

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

**Eighty-First Session
March 2, 2021**

The Committee on Legislative Operations and Elections was called to order by Chair Brittney Miller at 4:03 p.m. on Tuesday, March 2, 2021, Online. 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Sandra Jauregui, Vice Chair
Assemblywoman Jill Dickman
Assemblywoman Cecelia González
Assemblyman Glen Leavitt
Assemblyman Andy Matthews
Assemblyman Richard McArthur
Assemblywoman Clara Thomas
Assemblywoman Selena Torres

COMMITTEE MEMBERS ABSENT:

Assemblyman Jason Frierson (excused)
Assemblywoman Daniele Monroe-Moreno (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Gregory T. Hafen II, Assembly District No. 36

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Bonnie Borda Hoffecker, Committee Manager
Jordan Green, Committee Secretary



OTHERS PRESENT:

Mark A. Wlaschin, Deputy of Elections, Office of the Secretary of State
Doug Goodman, Founder and Executive Director, Nevadans for Election Reform
Melissa Clement, representing Nevada Right to Life
Lynn Chapman, State Treasurer, Independent American Party of Nevada

Chair Miller:

[Roll was called. Committee rules and protocol were explained.] We will begin with the first agenda item—a hearing on Assembly Bill 166, which is sponsored by Assemblyman Hafen. This measure establishes disclosure requirements related to certain elections-related communications.

Assembly Bill 166: Establishes disclosure requirements relating to certain elections-related communications. (BDR 24-867)

Assemblyman Gregory T. Hafen II, Assembly District No. 36:

I would like to take a moment and acknowledge the COVID-19 pandemic, and that we all have struggled with the lockdowns and the deaths. As the Chair alluded to in her opening remarks, we all are using more electronic means of communication. We have now seen more electronic means of communications, especially via text messages [unintelligible] campaign system.

Existing law, which is codified in *Nevada Revised Statutes* (NRS) 294A.348, currently requires individuals, committees for political action (PACs), political parties, and committees sponsored by political parties to clearly identify who paid for the communication within it. This is required when the individual or entity spends more than \$100 for political advertising, and the communication is created to advocate the election or defeat of a candidate or group of candidates or to solicit donations. However, this provision is dated and specifically applies to communications through television, radio, newspaper, magazine, outdoor advertising, and mailing. Although NRS 294A.348 [section 1 of Assembly Bill 166], subsection 1 mentions "any other type of general public political advertising," text messaging has fallen through the cracks.

Assembly Bill 166 is not a complex bill. It simply modernizes campaign disclosure requirements and fixes a loophole in Nevada law by making sure text messages from a person, PAC, political party, or committee sponsored by a political party disclose the name of the individual or entity who paid for the communication in the text message.

In this past election cycle, with more text messages used, I heard from many constituents who were frustrated because their privacy was continuously interrupted, and they could not figure out who was sending all these text messages. Consistent with current law, this is only

required when the individual or entity spends more than \$100, and the communication advocates the election or defeat of a candidate or group of candidates or solicits a contribution.

I will further illustrate the intended types of disclosures of A.B. 166 with some examples of campaign text messages in this PowerPoint presentation [[Exhibit C](#)]:

- "Hi, this is William with the Silver Standard for Nevada Cmte . . . ," and the message presumably goes on to explain its purpose [page 2]. It is very simple and short.
- "My friend Bobby Miller is running for Assembly and needs your support . . . " [page 3].
- "Did you know that Asm Jones voted for AB000 which makes your children much less safe at home? Let's give Asm Jones the boot, www.JonesMustGo.com" [page 4].
- "The Bullfrog County Republican Party would like to thank Joe for his 12 wonderful years of service in Carson City . . . " [page 6].
- "This is Kelly at AtZ PAC, I wanted you to know we are having a fundraiser. We hope we can count on your support." There is even a question at the end: "Can we share a link so you can learn more?" [page 7].

Here [page 5] is another example where we utilize a website to further disclose who is sending the message, and this [page 8] is a brief summary of all the different examples that I just showed you.

Thank you for your consideration of A.B. 166. I am available to answer questions, and Mark Wlaschin, who is the Deputy of Elections of the Office of the Secretary of State, is also in the Zoom meeting to answer any questions that you may have.

Chair Miller:

Committee members, do you have any questions?

Assemblywoman González:

Would the provisions of A.B. 166 apply to all text messages—including messages from 501(c)(3) and 501(c)(4) organizations [*United States Code*, Title 26, Section 501]? Does this also apply to text messages that come from out of state?

Assemblyman Hafen:

The intent for this is for political advertisements and political text messages. You mentioned the 501(c)(3) organizations, such as the nonprofits—that is not the intent of what we are

doing here. The intent of this bill is strictly to make political messaging through text messages more consistent and transparent as we have done with print messages such as newspaper and magazine advertisements.

I believe you asked about the monetary threshold. There is a monetary threshold of \$100, so it would be any time the messages being sent exceed that \$100 threshold.

Assemblywoman González:

How would you know if a person spent more than \$100 on a text? For example, there are many different apps that you can spend \$200, \$300, or \$400 and text your base with, so how are we able to know that they are spending more than \$100 on a program?

Assemblyman Hafen:

From my perspective, the way that this would work would be very similar to the print mail pieces. If you send out a mass-mail piece, obviously it is a very difficult task to determine whether it exceeds the \$100 threshold. Mr. Wlaschin can probably touch base on it a little more, but again, the intent is for consistency amongst the different types of media that are now being used in this realm.

Mark A. Wlaschin, Deputy of Elections, Office of the Secretary of State:

In regards to the question, "How would you know?"—I admit that it would be challenging. We would carry out the same procedure that we do for all the other alleged violations of this statute [NRS 294A.348]. First and foremost, if we identified that there was a text message that was not in compliance, our compliance investigator would reach out to the organization or entity that had sent the message. That would be part of the investigation. Could the organization or entity come back and say, "No, no, I only spent \$5 or maybe \$95 worth of text messages"? Conceivably, but again, it would be part of the compliance investigation that we conduct as part of a civil matter.

Chair Miller:

Assemblywoman González, you had a question about this pertaining to 501(c)(3) and 501(c)(4) organizations. I do have documentation of that, but I do not want to pull it up right now. Committee counsel is not with us in this hearing because the Legal Division staff of the Legislative Counsel Bureau are currently drafting bills, but I will get that information for us.

Assemblywoman Dickman:

Clearly from the examples given, you do not expect people to do the long, standard disclosure. However, if we pass A.B. 166, could the statute be interpreted to require the long "paid for and approved by the committee to elect . . ." language?

Assemblyman Hafen:

That is in no way or shape my intent of A.B. 166. The intent is to have transparency while allowing flexibility to candidates in the way that they choose to disclose who is paying for the advertisements and giving flexibility to the Office of the Secretary of State to ensure that

disclosures are being handled properly. I know the Secretary of State has had a number of issues with text messages—at least this last election cycle—and trying to track down how that communication is being paid for and who is sending those messages has become a very tedious task.

Any way to help get that information of who is actually paying for it will help the Office of the Secretary of State in its investigation and hopefully reduce some of the time that is spent tracking this down. Please correct me if I am wrong, Mr. Wlaschin.

Assemblywoman Torres:

I appreciate the intent of this legislation. Like many of my colleagues, my phone was going off with notifications every other minute during the last election. Reaching out to constituents, a lot of parties were interested to know who was contacting them and recognize that it was a lot of different organizations at once.

I have two different parts to my question. First, I want to guarantee that this legislation is strong enough for political candidates to just put hyperlinks to their website so the recipient can be directed there to find information about how the message is paid for. Obviously, text messages only have so many characters, and this will help shorten that required information. I want to make sure that the candidate can still use the text message as a way to convey his or her message.

Additionally, I just want to understand whether this applies to pictures or videos. During the campaign, I got a number of those types of digital communications via text message as well. Does this apply to that?

Assemblyman Hafen:

That is exactly what I am intending with this bill language. I did not have an example of it, but I also envisioned allowing someone to use something like a Bitly link. As we know, the Bitly links are a lot shorter than the full website address. I believe the text messages are limited to about 230 characters, so we do not want to have to burden it with a 50-character "paid for by" disclosure. We want to make this very simple but also transparent.

In regards to the pictures and videos, absolutely. It was my initial intent that when people send a picture, that information can easily be added to the picture just as with the text message.

Chair Miller:

Assemblywoman Torres, does that conclude your questions?

Assemblywoman Torres:

Yes, thank you.

Assemblywoman Thomas:

I am trying not to read anything into A.B. 166, but I am. You put a dollar amount in there, and it basically captures the campaign, or whoever is paying for it, when it expends more than \$100. I think that eventually you or someone else will come in and amend it to \$0, meaning you want to know the name of everyone who sends a text message. I have an issue with the way this is written and whether something else is coming down the pike. Why did you even put that in there when you really want to know who it is that is sending the text message out? Why was it not just put in that way?

Assemblyman Hafen:

That is an excellent question. The \$100 comes from the current language. Any paid political advertisement that is in excess of \$100 must have the "paid for by" information on it. The language in A.B. 166, section 1, subsection 3, just addresses that text messages currently do not have to have any disclosures whatsoever, and we want to include them in the same things that any other paid political ad is doing. That is where the \$100 limitation came from—the existing NRS that discusses all other means of communications and campaigning. It is not my intent to ever go beyond that. I think that what we have is sufficient. I really want to make everything be on the same level playing field—with the caveat that the text messages are shorter and limited in space.

Chair Miller:

Are there any additional questions from Committee members? [There were none.]

I know that the current law is \$100 for the purpose of political advertising, and I appreciate that we did not necessarily have text messages or the means to promote campaigns through text messages when these laws were written. I understand that you are trying to bring everything current, but is the \$100 cumulative or per advertisement?

Assemblyman Hafen:

I am going to have to defer to the expert in the matter of how that is currently being handled with all the others. Mr. Wlaschin, I would greatly appreciate if you would chime in on that.

Mark Wlaschin:

As the statute [NRS 294A.348] currently stands, it identifies a \$100 limitation before the statute would apply. That has never really been the issue for us when it comes to compliance. Since 2014, we have had approximately 18 formal complaints about this statute, and it usually relates to signs that do not have the "paid for by" language. However, as you can imagine, we are not going out looking at the number of signs, finding a publisher or printer to identify how much the signs would cost, and then only addressing those individual organizations that have crested the \$100 limit. Generally speaking for the mass-produced signs, if they are found to be an issue, that is how we identify them and begin the compliance discussion.

For these text messages, it would be something similar. If there were text messages that we were made aware of as being out of compliance, our first step would be to investigate and get in touch with the organization. It may come back that the amount was not above a certain cap and, ultimately, we would bring those sorts of discussions to the Office of the Attorney General to find out what accounts for a lack of compliance.

I am not a text message expert. One day it may be possible to send out a text message by email without making it cost \$100—perhaps that is possible currently—but, again, we would look at the compliance piece as it pertains to this statute and bring questions of that nature to the Attorney General for discussion.

Chair Miller:

I say that because while \$100 does not sound like a lot, the truth is many of us do not have the resources we would want to have when starting off our campaigns. Sometimes you get a little bit, and then do a little bit; you get a little bit more, and you can do a little bit more—so I was wondering about the possible cumulative nature of it. We will follow up with clarification on that, so thank you. Are there any additional questions? [There were none.]

We will move to testimony in support of A.B. 166. Is there anyone who would like to testify in support?

Doug Goodman, Founder and Executive Director, Nevadans for Election Reform:

Transparency, especially in today's political environment, is so critical. I would like to thank Assemblyman Hafen for bringing this bill forward to add a new piece of communication that was not around when this legislation was originally done. We fully support this bill.

[There were no more callers in support.]

Chair Miller:

Is there anyone who would like to testify in opposition to A.B. 166?

Melissa Clement, representing Nevada Right to Life:

I am calling today in opposition to A.B. 166. While I understand the intent of the bill, I think it is a little bit challenging at this point in time. Texting is a new technology, one that we utilized in this last election. We are trying to regulate it within a framework developed by telephones, billboards, and newspapers. It really does not even compare to, say, Google Ads or Facebook Ads Manager. Text messaging is character limited; it is limited to 160 characters per message. While messages can be strung together, it increases the cost. For a small organization like mine, that can be challenging. I would encourage you to work some more on this to see if we can do something that takes care of the problem but also allows creativity and agility for a small organization.

Lynn Chapman, State Treasurer, Independent American Party of Nevada:

I am reading from the written testimony of Janine Hansen, our State Chairman of the Independent American Party of Nevada [[Exhibit D](#)]:

The Independent American Party opposes AB166. Every additional requirement placed by government on political free speech, the most critical and important kind of free speech, interferes with and harms the exercise of political free speech and our ability to remain free.

AB166 requires in the very limited space of a text message, for the committee sponsoring the text message, to be identified. This will cost more money and will limit the opportunity for candidates and committees with limited funds to participate in the political process.

All of these Campaign disclosure laws are designed to harm Minor Parties and challengers to the Monopoly Powers that Be. As a candidate for the Independent American Party, people tell me, oh Janine I can't give you more than \$100 because then I will be on the Secretary of State's website and the "Party"—the Powers that Be—will come after me. Yes that's how it works. Suppress your opposition's ability to raise money and you suppress their free speech.

These laws are specifically designed to stifle and suppress the free speech of or all but the chosen and anointed of the monopoly parties. Our founders understood that anonymous free speech was at the center of the meaning of free speech.

The more reporting requirements in law, the more Political Free Speech is Suppressed.

The Independent American Party believes in liberty and opposes AB166.
Thank you.

I will add: George Washington said that if freedom of speech is taken away, then dumb and silent we may be led like sheep to the slaughter [". . . the freedom of Speech may be taken away—and, dumb & silent we may be led, like sheep, to the Slaughter" Newburgh Address (1783)]. I think that is something we should be thinking about.

[There were no more callers in opposition.]

Chair Miller:

Is there anyone who would like to testify as neutral to A.B. 166? [There was no one.] Assemblyman Hafen, thank you for your presentation and for bringing this legislation forward. I will go ahead and close the hearing on A.B. 166.

I will move on to the next agenda item, which is public comment. Again, we appreciate if you can limit your comments to two minutes per person. Is there anyone in the queue? [There was no one.] We will wait a moment to ensure we capture anyone who may be trying to dial in. Do we have anyone? [There was no one.] I will close public comment.

We do not have a meeting on Thursday, March 4. The agenda for the next meeting will be posted when it is scheduled, which will be soon. With that, I will close the meeting for today. Thank you, everyone. We are adjourned [at 4:36 p.m.].

RESPECTFULLY SUBMITTED:

Jordan Green
Committee Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a copy of a PowerPoint presentation titled "Assembly Bill 166 Campaign Text Messages," presented by Assemblyman Gregory T. Hafen II, Assembly District No. 36.

[Exhibit D](#) is written testimony dated March 2, 2021, submitted by Janine Hansen, State Chairman, Independent American Party of Nevada, in opposition to Assembly Bill 166, presented by Lynn Chapman, State Treasurer, Independent American Party of Nevada.