



March 22, 2010

Governor Jim Gibbons
101 North Carson Street
Carson City, NV 89701
Via U.S. Mail and Facsimile

Dear Governor Gibbons:

The ACLU of Nevada has learned, through recent press reports,¹ that your office plans to allow the Governor's Education Reform Blue Ribbon Task Force to hold secret meetings. While the ACLU of Nevada applauds your office for taking steps to improve education in Nevada, we are very disturbed by the news that the Task Force may be shrouded in secrecy. Thus, we are calling on you to immediately require that the Task Force meet in public.

First and foremost, as a matter of principle, the business of the Task Force should not be conducted behind closed doors. Put simply, democratic principles mandate that Nevada's citizens not be excluded from the affairs of the state. The need for openness is perhaps nowhere more vital than in the area of education, unquestionably one of the most debated issues in the state and an issue of deep concern to all Nevadans.

Second, it is our view that holding Task Force meetings in secret violates the law. Nevada's Open Meeting Law was enacted to ensure that governmental deliberations are conducted openly. N.R.S. 241.010 ("In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.")

Thus, the Nevada Revised Statutes explicitly require that "all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies," unless explicitly provided otherwise by statute. N.R.S. 241.020. Other requirements, such as advance notice to the public, allowing public comment, and providing copies of materials, are also mandated by statute. *Id.* The Open Meeting Law applies here, and there is no exception that is applicable to meetings of a body such as the Governor's Education Reform Blue Ribbon Task

¹ See, e.g., Dave McGrath Schwartz and Cy Ryan, "Gibbons' education task force to meet behind closed doors: Panel will form state's new education policy," Las Vegas Sun, March 19, 2010 (available at: <http://www.lasvegassun.com/news/2010/mar/19/gibbons-task-force-meet-private/>).

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Force. *See* N.R.S. 214.030 (setting forth “Exceptions to requirement for open and public meetings”).

The definition of a “public body” to which the Open Meeting Law applies makes explicit that the task force fall within its purview, defining “public body” as:

any administrative, advisory, **executive** or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which **advises or makes recommendations** to any entity which expends or disburses or is **supported in whole or in part by tax revenue**, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof.

NRS 241.015(3) (emphasis added). The definition of “meeting” is similarly illustrative: “The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or **advisory power.**” 241.015 (2) (emphasis added).

That these definitions and the Open Meeting Law apply is abundantly clear from the Executive Order establishing the Education Reform Blue Ribbon Task Force. The Order provides, for example, that the Task Force’s responsibilities will include:

Develop[ing] legislative and regulatory recommendations supporting the mission that may address, among other matters, governance, academic standards, teacher performance and resource allocations.

March 15, 2010 Executive Order, available at http://gov.state.nv.us/EO/2010/EO-2010-03-15_EdReformTF.pdf.

While the Attorney General’s Office has opined that the Governor himself is not subject to the Open Meeting Law, for the reasons set forth above, the Task Force *is* unquestionably a public body under the plain language of the Nevada Revised Statutes. The Nevada Supreme Court has noted the importance of Nevada’s Open Meeting Law, and has held “that meetings of public bodies should be open whenever possible to comply with the spirit of the Open Meeting Law.” *Chanos v. Nevada Tax Com’n*, 181 P.3d 675, 680 (2008). Further, “[s]ince generally all meetings must be open, this court strictly construes all exceptions to the Open Meeting Law in favor of openness.” *Id.* at n.14.²

² It is noteworthy that, in order to ensure compliance with the Open Meeting Law, violators may potentially face criminal liability. N.R.S. 241.0040. (“Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor...”).

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To comply with the Open Meeting Law – and, more importantly, to operate within fundamental democratic principles of open government and allow Nevada citizens and its press fair access to their government, please confirm that the education Task Force will comply with the Open Meeting Law. We would appreciate a response no later than Friday, March 26, 2010.

Should your office have any questions or wish to discuss this matter, please feel free to contact us at your convenience. We look forward to working with you to ensure that Nevadans have full access to the deliberations of the Task Force, and can both monitor and meaningfully participate in the important work on education in our state.

Sincerely,



Margaret A. McLetchie
Interim Southern Program Director

Lee B. Rowland
Northern Coordinator

cc: Catherine Cortez Masto, Attorney General; Elaine Wynn, Task Force Co-Chair; Dan Klaich; Nevada System of Higher Education Chancellor and Task Force Co-Chair; Task Force members; Nevada Freedom of Information Coalition