complicated world.

[([Exhibit G](#)) was submitted but not discussed.]

Chairwoman Diaz:

With that, I will close the hearing on A.J.R. 6. Is there anyone who would like to speak under public comment? [There was no one.] This meeting is adjourned [at 3:39 p.m.].

RESPECTFULLY SUBMITTED:

Julianne King
Committee Secretary

APPROVED BY:

Assemblywoman Olivia Diaz, Chairwoman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document titled "Treasurer's Office," submitted by Assemblyman Elliot T. Anderson, Assembly District No. 15, regarding [Assembly Joint Resolution 6](#).

[Exhibit D](#) is a copy of a PowerPoint presentation titled "Potential Complications Raised by [AJR 6](#)," presented by Geoffrey Lawrence, Assistant State Controller, Office of the State Controller.

[Exhibit E](#) is written testimony presented by Julie Hereford, Private Citizen, Las Vegas, Nevada, dated February 28, 2017, in opposition to [Assembly Joint Resolution 6](#).

[Exhibit F](#) is a copy of a PowerPoint presentation titled "State Treasurer's Office Overview," dated February 28, 2017, presented by Dan Schwartz, State Treasurer, Office of the State Treasurer.

[Exhibit G](#) is written testimony submitted by Angel De Fazio, Private Citizen, Las Vegas, Nevada, dated February 28, 2017, in opposition to [Assembly Joint Resolution 6](#).