

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session  
March 13, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:01 a.m. on Wednesday, March 13, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Tick Segerblom, Chair  
Senator Ruben J. Kihuen, Vice Chair  
Senator Aaron D. Ford  
Senator Justin C. Jones  
Senator Greg Brower  
Senator Scott Hammond  
Senator Mark Hutchison

**GUEST LEGISLATORS PRESENT:**

Senator Barbara K. Cegavske, Senatorial District No. 8  
Senator Joseph P. Hardy, Senatorial District No. 12

**STAFF MEMBERS PRESENT:**

Mindy Martini, Policy Analyst  
Nick Anthony, Counsel  
Lynn Hendricks, Committee Secretary

**OTHERS PRESENT:**

Tim Schultz, American Religious Freedom Program, Ethics and Public Policy Center  
Alan Reinach, Church State Council  
Francisco Nahoe, Father, Order of Friars Minor Conventual  
Jim Richardson

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John T. Jones, Jr., Clark County  
Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates  
Nechole Garcia, Assistant City Attorney, City Attorney's Office, City of  
Henderson  
Jane Heenan, Gender Justice Nevada  
Janine Hansen, Nevada Families  
Brent Brooks, Senior Pastor, Reno Christian Fellowship  
Kate Morra  
Don Alt, Nevada Live Stock Association  
Frank Schnorbus, Nevada Homeschool Network  
Ana Farfan  
Ludi Lopez  
Jason Guinasso  
Lynn Chapman, Independent American Party  
Mark Foxwell, Knights of Columbus  
Nicholas Frey  
Allen Lichtenstein, American Civil Liberties Union of Nevada  
Marla McDade Williams, Deputy Administrator, Health Division, Department of  
Health and Human Services  
Diana Foley, Securities Administrator, Office of the Secretary of State  
Ross Miller, Secretary of State  
Scott Scherer, Nevada Resident Agent Association  
Matthew A. Taylor, Nevada Resident Agent Association

**Chair Segerblom:**

I will open the hearing on Senate Bill (S.B.) 192.

**SENATE BILL 192**: Enacts the Nevada Preservation of Religious Freedom Act to prohibit governmental entities from substantially burdening the exercise of religion. (BDR 3-477)

**Senator Barbara K. Cegavske (Senatorial District No. 8):**

I have written testimony which describes the need for S.B. 192, the Nevada Preservation of Religious Freedom Act, and walks through the bill's sections (Exhibit C). A number of people have come to testify in support of this bill today. I have indicated to them that we have an hour for testimony, so they are going to shorten their testimony. I would like all of their written remarks to be part of the record of today's hearing.

**Chair Segerblom:**

Certainly. Can you give me a real-life example of something that has happened in Nevada that this bill would address?

**Senator Cegavske:**

We will be going through that.

**Senator Mark Hutchison (Senatorial District No. 6):**

I would like to remind all of us here of the basis for the religious freedoms we as a Nation have cherished for generations. Our ancestors came to this Country and populated its shores in large measure to escape persecution and death for exercising religious beliefs that were contrary to the beliefs or practices of their home country monarch, dictator or tyrant. Ironically, our ancestors were often themselves intolerant of other faiths. Then in 1776, Thomas Jefferson drafted the Declaration of Independence from England. The ensuing war would cost the lives of tens of thousands of Americans, but eventually we won our independence from the greatest military power of the time by, according to George Washington, divine intervention again and again.

Following the war, the American people embarked on a great experiment of self-government guided by the U.S. Constitution, which was ratified by the states in 1787. Four years later, the states ratified the Bill of Rights, the first ten amendments to the Constitution. The Declaration of Independence, which has been described as American scripture and our greatest export, serves as the foundational source for religious freedoms by declaring, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights ... ." The First Amendment to the Constitution guarantees freedom of religion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ... ."

Beyond these domestic sources of religious freedoms, international law likewise embraces all people's right to freedom of religion. The Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion and Belief, adopted by the United Nations General Assembly in 1981, declares under Article 1:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or

whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

I also have written testimony detailing some of the legal context for S.B. 192 ([Exhibit D](#)), including the U.S. Supreme Court cases of *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), as well as the Religious Freedom Restoration Act of 1993 (RFRA).

This bill deserves wide bipartisan support, as reflected by the many cosponsors. Religious freedom under the Declaration of Independence and the First Amendment to the U.S. Constitution is a hallmark of this Country's greatness and might. My own faith teaches, "We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may."

**Chair Segerblom:**

You mentioned that S.B. 192 mirrors federal law in large measure. Can you point out any differences?

**Senator Hutchison:**

Senator Ford has studied this issue. I do know that whereas under the federal law there is a right to pursue a governmental body that would substantially burden a religion, S.B. 192 would allow that cause of action and permit damages and attorneys' fees.

**Senator Ford:**

I am a cosponsor on this bill. I am familiar with the history of the First Amendment jurisprudence you mentioned and have worked on the U.S. Court of Appeals for the Ninth Circuit as we were interpreting a comparable statute in the past. When I signed on to this bill, it was my understanding that we were adding back the protections that were in existence for 30 years. After receiving emails from constituents expressing their concern about this bill, I want to ensure that we are not doing something different than the federal government has already done. I have spoken with staff, and I am confident that we have not done anything the federal government has not already done. As far as I can tell, the primary difference is the attorneys' fees.

The primary concern I have received from those who oppose the bill is that in other jurisdictions, this type of statute has been misused to try to discriminate against others. That clearly concerns me. One suggestion is that we add a provision to the bill stating point-blank that nothing in this statute will allow anyone to make an endrun around the antidiscrimination laws in Nevada.

**Senator Hutchison:**

The *Sherbert Test* was established by U.S. Supreme Court Justice William J. Brennan, Jr., in 1963. In 1964, the landmark Civil Rights Act was passed. For decades, these two great federal laws and principles coexisted together very well. The courts have fashioned a body of law based on the principle that if there is conflict, the court evaluates that conflict, weighs the competing interests and decides between them. The seminal case in this area is *Bob Jones University v. United States*, 461 U.S. 574 (1983). Under the *Sherbert Test*, the U.S. Supreme Court considered Bob Jones University's position that its religious beliefs prevented it from admitting minorities. The IRS revoked its tax-exempt status. Bob Jones University appealed that decision to the U.S. Supreme Court. The U.S. Supreme Court determined that the government has a compelling state interest in ensuring that antidiscrimination laws are enforced and upheld the IRS action.

**Senator Ford:**

I still need to see express inclusion of a statement saying that this bill will not allow people to violate the antidiscrimination laws in Nevada in order to assure that those who have concerns about this bill will have proper safeguards.

**Chair Segerblom:**

Perhaps we could reference the federal decisions as being the basis we would use to interpret our own State law.

**Senator Brower:**

Can you give us any real-life examples of why you feel this law is necessary in Nevada?

**Senator Cegavske:**

Our next testifier will provide some examples.

**Tim Schultz (American Religious Freedom Program, Ethics and Public Policy Center):**

I have written testimony that explains the history of religious freedom in America and describes the need for S.B. 192 ([Exhibit E](#)).

You have asked about specific incidents in Nevada to which this bill is a response. I am not aware of any violations of the kind detailed in [Exhibit E](#) that have occurred in Nevada. We may not know when rights violations like this occur because those who consult attorneys might be told they have no legal recourse. For this reason, it is quite possible there have been violations we do not know about. However, I do not think this legislation is in response to a particular Nevada violation. It is in response to a legal state of being in Nevada that does not protect religious freedom at the same level as the federal government and 27 other states do.

Recently, Kentucky passed a religious freedom act like this one; it is currently on the governor's desk awaiting his signature. Opponents in Kentucky made almost identical claims to some of those we expect to hear today. A March 10 Associated Press report that aired on WPSD News in Kentucky stated, "There is little evidence to support these fears. ... Experts say they're often underused, if used at all." Thus, the claims were investigated of all these states having terrible violations of other important individual rights, and the reporter concluded that those claims were without evidence or foundation. The reporter relied heavily on a *South Dakota Law Review* article from 2010. This survey of all the cases that have arisen under these state laws finds that the fears being raised are unfounded.

I want us to think about why this is, particularly in the context of law enforcement or criminal prosecution. Some say this bill is going to give criminals a get-out-of-jail-free card and allow them to claim that committing that crime is part of their religion. However, the government has a compelling state interest in stopping crime and punishing violence. Criminal laws have to be uniformly imposed or they will not work at all. Those arguments have uniformly failed in other states.

**Senator Ford:**

Judges differ. They have different opinions on different factual circumstances, and what some will find a compelling state interest, others will find that no compelling state interest exists. My question remains. Is there any problem with

adding language into the statute that says point-blank you cannot get around the antidiscrimination laws by virtue of this statute? That will squelch one of the primary concerns about this bill that many opponents have brought forward.

**Mr. Schultz:**

I will leave it to the Senators to answer the specifics.

**Senator Ford:**

Other states have put in this type of provision. Texas is a prime example. That state's statute says you cannot use the statute in criminal prosecutions or to violate antidiscrimination statutes. It is not a far-fetched idea that should be given short shrift.

**Mr. Schultz:**

Some of the arguments against these bills are premised on the idea that if it could ever have political results I find unfavorable, I must oppose it. That is where a lot of the criticism comes from, whether from the right or from the left.

**Senator Ford:**

Can you rephrase that? I do not understand what you are saying.

**Mr. Schultz:**

People raise political issues in response to this act. Those on the left raise the pharmacist issue; those on the right say they want heavy enforcement against illegal immigrants, or they want to allow or even mandate that churches allow guns in the services. What I am saying is some refuse to pass a religious freedom act unless they can guarantee the law will never allow any case outcomes that go against their personal politics. I am not saying you are saying that. I am saying the premise of some of these objections is rooted in this. If that is the case, religious freedom does not have much protection. I think we ought to reject that idea.

**Senator Hutchison:**

This law does not have any intent of changing the antidiscrimination laws. I am fine with your change, Senator Ford, as long as the wording is such that we are also not saying that religion always has to take a back seat to the antidiscrimination laws. We have two competing interests. We have a fundamental First Amendment right to exercise religious freedom, and we have the antidiscrimination laws that came along much later. Both need to be

considered. My concern is that it not say that in every case where one person has a religious belief which another person says would lead to discrimination, the second person always wins. You cannot legislate the outcome. You are right that we have to rely on judges to make decisions weighing competing interests, and this law should not change that. We do not intend this law to affect the antidiscrimination laws. The *Sherbert Test* of 1963 coexisted with the Civil Rights Act of 1964 for decades. I would expect the same result under this State law.

**Senator Brower:**

With respect to the Maryland example cited in [Exhibit E](#), I have a question. As I understand it, it is not against Maryland law to consume or buy kosher wine. There is simply a law that prohibits the importation of wine generally. So the idea that Maryland law is discriminating against Jews who want to practice their religion is not true. Is that correct?

**Mr. Schultz:**

Maryland is not intentionally discriminating against Jews. It is not an anti-Semitic law.

**Senator Brower:**

The law does not prohibit Jews from practicing their religion.

**Mr. Schultz:**

It does prohibit the full, free exercise of Judaism when all you can get is the equivalent of cheap drugstore wine. Kosher wine is central to Jewish sacramental practice.

**Senator Brower:**

But it is not true that the possession and consumption of kosher wine is illegal in Maryland? No Jews in Maryland are being prohibited by the state from practicing their religion.

**Mr. Schultz:**

That is correct.

**Senator Hutchison:**

But what the courts must decide is whether the law substantially burdens the exercise of religious freedom. With this law, Jews must go out of the state to



buy kosher wine, and Orthodox Jews would say that the law prohibiting them from buying kosher wine via mail order or the Internet is a substantial burden. A court would then have to decide. If it is substantially burdensome, the government cannot do it; if it is not, the law can stand.

**Senator Brower:**

You can purchase kosher wine in Maryland. The law simply prohibits you from importing it via the Internet. Maryland Jews are not burdened simply because they cannot go down to the grocery store to buy it. Is that right?

**Mr. Schultz:**

Right, but the testimony from the Jewish community was that the law was a substantial burden. Because of market demand, all they can get is cheap wine that is not remotely what they want. To get anything of higher quality, they have to go out of state.

I think this Maryland law is a bit of a rabbit trail. The question is whether it is a substantial burden on their religion. I am not saying they should win, necessarily, in a legal action. The state should have to justify the law. The Jews, as a tiny religious minority in Maryland, should not have to seek legislation to do this. The burden should be the other way.

**Senator Brower:**

I agree, and I appreciate that. Who could be against the preservation of religious freedom? But it might be helpful to hear about specific, real-life examples from Nevada. If there are none, perhaps this matter is more theoretical than that.

**Mr. Schultz:**

The *Law Review* article I mentioned has a long compendium of the various ways this law has played out in different states. It gives you some more of the practical outcomes.

**Senator Hutchison:**

This law is not theoretical to me. We have seen instances again and again where laws that were passed without any intent to discriminate against or burden a specific religion are in fact burdensome. I think we would all agree that we are in a very heavy regulatory State environment. The federal, state and local levels are imposing regulations more and more. Without intending to do so,

the State can burden religious freedoms. What S.B. 192 says is before you pass such a law, make sure you have a compelling State interest.

This is not an act that surfaces from a specific egregious example that we have to correct in Nevada. It is a recognition that there have been problems elsewhere. There could continue to be problems that we do not know about, and certainly the State is regulating its citizens much more in the last two or three decades than it did in the past. These issues will likely surface, and we want to prevent them from doing so.

**Senator Kihuen:**

What other states have passed laws like this? Are any of them Western states?

**Mr. Schultz:**

To date, 16 states have passed a law or a constitutional amendment. That includes California, Idaho, New Mexico and Arizona. Eleven other states have had a state supreme court decision that said they were going to use the compelling state interest standard. Effectively, 27 states are operating under the legal standard this legislation creates.

**Senator Kihuen:**

Have any of those states included antidiscrimination language such as Senator Ford suggested?

**Mr. Schultz:**

Only Texas. It should be pointed out the other 15 states have not had problems with their antidiscrimination laws. These are hypothetical concerns. With all respect to those who are worried about this, I believe antidiscrimination laws are very important. The courts have repeatedly said that antidiscrimination laws are a compelling state interest. That is the reason it has not been a problem.

**Senator Jones:**

When Senator Hutchison mentioned Thomas Jefferson, I remembered visiting Monticello many years ago. Jefferson's grave marker lists first that he was the author of the Declaration of Independence, and second that he was the author of Virginia's statute on religious freedom. That was clearly important to him above all else.

Mr. Schultz, we have many people who testify before this Committee, and we know them; we know who they work for and where their interests lie. Where does the funding come from for your organization so we can understand the reasons for your organization pushing this legislation across the Country?

**Mr. Schultz:**

There are a variety of donors. Our IRS Form 990 is publicly available. I can get you a copy if you want it. I do not deal with any of the fund-raising. As far as I know, we do not have one megadonor. We are funded by a combination of small and large donations, like any Washington, D.C., think tank.

**Senator Hutchison:**

Let me get to the point. It is a politically conservative think tank.

**Mr. Schultz:**

It is center right. I work exclusively on religious freedom issues for people of all faiths.

**Chair Segerblom:**

Let me pose a hypothetical question. I am a pharmacist, and someone comes to me wanting birth control pills. My religion says that is wrong. Does this bill give me the right to refuse to fill that prescription?

**Mr. Schultz:**

I believe that under Nevada law, there is no punishment for any medical professional who refuses to perform a medical procedure, whether filling a prescription or anything else.

**Chair Segerblom:**

Does S.B. 192 apply to corporations as well as people?

**Senator Hutchison:**

It would certainly apply to religious organizations.

**Chair Segerblom:**

Can the CVS drugstore chain refuse to fill birth control prescriptions?

**Senator Hutchison:**

Those questions would have to go through the *Sherbert Test*. Let us say there is a law that prohibits a pharmacist from refusing to fill a prescription, and one pharmacist says, "I will not fill this prescription on religious grounds." The person would then be prosecuted for violating State law. If he or she then claimed a violation of religious freedom, a court would then analyze the situation. Is there a compelling state interest to require every pharmacy in the State to fill prescriptions for contraceptives? If there is, the pharmacist loses the case. If there is not, or if it is not narrowly tailored, the court can decide that the First Amendment rights of the pharmacist will prevail.

That is how it would go in all of these situations in which there is a clash. I am not aware of any concept in the law that allows one argument to prevail every time.

**Senator Joseph P. Hardy (Senatorial District No. 12):**

As a family physician and now as a State Legislator, I support S.B. 192. I do not see this as changing the delivery of care to those in need. I have personally delivered care to all people with all kinds of problems. Physicians have been taught to remain professional in their approach to real people. Should religious feelings and commitments go counter to what has been asked of them, doctors have been able to allow patients the information they need to access the kind of care they feel appropriate while maintaining their own religious freedom.

**Alan Reinach (Church State Council):**

I support S.B. 192. I have written testimony giving the legal context of the bill in both Nevada and the Nation ([Exhibit F](#)).

I need to make one factual correction. Mr. Schultz was incorrect in stating that California has these protections. A bill was passed in 1998, but it was vetoed by former Governor Pete Wilson.

With respect to the lack of concrete problems in Nevada, we are certainly grateful that we have not had a lot of religious freedom problems and conflicts. I am reminded that when all of the states pushed for a Bill of Rights, they did so in order to protect fundamental liberties before they were violated, not after. What we are doing here is acting to preserve our fundamental right of religious freedom before we run into problems, before the courts are influenced either by

the U.S. Supreme Court or by the California Supreme Court to apply a lower standard and degrade the principle of religious freedom.

**Chair Segerblom:**

Are you saying the California Supreme Court has come out with a lower standard?

**Mr. Reinach:**

No. The California Supreme Court is completely confused about the standard. There is more information about this in [Exhibit F](#).

I need to address the discrimination issue. I have been a plaintiff's employment lawyer for 25 years; I deal exclusively with religious discrimination issues. The leading case is a Ninth Circuit case of *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004), which squarely held that an individual asserting a religious discrimination claim lost against the company's nondiscrimination policy and inclusiveness policy with respect to gay rights. There is no question that this is now black letter law in the Ninth Circuit that governs Nevada.

**Chair Segerblom:**

Did that case deal with the federal RFRA?

**Mr. Reinach:**

No. That was decided under Title VII of the Civil Rights Act, but it is the same principles we are dealing with here.

**Father Francisco Nahoe (Order of Friars Minor Conventual):**

I support [S.B. 192](#). I have written testimony explaining the need for this balanced and reasonable bill ([Exhibit G](#)). Here in Nevada, one of my parishioners who turned out to be undocumented was stopped for a routine traffic matter by a county sheriff on his way home from work. When he was discovered to be without documentation, he was instantly put in the pipeline for deportation. While he was still in the custody of Washoe County, I was not allowed to visit him to hear his confession and find out how he was doing, in spite of the fact that I identified myself as his pastor. By the time I had the opportunity to consult a lawyer in Las Vegas, my parishioner was already out of County jurisdiction and in a federal holding facility in New Mexico. He has now been deported.

It was not so much my parishioner's free exercise of religion that I bring before this Committee. It was my free exercise of religion that was impeded by the fact that we do not have legislation such as S.B. 192 foremost in our Nevada consciousness. If we had, I could have appealed to the County and said, "You cannot impede me from seeing my parishioner to hear his confession."

The best, most detailed defense of this legislation that I have seen is the amicus brief written by the American Civil Liberties Union (ACLU) in the case of *City of Boerne v. Flores*, 521 U.S. 507 (1997). The ACLU supported the legislation in 1993 and also defended the respondents in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

**Jim Richardson:**

I support S.B. 192. I am a professor at the University of Nevada, Reno. I have been doing research in this area for some time. When the federal RFRA was declared unconstitutional by the U.S. Supreme Court in a split decision, Congress took umbrage and passed the Religious Land Use and Institutionalized Persons Act of 2000. That Act has been quite effective. In another development with state legislatures considering state RFRA laws, 16 states have passed such laws to date. In a further 12 states, the state supreme courts have chosen to interpret their constitutions in a manner that made the passage of a state RFRA law unnecessary. Therefore, almost half the states have taken some sort of action on this issue since the federal RFRA was declared unconstitutional.

I would like to submit the article from the *South Dakota Law Review* that was mentioned earlier for the Committee's review ([Exhibit H](#)). "Religious Liberty After Gonzales: A Look at State RFRA's" was written by Christopher C. Lund in 2010. This article has a lot of data on what has happened with the state RFRA's. Those state acts are mainly symbolic. However, they have been used to protect the rights of minority religious groups and to enable prisoners to practice their religions in prison. That is another reason these bills are sometimes opposed, by the way.

**John T. Jones, Jr. (Clark County):**

Clark County supports religious freedoms. Our only concern with S.B. 192 is the potential it has for increasing litigation.

**Chair Segerblom:**

Have you requested or submitted a fiscal note?

**Mr. Jones:**

We have not as yet. We have some concerns with the lack of definition for "substantially burden." We have done some research, and four of the states implementing this law have defined "substantially burden." That seems to help and leaves fewer questions up to the judge in terms of what is a substantial burden of the exercise of religion.

**Senator Ford:**

If I remember correctly, "substantially burden" is a term of art in constitutional law related to the First Amendment. Are you requesting we codify constitutional law into the definition section to make it clearer?

**Mr. Jones:**

If it is not codified, it leaves the question open for interpretation by the courts. The Pennsylvania statute defines substantial burden as one that significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs; significantly curtails a person's ability to express adherence to a person's religious faith; denies a person a reasonable opportunity to engage in activities which are fundamental to a person's religion; and compels conduct or expression which violates a specific tenet of that person's religious faith. If this Legislature decides to add language defining the term, it will give guidance to the court regarding any future litigation.

**Elisa Cafferata (Nevada Advocates for Planned Parenthood Affiliates):**

I oppose S.B. 192. I have written testimony describing some of the possible repercussions of this bill ([Exhibit I](#)).

I am not an attorney, and I have learned not to argue about what the law means, especially with a Committee made almost entirely of attorneys. I would just point out that the proponents of this bill could not point out any specific examples of violations in Nevada law that this bill would correct. Unfortunately, I read every day of situations in which people assert their religious rights to deny women access to health care. There are dozens of cases around the Country. We know of cases in Nevada where pharmacists have refused to provide women with birth control. We can give you hundreds of examples.

**Chair Segerblom:**

If you could print some of those out and submit them for the record, that would be great.

**Ms. Cafferata:**

I will do that.

The Committee is aware of the many lawsuits going on across the Country litigating these issues right now, particularly around the question of birth control and how we balance competing interests. The proponents of the bill could cite no examples of violations in Nevada. If one arose, the Nevada Supreme Court could certainly embrace the tenets of S.B. 192, as has been done in other states. If and when it became a problem in Nevada, this is a solution other states have pursued. Passing this bill would open the doors to relitigate every one of these questions in Nevada.

A lot of this litigation has to do with women's access to health care. Birth control, which is used by 90 percent of American women at some point in their lives, can then become litigated through the courts by creating this law. Birth control is an incredibly time-sensitive issue. A woman who is using birth control for some other health reason, like high blood pressure, heart conditions or chronic pain, as a third of them do, really does not have time to go to court to demonstrate that it is a substantial burden to her and her health to access birth control.

Under existing Nevada statute, pharmacists can refuse to fill prescriptions for narrow legal or health reasons only. They cannot refuse to fill prescriptions for any other reason.

**Chair Segerblom:**

So in the scenario I posed earlier, the pharmacist cannot say, "My religion opposes birth control, so I will not fill your prescription."

**Ms. Cafferata:**

That does occur in Nevada, but the pharmacist does not have a legal or regulatory right to do so. The pharmacist can refuse to fill a prescription if he or she believes it is illegal or there is an immediate health issue. That balance has been struck. My concern is that it would have to be completely relitigated all over the State if a law like S.B. 192 were passed.



**Nechole Garcia (Assistant City Attorney, City Attorney's Office, City of Henderson):**

We oppose S.B. 192. We share a lot of the concerns expressed by Mr. Jones. We support religious freedom and the intent behind the bill, but we believe the bill as written is too broad and could create some unintended consequences. Section 5 of the bill states:

“Exercise of religion” means the ability to act or to refuse to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

This means the matter does not have to be something that is substantial, fundamental or central to the belief. It could be anything.

Our other concern with the language is that "substantially burden" is not defined. We agree with Clark County that codifying some kind of definition would help.

The main issue for us is that whether plaintiffs win or lose cases brought under this type of statute, our Office will have to go to court and spend our time and resources litigating this issue. Without clearer language, it will be up to the courts to define what constitutes a substantial burden.

**Jane Heenan (Gender Justice Nevada):**

I support freedom of religious expression, but I am here to speak in opposition to S.B. 192. I have a letter from Jennifer Pizer of Lambda Legal laying out the legal problems with this bill ([Exhibit J](#)).

I would like to focus my oral testimony on the effects of discrimination, both as a licensed therapist and as a person who has experienced direct harm by those claiming justification for their actions in religion. I have seen the significant damage of these violations on persons already struggling to see themselves as equal members of society. While it might be an unintended consequence of S.B. 192, it seems likely that its passage will be taken by some as permission to discriminate if one claims a religious basis. The real-life consequences on Nevada's citizens include increased depression and anxiety, risk of substance abuse, self-injury and suicide, lower self-esteem and lower self-confidence. These psychological symptoms express themselves in a variety of ways,

including inability to stay in school or maintain stable employment, fracturing of primary relationships and social isolation. These kinds of harm occur even if the claims made by people who discriminate do not ultimately hold up in legal proceedings. It is not possible to unring a bell. When people experience this kind of harm, the damage is immediate, and the harm continues regardless of what happens in litigation.

Since the passage of S.B. No. 331 of the 76th Session and S.B. No. 368 of the 76th Session—laws protecting transgender rights—in 2011, I have heard from many people who have been significantly more empowered in their lives, integrating more fully into social groups such as workplaces, classrooms and families, and joining together more vibrantly in support of our community's needs. We deserve the ongoing support of Nevada's religiously neutral laws that regulate the public sphere for the safety and well-being of society as a whole. We believe S.B. 192 is a big step backward and will harm many vulnerable people.

**Chair Segerblom:**

Can you give a specific example of someone who has used religion to try to offend you or take action against you?

**Ms. Heenan:**

There was an incident at the Department of Motor Vehicles (DMV) in 2010 in which a transgender person went to change the driver's license gender marker. The person brought a letter from a doctor, which was a requirement at that time. The DMV staff member decided it was not appropriate for the person to change the gender marker and asked questions such as, "What does God think about your behavior?" and ultimately refused to perform the service. That is one example of many I could provide.

**Senator Ford:**

You may have heard me suggesting that language be added to the bill relative to the antidiscrimination statutes. If that language were added, would the majority of your opposition to this bill go away?

**Ms. Heenan:**

When the statute says if you believe your religious freedoms are being violated you can act in opposition to established civil rights laws, that message is clearer than any additional language. Individuals will act in harmful ways if this law gets

passed, regardless of whether the additional language is included. Those harms are specific and severe, in many cases.

**Senator Ford:**

The conclusion of [Exhibit J](#), page 6, says, "Alternatively, [at] a minimum, the bill should be amended to preclude its use as a defense to a claim of discrimination in violation of Nevada law." If such language is added, would you agree that this bill should be allowed to proceed?

**Ms. Heenan:**

We would like to see the bill not go forward in any form. If it is to move forward, that language should be included at the minimum.

**Janine Hansen:**

I support S.B. 192. I am a member of a religious minority. My great-grandmother stood on her porch as the mob came to murder the missionaries in Mississippi. I understand the discrimination and persecution that can take place. I myself have had death threats numerous times. My children have been accosted and threatened because of my beliefs. Twice now, I have had to be escorted out of this building by the Legislative Police for my own protection.

**Chair Segerblom:**

Do you feel this bill would help you?

**Ms. Hansen:**

I feel this bill is essential to providing a balance in the ways we have now begun to discriminate against those with religious beliefs. I encourage you to pass S.B. 192.

**Brent Brooks (Senior Pastor, Reno Christian Fellowship):**

I support S.B. 192. I am a former Texas attorney. I would like to simplify this issue. What you have before you is something the U.S. Supreme Court asked you as a Legislature to deal with. The U.S. Supreme Court decided it was not a federally mandated matter. The Justices asked the state legislatures to look into the issue of religious freedom and respect it. That is what happened in *Boerne v. Flores*. To enact laws that do not discriminate against one group does not mean that another group is being discriminated against, and I do not understand the logic of that claim. I would encourage you to do what was done by

Congress almost unanimously and with the support of People for the American Way, the ACLU, the Catholic Church, the Christian Legal Society and a broad spectrum of people who said this is needed to reinforce religious freedoms. It is not designed to take away from anyone else's religious freedom. It is your job as Legislators to provide direction and clarity to the courts. That is what we the people have given you to do.

**Kate Morra:**

I support S.B. 192. I have written testimony explaining my support for this very important legislation ([Exhibit K](#)).

**Don Alt (Nevada Live Stock Association):**

We support S.B. 192. Our policy is freedom of religion. The original documents from America's founding fathers all came from Sir William Blackstone's *Commentaries on the Laws of England*. In Blackstone, anything contrary or repugnant to the Bible is illegal. That is how our founding fathers looked at things.

**Frank Schnorbus (Nevada Homeschool Network):**

We support S.B. 192. A high percentage of homeschool families are strongly in favor of this measure. Religious freedom is statistically the second or third reason parents choose to homeschool. Please pass S.B. 192.

**Ana Farfan:**

I support S.B. 192. I have written testimony urging your passage of this bill ([Exhibit L](#)).

**Ludi Lopez:**

I support S.B. 192. I am the third generation of my family to be born in America. My grandmother's brothers were imprisoned in Mexico in the 1900s for not obeying the law for religious freedom. Later, they were under penalty of death. It initially starts with prison, and then it continues on.

**Chair Segerblom:**

I understand, but this bill only affects Nevada.

**Ms. Lopez:**

If this bill does not pass, I believe it will initiate the same progression that we saw in Mexico.

**Jason Guinasso:**

I support S.B. 192. I am a local attorney, and I have a specific Nevada example. I represented some clients who are guardians of a disabled woman who was pregnant. In response to my clients' desire to help their daughter carry the pregnancy to term in accordance with their faith, the judge said repeatedly that their faith had no place in the courtroom and should not have been a consideration in the family's decision. A RFRA-type law would have been an effective tool in that court proceeding to allow us to say that the family had a right to consult their faith when they make a decision about carrying a pregnancy to term or not. The complete disregard for this family's faith was disturbing and highlighted for me the need for Nevada to enact legislation like this.

**Chair Segerblom:**

Thank you for bringing us a specific example.

**Lynn Chapman (Independent American Party):**

We support S.B. 192. In the state platform of the Independent American Party, we have a statement that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. We feel that this bill does just that.

**Mark Foxwell (Knights of Columbus):**

We fully support S.B. 192 and will continue to do so. Please pass this bill.

**Nicholas Frey:**

I support S.B. 192. I have handled civil litigation matters in northern Nevada for 35 years. Over that time, I have seen half a dozen instances of what appeared to be discrimination against individuals on the basis of their religious beliefs and efforts to impede their exercise of their religious choices. I handled those matters as a litigator would. In virtually every instance, the existence of this law would have speedily led to a resolution that we ultimately achieved after great difficulty. It would have been easier to avoid litigation and resolve the disputes had this law existed at that time.

**Allen Lichtenstein (American Civil Liberties Union of Nevada):**

We are opposed to S.B. 192. I have written testimony discussing some of the unintended consequences of this bill and citing multiple specific examples of civil rights violations that might be permitted under this bill ([Exhibit M](#)).

Some parts of the bill are self-contradictory. Section 7, subsection 1 of the bill says, "Except as otherwise provided in subsection 2 or section 3 of this act ... ." Section 3, subsection 3 says, "The provisions of sections 2 to 7, inclusive, of this act shall not be construed as authorizing any governmental entity to burden any religious belief of a person." It does not say substantially burden; it simply says "burden." That runs in contrast to other parts of the bill.

There was some question about the meaning of "substantially burden." It is a legal term of art, usually having to do with free speech. It indicates a lesser level of constitutional scrutiny than "compelling," which is usually used only for prior restraints of fully protected speech. There is also a question in section 7, subsection 4, as to whether there can be any statute that prevents someone from going to court because of a previous court case. That is quite questionable.

There is a reason why no one could point out a particular situation where this particular Act would be necessary, and it is not because no cases involving the free exercise of religion clause have appeared in Nevada. We have litigated several of them under Title VII and the Fair Employment Act of 2011. The reason is that those laws are already in place. The First Amendment is already in place, as is Nevada's counterpart to it. Senate Bill 192 creates a standard presumptively in favor of someone who does not even evoke a particular fundamental tenet of his or her religion, but simply says, "I have a sincere religious belief, therefore it is up to the government to prove that a generally applicable law—whether antidiscrimination law, criminal law or any law—applies to me." Instead of the presumption that laws are valid for everyone, which is equal protection, there is instead a turning of that premise on its head and saying the presumption is that if someone says he or she has a sincere religious belief, the burden is automatically on the government to prove a compelling interest, which in a different context Justice Anthony Kennedy said is almost never proven.

**Senator Hutchison:**

As lawyers, we deal with competing interests all the time. What this bill addresses is the current state of the law in Nevada, which is the *Smith test*. That is, you can pass a facially neutral law, and it can then have an impingement and an imposition on the free exercise of religion, as long as it is facially neutral. That is the law in Nevada. Senate Bill 192 says we want to restore the compelling state interest test. We want to go back to Justice Brennan's opinion in *Sherbert*. We want to protect religious freedom with a standard that is higher than just passing a facially neutral law. A fundamental right like religious freedom deserves that kind of protection. There is nothing wrong with a presumption in the law, and when interests as important as the First Amendment are at stake, it deserves a presumption. I urge the Committee to seriously consider this bill.

**Mr. Schultz:**

I urge you to read some of the supplementary materials, especially [Exhibit H](#). There are competing fact claims here that you have heard today about how these laws will turn out. Looking at some neutral scholarly research like [Exhibit H](#) that gets to the heart of those questions is helpful. I would urge you to do the investigation here yourselves.

**Senator Cegavske:**

I have written testimony from a number of people that I would like to submit for the record. They are a letter and essay from Rajdeep Singh of the Sikh Coalition ([Exhibit N](#)), a letter from June Ingram of the Charleston Neighborhood Preservation association ([Exhibit O](#)) and a letter from Elissa Wahl of the Nevada Homeschool Network ([Exhibit P](#)).

**Chair Segerblom:**

I have also received written testimony from Maggie Garrett of Americans United for Separation of Church and State in opposition to S.B. 192 ([Exhibit Q](#)).

I will close the hearing on S.B. 192 and open the work session on S.B. 113.

**SENATE BILL 113**: Makes various changes to provisions governing the termination of parental rights. (BDR 11-434)

**Mindy Martini (Policy Analyst):**

I have a work session document with a summary of S.B. 113 ([Exhibit R](#)). An amendment was submitted by Senator Hammond and Clark County, and that amendment is on pages 2 through 19 of [Exhibit R](#). The amendment makes several changes: it adds information to be included in the registry; requires a putative father to register with the registry; revises provisions relating to the summary petition for termination of parental rights; clarifies provisions relating to confidentiality of the information within the registry; provides that governmental entities shall not be charged a fee for tasks related to the registry; and clarifies provisions relating to locating putative fathers.

**Senator Hammond:**

We worked diligently with those in support and those in opposition on the amendment in [Exhibit R](#). In addition, I sat down with Marla McDade Williams and worked out a few further small changes, which she will present.

**Marla McDade Williams (Deputy Administrator, Health Division, Department of Health and Human Services):**

I will list the changes we are requesting. In section 9, subsection 1 of S.B. 113, change "State Board of Health" to "Health Division." The State Board of Health is not an administrative body; the Health Division is. This is a technical change to allow us to develop the form. The same change should be made in section 9, subsection 2 of the bill.

Section 12, subsection 4 of the bill says if a father is found pursuant to a search of the Registry of Putative Fathers, due diligence must be exercised to locate him. After speaking with Senator Hammond, it should be noted that locating the father would not be the responsibility of the Health Division. Rather, it would be the responsibility of the agency that was petitioning to terminate parental rights.

Finally, with regard to the implementation date of S.B. 113, we would like it changed from October 1, 2013, to July 1, 2014. That will give us time to develop regulations, determine fees and get everything in place.

**Chair Segerblom:**

Mr. Jones, are you in agreement with these changes?



**Mr. Jones:**

Yes. I do have one additional change. Section 6, subsection 2 of the amendment says that the consent of the father is not required pursuant to *Nevada Revised Statutes* (NRS) 128. That should read NRS 127.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 113.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\*\*\*\*\*

**Chair Segerblom:**

I will open the work session on S.B. 169.

**SENATE BILL 169**: Revises provisions governing criminal penalties. (BDR 15-495)

**Ms. Martini:**

I have prepared a short history of S.B. 169 ([Exhibit S](#)). We received one amendment from Senator Segerblom to change 2 years to 5 years in section 5, subsection 1, paragraph (d) of the bill. This would provide for the submission of a petition for sealing of the records relating to a gross misdemeanor at 5 years instead of the 7 years in statute.

**Senator Brower:**

In light of the testimony at the hearing on this bill, I have tried to reach out to the federal authorities on this issue to get a feel as to how this might impact their enforcement activities. I have not been able to have a conversation with them. I will support the bill today, but I reserve judgment on the final vote in case they do get in touch with me today with further information.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 169.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

**Chair Segerblom:**

I will open the work session on S.B. 28.

**SENATE BILL 28**: Makes various changes to provisions relating to securities.  
(BDR 7-381)

**Ms. Martini:**

I have prepared a summary and history of S.B. 28 ([Exhibit T](#)). No amendments have been submitted for this bill.

**Senator Brower:**

I seem to recall some opposition to the bill at the original hearing. I request the Chair's indulgence that if there is anyone here today whose concerns have not been addressed, let him or her be heard.

**Diana Foley (Securities Administrator, Office of the Secretary of State):**

There was no opposition at the hearing, and I am unaware of any opposition to this bill. There were some questions from Senator Hammond. We sent him the model rule, and he has not told us of any further concerns.

**Senator Brower:**

As I recall, my concern was about the long, convoluted definition sections of the bill. The definitions in the model rule are just as long and convoluted, so I suppose the bill is as simple as it can be.

SENATOR HUTCHISON MOVED TO DO PASS S.B. 28.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

**Chair Segerblom:**

I will open the work session on S.B. 60.

**SENATE BILL 60**: Revises various provisions relating to businesses. (BDR 7-380)

**Ms. Martini:**

I have prepared a summary and history of S.B. 60 ([Exhibit U](#)). We have received two extensive amendments, one from the Secretary of State and one from the Nevada Registered Agent Association (NRAA).

The amendment by Ross Miller, Secretary of State, is on pages 2 through 12 of [Exhibit U](#). The majority of the amendment from the Secretary of State was presented at the hearing on February 7. The remainder of the amendment came from discussions. One change in this amendment is to revise the definition of commercial registered agent to be any person or domestic or foreign entity serving for 50 or more entities. In doing this, the amendment would repeal the fees of \$75 under NRS 77.280 for a commercial registered agent listing statement and \$100 for a commercial registered agent termination statement. The Secretary of State says the fiscal impact of this would be negligible.

The other changes in the amendment are to require additional information be provided on the registration statement; remove section 7 of the bill relating to the prohibition of certain registered agents from serving in Nevada; add a new section authorizing the Secretary of State to examine the records of a registered agent; add a new section authorizing the Secretary of State to impose a civil penalty of up to \$500 for each violation; and authorize the Secretary of State to deny or revoke any registration, to require enhanced recordkeeping, etc. Under section 9, subsection 2, paragraph (c) of the bill, the amendment would strike the moral turpitude provisions relating to felons serving as registered agents; the measure would, however, retain felonies and any crimes which include an element of dishonesty or fraud. Under sections 8 and 9, the words "or crime" would be struck, which would address concerns that a person may be precluded from serving as a registered agent due to a minor crime. Finally, the word "fraudulent" is added to various sections to address concerns about the intent in the creation of an entity.

The NRAA amendment was received yesterday, and it is on pages 13 through 16 of [Exhibit U](#). It was submitted by Scott Scherer on behalf of the NRAA. The intent of the amendment is noted on pages 18 and 19 of [Exhibit U](#).

**Chair Segerblom:**

Secretary Miller, if you have met with the NRAA on this, do you have an opinion of its proposed amendment?

**Ross Miller (Secretary of State):**

In response to some of the legitimate concerns and questions raised at the first hearing on S.B. 60, we put together a comprehensive amendment that was intended to resolve most of the outstanding concerns. I believe our amendment does that. We have defined "commercial registered agent" and imposed regulatory oversight in a way that is consistent with Wyoming and Delaware. We have included provisions making it clear that we are trying to oversee and make explicit in the statute that we prohibit fraudulent or illegal activity.

The amendment offered by the NRAA misses the entire point of the bill, and in fact invalidates all the provisions needed to avoid the unwanted attention Nevada regularly receives in the national and international news media. As we have defined the bill, you cannot serve as a registered agent, officer or director if you have been convicted of a felony involving theft or dishonesty. Notably, Wyoming and Delaware have a flat prohibition: if you have been convicted of any felony, you cannot serve in that capacity. The NRAA is proposing to substitute that with "a felony for a crime which was intended or likely to deceive the public." I was a criminal prosecutor before I became Secretary of State, and I am not aware of any offenses in the Nevada statutes for which that definition is an element. I have talked to a couple of 30-year prosecutors, and I do not think that definition exists. It may do in the federal scheme, but I am not aware of it. This would significantly limit the scope of those to whom it would apply, if not eliminate it altogether.

The other provisions of our amendment are explicit that we are only going after illegal activity. Removing them would be entirely redundant. The NRAA suggests there should not be an additional penalty because it would subject registered agents to potential criminal prosecution if there is a filing with fraudulent intent, as we have defined it. The NRAA suggests instead that we make resident agents subject to penalties for unlawful conduct for aiding and abetting. You can already charge somebody under that offense, and this change would render the bill entirely meaningless. I would make the same argument with respect to the NRAA's suggestion that these in fact are already prohibited acts. If they are already prohibited, then what is the problem with spelling it out explicitly in this statute?

We have chosen to take this approach because if you google "registered agent practices in Nevada," you will find a long laundry list of people who advertise Nevada as a safe haven from IRS oversight and claim that you can engage in any kind of activity you want here with no repercussions. Senate Bill 60 is intended to explicitly spell out in statute that this is not an allowable practice. We feel our amendment resolves most of the outstanding concerns.

**Chair Segerblom:**

Thank you for bringing this bill to us. It is important that we maintain the integrity of our statutory oversight. If we invite corporations to come here, we have to be able to say we are a legitimate place to do business.

**Senator Brower:**

I agree with the Chair. It is important that we get this right. With respect to the perception of Nevada as a safe haven with no repercussions, that is not really true, is it? Even without this bill, Nevada is not truly a state where an incorporator can incorporate, engage in fraud and other illegal activity and suffer no repercussions. Your Office investigates those crimes, and the Office of the Attorney General (AG) prosecutes them. Is that not the case?

**Secretary Miller:**

My office has almost no enforcement powers. We are trying to change that, redirecting resources so we can start to investigate these types of claims and go after them more aggressively. As you know, for the U.S. Attorney's Office, the FBI, the IRS and other agencies, this has not been a top priority. The practice of advertising like that is fairly widespread, or at least more widespread than we would want when we are trying to improve the number of companies that would want to come to Nevada and help our economic development. Being known as a safe haven for snake oil salesmen, thieves and conmen certainly does not help. Those kind of media reports are published on a regular basis nationally and internationally. I know from talking to attorneys around the Country who advise clients as to where to file that Nevada has a significant stigma because we have that reputation. Stating explicitly in statute that you cannot set these companies up for an illegal purpose would go a long way to try to rebut those types of claims.

**Senator Brower:**

I appreciate that. We need to get this right, and we need to be as tough as we can be. However, a lot of what you reference is just marketing. It may be the

kind of marketing we do not like to see, but that is just the marketing the Websites do. I cannot believe Nevada is truly a safe haven with no enforcement activity. I see enforcement activity from your Office, the AG's Office and the U.S. Attorney's Office.

**Scott Scherer (Nevada Resident Agent Association):**

Based on what we have heard, we are satisfied with the changes the Secretary of State has made with regard to the illegality issue. If it is a felony and the language is "dishonesty or fraud," we are fine with that. We do not need our language instead.

There are two key issues here. First, we do not believe there is a need for new language to create a new penalty for things that are already unlawful. Our concern is that if the crime that was aided and abetted is a gross misdemeanor, the resident agent is now criminally liable for a Category C felony. There is a proportionality issue with putting in a new penalty that overrides everything else in the law. If you file a false list, there is already a criminal penalty and civil penalties for that. We are happy to clarify that there is no indemnity or protection from any criminal liability.

The other problem with the Secretary's amendment is in section 13, subsection 3, paragraph (a), subparagraph (3), where it says, "None of the officers or directors identified in the list has been identified in the list with the fraudulent intent of concealing the identity of any person ... ." But it does not say whose fraudulent intent that is. Section 13, subsection 9 of the amendment says, "A person who files ... a list ... which identifies an officer or director with the fraudulent intent of concealing the identify of any person or persons ... ." The list is usually provided by the owners of the corporation to the registered agent, and the registered agent then files it. If the owner has fraudulent intent but the registered agent does not know it, is the registered agent going to be subject to the penalties in the bill because of the owner's fraudulent intent? The language is not clear on that, and we do not think an additional penalty is needed.

Next, the Secretary of State's amendment adds two new sections that are horribly overbroad. They would allow the Secretary of State to obtain any records from a registered agent. There ought to be some standard for obtaining those records. They ought to be relevant, not just "deemed necessary or appropriate," but actually relevant to the investigation. A subpoena ought to be

required so our members can tell their customers why they delivered up those records. There ought to be some due process so they can go to court and fight the subpoena if they think it is overbroad or outside the standards.

The new civil penalties impose a \$500 penalty for any violation not already covered, but it is also per entity. That could be a minor technical violation that was repeated through thousands of entities, which would add up to a severe civil penalty. Even more severe is the ability to revoke the registration of that registered agent and refuse to accept new filings from that registered agent. Again, we think due process and standards should be put in. The Secretary of State already has the authority to go to a court and get an order enjoining someone from acting as a registered agent in NRS 77.430. Those same kinds of due process procedures ought to be in effect if there are violations and the Secretary of State wants to revoke someone's registration as a registered agent.

Finally, with regard to registration, we do not have an objection to registration requirements in the regulation by the Secretary of State. However, it ought to apply to everyone who acts as a registered agent for compensation, not just those with 50 or more entities, because it would be possible to evade that requirement.

**Chair Segerblom:**

Are those issues covered in your amendment?

**Mr. Scherer:**

Yes. Along with our amendment, I have included a section responding to the Secretary of State's amendments on page 17 of [Exhibit U](#).

**Senator Brower:**

I was hoping you would have worked out your differences with the Secretary of State, but it sounds like that has not happened. It sounds like you feel there is some overreach in the bill even with the Secretary's amendment. Is that true?

**Mr. Scherer:**

Yes. We have worked out a couple of issues.

**Senator Brower:**

Do you think if you had more time you could work out a compromise with the Secretary of State on these issues?

**Mr. Scherer:**

We would certainly be happy to try. We are not objecting to the Secretary of State having regulatory authority; we just want standards, proportional penalties and due process to be established by the Legislature.

**Senator Brower:**

Due process is the key for me as well. I would like to see you work this out.

**Chair Segerblom:**

I believe the Secretary of State has worked as far as he is going to work.

**Secretary Miller:**

That is correct. We provided this language to the NRAA in November or December; we were given the Association's proposed language and concerns last night.

Three jurisdictions are identified in the national and international reports: Delaware, which is the highest in the number of business filings per capita; Nevada, which is the next highest; and Wyoming, which is third. All of the provisions in our amendment are contained in Wyoming and Delaware law. We are trying to get ourselves to the bottom floor of government oversight. The NRAA is requesting through its amendment to keep the status quo. I would suggest to you that the status quo is no longer acceptable. It has gone too far to harm Nevada's reputation as a business-friendly jurisdiction that will oversee and weed out the bad actors.

We have been having this debate since 2005. Other than in 2007, when we brought forward a comprehensive bill to try to resolve some of the concerns, I am not aware of a single proposal by the NRAA that would have advanced that interest. In fact, the group has opposed our attempts on almost every occasion.

**Senator Hutchison:**

One point that resonated with me is the idea that your office can ask for documents without going through the subpoena process.



**Secretary Miller:**

On the surface, I would certainly support your concern. First, note at the outset that this identical provision is contained in Wyoming and Delaware law. Those states both flourish as states of incorporation, and this provision has not posed a significant concern to legitimate industries. Asking for the ability to inspect records may sound alarming at first, but it is limited to records that the registered agent is required to maintain by law. That information and the registered agent's involvement in the process are limited by statute. He or she simply has to maintain a residential address and keep a copy of the following records: a copy certified by the Secretary of State of its articles of incorporation and all amendments; a copy certified by an officer of the corporation of its bylaws and all amendments thereto; a stock ledger or a duplicate stock ledger revised annually containing names alphabetically arranged; etc. There is also a provision that you maintain a current list of the owners or a statement indicating where such a list is maintained. That provision was added in 2007 with the support of the NRAA.

These provisions exist to make sure we have the ability to inspect, to make sure registered agents are keeping the records they are required by law to keep and to make sure it is in fact a residential address. Many of the concerns in the media are about the fact that 4,000 shell companies are found to be registered at a UPS store. This would give us the ability to go after the bad actors.

**Senator Hutchison:**

I would note for the record that this may be a little more burdensome on the resident agents than they would want, but if there is an issue with getting records, your Office could always be sued and let the courts decide. Would you see a problem with that procedure if it needed to be invoked in the future?

**Secretary Miller:**

Absolutely. There would obviously be substantial penalties if we were trying to seek records that exceeded our scope under the statute.

**Senator Hutchison:**

My second point is about the list of officers and directors provided by the owner to the resident agent. If that list is fraudulent, what is our view of the case of an innocent resident agent who had no knowledge about the fraud?

**Secretary Miller:**

As I read the bill, it is specifically intended only to target people who have fraudulent intent. It is an intent crime. The NRAA suggests that it reads the bill as a strict liability crime. A plain reading of the law refutes that. Clearly, you cannot lock someone up for strict liability if the language says you must have the fraudulent intent to conceal the officers in that situation.

**Senator Hutchison:**

So in the hypothetical case presented, if the resident agent is truly innocent and does not have knowledge, this law would not apply. This is a specific intent approach to enforcement.

**Secretary Miller:**

That is correct.

**Matthew A. Taylor (Nevada Resident Agent Association):**

Let me address a couple points that just came up. First, we did receive the original language of S.B. 60 in November. We have tried to work with the Secretary of State's Office addressing our concerns since then. The two new sections were just presented to us on Monday. Our concern is that they may be overly broad in that there are no specifics as far as the potential violations or what the fines or consequences of that might be, as well as our concern that under the Model Registered Agents Act, there is the safeguard of having the Secretary of State apply to the district court to enjoin a registered agent from providing those services. This appears to maybe remove that. That is our concern, and we want clarification on that.

**Chair Segerblom:**

We will consider S.B. 60 at the next work session on Tuesday, March 19, and vote on it at that time.

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Is there any public comment? Hearing none, the meeting is adjourned at 11:15 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Tick Segerblom, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	2		Agenda
	B	11		Attendance Roster
S.B. 192	C	4	Senator Barbara K. Cegavske	Written testimony
S.B. 192	D	4	Senator Mark Hutchison	Written testimony
S.B. 192	E	5	Tim Schultz	Written testimony
S.B. 192	F	5	Alan Reinach	Written testimony
S.B. 192	G	3	Father Francisco Nahoe	Written testimony
S.B. 192	H	38	Jim Richardson	Religious Liberty After Gonzales: A Look at State RFRA's article
S.B. 192	I	1	Elisa Cafferata	Written testimony
S.B. 192	J	6	Jane Heenan	Letter from Jennifer Pizer, Lambda Legal
S.B. 192	K	1	Kate Morra	Written testimony
S.B. 192	L	1	Ana Farfan	Written testimony
S.B. 192	M	5	Allen Lichtenstein	Written testimony
S.B. 192	N	9	Sikh Coalition	Letter and essay from Rajdeep Singh
S.B. 192	O	1	Charleston Neighborhood Preservation	Letter from June Ingram
S.B. 192	P	1	Nevada Homeschool Network	Letter from Elissa Wahl
S.B. 192	Q	2	Americans United for Separation of Church and State	Letter from Maggie Garrett
S.B. 113	R	19	Mindy Martini	Work session document
S.B. 169	S	1	Mindy Martini	Work session document
S.B. 28	T	1	Mindy Martini	Work session document
S.B. 60	U	19	Mindy Martini	Work session document