

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 KEVIN BENSON  
Senior Deputy Attorney General  
3 Nevada Bar No. 9970  
Attorney General's Office  
4 100 North Carson Street  
Carson City, Nevada 89701-4717  
5 (775) 684-1114  
Attorneys for Plaintiff  
6

7  
8 IN THE FIRST JUDICIAL DISTRICT COURT OF NEVADA  
9 IN AND FOR CARSON CITY  
10

11 STATE OF NEVADA, by and through ROSS )  
12 MILLER, its SECRETARY OF STATE, )

13 Plaintiff,

14 vs.

15 AMERICANS FOR PROSPERITY, Inc., a )  
16 Washington, D.C. corporation, )

17 Defendant.

CASE NO.

DEPT. NO.

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

Arbitration Exemption claimed:  
Rule 3(A) – Public Policy

18 Plaintiff, State of Nevada, by and through Ross Miller, its Secretary of State, by and  
19 through counsel, Catherine Cortez Masto, Attorney General for the State of Nevada, and  
20 Kevin Benson, Deputy Attorney General, complains and alleges as follows:

21 **PARTIES**

22 1. Plaintiff Ross Miller is the duly elected Secretary of State and in that capacity is  
23 the Chief Elections Officer, charged with enforcing the elections laws of the State of Nevada.

24 2. Defendant AMERICANS FOR PROSPERITY, Inc., ("AFP") is a foreign non-profit  
25 corporation organized under the laws of Washington, D.C.

26 **JURISDICTION AND VENUE**

27 3. This Court has jurisdiction pursuant to Nev. Const. Art. 6, § 6.

28 ////

1 4. Venue is proper in the First Judicial District Court pursuant to NRS 294A.410  
2 and 294A.420.

3 **GENERAL ALLEGATIONS**

4 5. Defendant AFP published and disseminated, or caused to be published and  
5 disseminated, three flyers which it mailed or caused to be mailed to voters in Clark County,  
6 Nevada, during the 2012 election cycle, specifically on or about May 25, June 1, and June 8,  
7 2012.

8 6. The first flyer has a large red question mark and the words "Guess who's  
9 policies are benefitting the Special Interests?" ("Special Interests Flyer"). The other side of the  
10 flyer has a large picture of Kelvin Atkinson and an energy bill. It says: "Assemblyman Kelvin  
11 Atkinson sponsored and voted for legislation that would have raised energy rates on  
12 struggling Nevada families!" The graphic of the energy bill has a highlighted portion containing  
13 the words "POTENTIAL RATE INCREASE: \$1,000,000,000". The flyer continues: "Kelvin  
14 Atkinson was the PRIMARY SPONSOR of AB416. The bill could have cost NV Energy  
15 ratepayers a \$1 BILLION increase which is only a small amount to Kelvin, but Nevadans are  
16 struggling..." Finally, there is an image of a telephone handset and cord, and the flyer states:  
17 "Call Assemblyman Atkinson at (702) 457-9995 Tell him it is time to represent Nevada  
18 working families." Exhibit 1, Special Interests Flyer.

19 7. The second flyer shows an image of a person opening a wallet that has no  
20 money in it and the words "While North Las Vegas families **struggle** to make ends meet..."  
21 ("Struggling Flyer"). The other side of the flyer states: "Atkinson was busy saddling North Las  
22 Vegas families AB416 and the \$1 Billion in rate hikes that may have come with it." It  
23 continues: "NV Energy lobbyists cash in... You pay higher rates!" The flyer has an image of a  
24 cigar in an ashtray, a glass of brandy, and a cocktail napkin. On the napkin are the words: "A  
25 billion dollar increase is only a small amount to Kelvin, but Nevadans are struggling..." Like  
26 the first flyer, there is also an image of a telephone and the words "Call Assemblyman  
27 Atkinson at (702) 457-9995 Tell him it is time to represent Nevada working families."  
28 Exhibit 2, Struggling Flyer.

1           8.       The third flyer shows the Carson City capital building and reads: "for  
2 Assemblyman Atkinson, it's politics as usual in Carson City" ("Politics As Usual Flyer").  
3 Superimposed on the image are the words "backroom deals," "lobbyists," "insiders," and  
4 "special interests." The other side of the flyer has a large picture of Atkinson and states:  
5 "Atkinson was the PRIMARY SPONSOR of AB416. The bill would have cost NV energy rate  
6 payers \$1 BILLION". There is also an image of a bill with a highlighted portion that says  
7 "Energy rate increase \$1 billion." Written on the bill are the words "A billion dollar increase is  
8 only a small amount to Kelvin, but Nevadans are struggling..." Like the other flyers, there is a  
9 picture of a telephone and the words "Call Assemblyman Atkinson at (702) 457-9995 Tell him  
10 it is time to represent Nevada working families." Exhibit 3, Politics As Usual Flyer.

11           9.       At the time the Flyers were mailed, Kelvin Atkinson was a candidate for State  
12 Senate District 4, and appeared on the June 12, 2012 primary election ballot.

13           10.       Each of these Flyers constitutes express advocacy.

14           11.       Defendant AFP has not registered with the Secretary of State as a nonprofit  
15 entity which solicits contributions, makes contributions, or makes expenditures designed to  
16 influence the outcome of an election. See NRS 294A.225.

17           12.       Defendant AFP has not registered with the Secretary of State as a political  
18 action committee. See NRS 294A.230.

19           13.       Defendant AFP has not made any reports to the Secretary of State regarding its  
20 contributions or expenditures. See NRS 294A.140; NRS 294A.210.

21           14.       Plaintiff is informed and believes and on that basis alleges that Defendant AFP  
22 paid other parties to design, produce and print the flyers, and also caused payment to be  
23 made to the U.S. Postal Service to mail the flyers, and that these payments exceeded \$100.  
24 Defendant has therefore made expenditures as defined in NRS 294A.0075.

25           15.       Plaintiff has notified Defendant AFP that it received information that AFP has not  
26 filed any reports or registrations as required by Chapter 294A, and that Plaintiff was directing  
27 the Attorney General to pursue the appropriate relief in the First Judicial District Court. See  
28 Exhibit 4, attached hereto.

1 16. Defendant AFP has not as of this date registered with the Secretary of State's  
2 Office as a nonprofit or a political action committee, nor has it filed any of the required reports.

3 **FIRST CLAIM FOR RELIEF**

4 **Failure to Register as a Non-profit Engaging in Political Activity**

5 17. Defendant AFP is a Washington, D.C. nonprofit corporation.

6 18. Pursuant to NRS 294A.225, nonprofit corporations are required to register with  
7 the Secretary of State prior to receiving or soliciting any contributions or making any  
8 expenditures designed to influence the outcome of an election.

9 19. Defendant AFP solicits contributions through its website, [www.afpnv.com](http://www.afpnv.com) (which  
10 redirects to <http://americansforprosperity.org/nevada/>). The website features a yellow "Donate"  
11 button at the top that allows users of the website to make monetary "donations" to AFP.

12 20. Plaintiff is informed and believes that Defendant AFP has actually received  
13 money from Nevada residents.

14 21. By soliciting contributions and by mailing the Flyers, Defendant AFP has  
15 engaged in political activity in Nevada, yet has failed to register as a nonprofit and therefore  
16 violated NRS 294A.225.

17 **SECOND CLAIM FOR RELIEF**

18 **Failure to Register as a Political Action Committee**  
19 **(Alternative to First Claim for Relief)**

20 22. Defendant AFP is a group of natural persons or entities.

21 23. Pursuant to NRS 294A.230, political action committees are required to register  
22 with the Secretary of State prior to engaging in any activity in this State.

23 24. Defendant AFP solicits contributions through its website, [www.afpnv.com](http://www.afpnv.com) (which  
24 redirects to <http://americansforprosperity.org/nevada/>). The website features a yellow "Donate"  
25 button at the top that allows users of the website to make monetary "donations" to AFP.

26 25. Plaintiff is informed and believes that Defendant AFP has actually received  
27 money from Nevada residents.

28 26. By soliciting contributions and by mailing the Flyers, Defendant AFP has

1 engaged in political activity in Nevada, yet has failed to register as a political action committee  
2 and therefore violated NRS 294A.230.

3 **THIRD CLAIM FOR RELIEF**

4 **Failure to File Contribution and Expense Report (Report #2)**

5 27. Defendant AFP, by paying to have the Flyers created and distributed made  
6 expenditures during the 2012 election cycle which the Plaintiff is informed and believes were  
7 in excess of \$100.

8 28. Defendant AFP has failed to file a contribution and expense report ("C&E  
9 Report") for the period from 24 days before the primary election through 5 days before the  
10 primary election, which was due on June 8, 2012 pursuant to NRS 294A.140(4)(b) and NRS  
11 294A.210(3)(b).

12 29. Defendant AFP is therefore subject to a civil penalty of \$5,000 pursuant to NRS  
13 294A.420(2) and (3), plus attorneys fees and costs.

14 **FOURTH CLAIM FOR RELIEF**

15 **Failure to File Contribution and Expense Report (Report #3)**

16 30. Defendant AFP, by paying to have the Flyers created and distributed, made  
17 expenditures during the 2012 election cycle which the Plaintiff is informed and believes were  
18 in excess of \$100.

19 31. Defendant AFP has failed to file a C&E Report for the period from 4 days before  
20 the primary election election through 25 days before the general election, which was due on  
21 October 16, 2012, as required by NRS 294A.140(4)(c) and NRS 294A.210(3)(c).

22 32. Defendant AFP is therefore subject to a civil penalty of up to \$5,000 pursuant to  
23 NRS 294A.420(2) and (3), plus attorneys fees and costs. The penalty increases each day the  
24 report is late, up to a maximum of \$5,000. NRS 294A.420(3).

25 **FIFTH CLAIM FOR RELIEF**

26 **Injunctive Relief**

27 33. Defendant AFP has not, to date, registered as required by NRS 294A.225 or  
28 NRS 294A.230, nor has it filed any C&E Reports.

1           34. Injunctive relief is necessary to require Defendant to provide the information  
2 required by statute.

3           **WHEREFORE**, Plaintiff prays for judgment in favor of Plaintiff and against Defendants  
4 as follows:

5           1. For civil penalties pursuant to NRS 294A.420 in an amount of \$5,000 for each  
6 violation of NRS 294A.225 (failure to register as a nonprofit), or in the alternative, for violation  
7 of NRS 294A.230 (failure to register as a political action committee);

8           2. For civil penalties pursuant to NRS 294A.420 in an amount of \$5,000 for failure  
9 to file C&E Report #2 in violation of NRS 294A.140 and NRS 294A.210;

10          3. For civil penalties pursuant to NRS 294A.420 in an amount up to \$5,000 for  
11 failure to filed C&E Report #3 in violation of NRS 294A.140 and NRS 294A.210;


12          4. For Plaintiff's attorneys' fees and costs pursuant to NRS 294A.420(2);

13          5. For injunctive relief ordering Defendant AFP to register as a nonprofit or as a  
14 political action committee and file Report #2, Report #3, and all applicable future reports; and,

15          6. For such other and further relief as the Court deems just and proper.

16          DATED this 29<sup>th</sup> day of November, 2012.

17   CATHERINE CORTEZ MASTO  
18   Attorney General

19   By:   
20   KEVIN BENSON  
21   Senior Deputy Attorney General  
22   Bar No. 9970  
23   Attorney General's Office  
24   100 North Carson Street  
25   Carson City, Nevada 89701-4717  
26   (775) 684-1114  
27   Attorneys for Plaintiff

**AFFIRMATION PURSUANT TO NRS 239B.030**

1 The undersigned does hereby affirm that the preceding Verified Complaint for Civil  
2 Penalties (NRS 294.420) filed in the First Judicial District Court does not contain the social  
3 security number of any person.

4 DATED this 29<sup>th</sup> day of November, 2012.

5 CATHERINE CORTEZ MASTO  
6 Attorney General

7 By:   
8 KEVIN BENSON  
9 Nevada State Bar No. 9970  
10 100 North Carson Street  
11 Carson City, Nevada 89701-4717  
12 Telephone: (775) 684-1114  
13 Facsimile: (775) 684-1108  
14 Email: [kbenson@ag.nv.gov](mailto:kbenson@ag.nv.gov)  
15 Attorneys for Plaintiff

EXHIBIT LIST

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- Exhibit 1 Special Interests Flyer
- Exhibit 2 Struggling Flyer
- Exhibit 3 Politics As Usual Flyer
- Exhibit 4 Letter dated October 4, 2012 from the Secretary of State's Office to Mr. John Flynn, Vice President and General Counsel.



# **EXHIBIT 1**

GUESS WHO'S POLICIES  
ARE BENEFITTING THE



SPECIAL

INTERESTS?

AMERICANS FOR PROSPERITY  
231 W. Charleston Blvd Suite 110  
Las Vegas, NV 89102  
AFPNV.com



PRESORTED  
STANDARD  
US POSTAGE  
**PAID**  
DMI

# ASSEMBLYMAN KELVIN ATKINSON



ACCOUNT NUMBER: 1000010000002000009

Service: NORTH LAS VEGAS RESIDENT

Customer 000100000  
Premise 0200000

Meter Number	Service Period		Bill Days	Meter Readings		Meter Multiplier	BTU Factor	Pressure Factor	Billing Usage
	From	To		Previous	Current				
9999999		Jul 31	31	1931	1992	0.0010	1024 61300	8622	54

POTENTIAL RATE INCREASE  
**\$1,000,000,000**

Atkinson was the **PRIMARY SPONSOR** of **AB416**.<sup>1</sup>

The bill could have cost NV Energy rate payers a **\$1 BILLION** increase which is only a small amount to Kelvin, but Nevadans are struggling...

Call Assemblyman  
Atkinson at  
**(702) 457-9995**

Tell him it is time to  
represent Nevada  
working families.

<sup>1</sup> <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=846>  
<http://www.lasvegassun.com/news/2011/jun/12/unread-bills-slide-through-last-hour/>

# **EXHIBIT 2**

WHILE NORTH LAS  
VEGAS FAMILIES  
TO MAKE  
ENDS MEET...



AMERICANS FOR PROSPERITY  
231 W. Charleston Blvd Suite 110  
Las Vegas, NV 89102  
AFPNV.com

PRESORTED  
STANDARD  
US POSTAGE  
**PAID**  
DMI

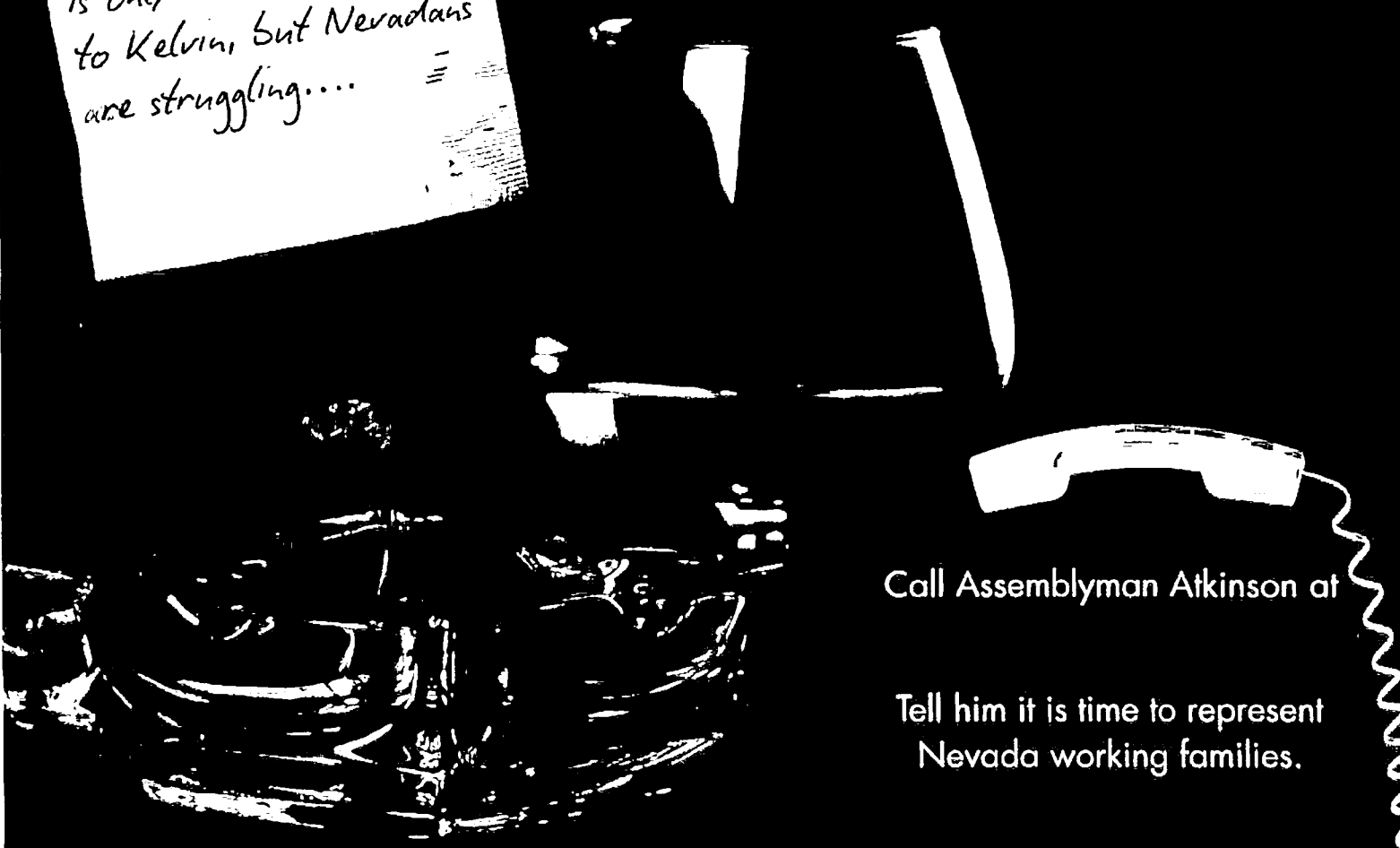
1101

ATKINSON WAS BUSY SADDLING NORTH  
LAS VEGAS FAMILIES WITH  
AND THE OF RATE HIKES  
THAT MAY HAVE COME WITH IT.\*

\*Cite: Las Vegas Sun. 6/12/2011  
<http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=846>

## NV ENERGY LOBBYISTS CASH IN..

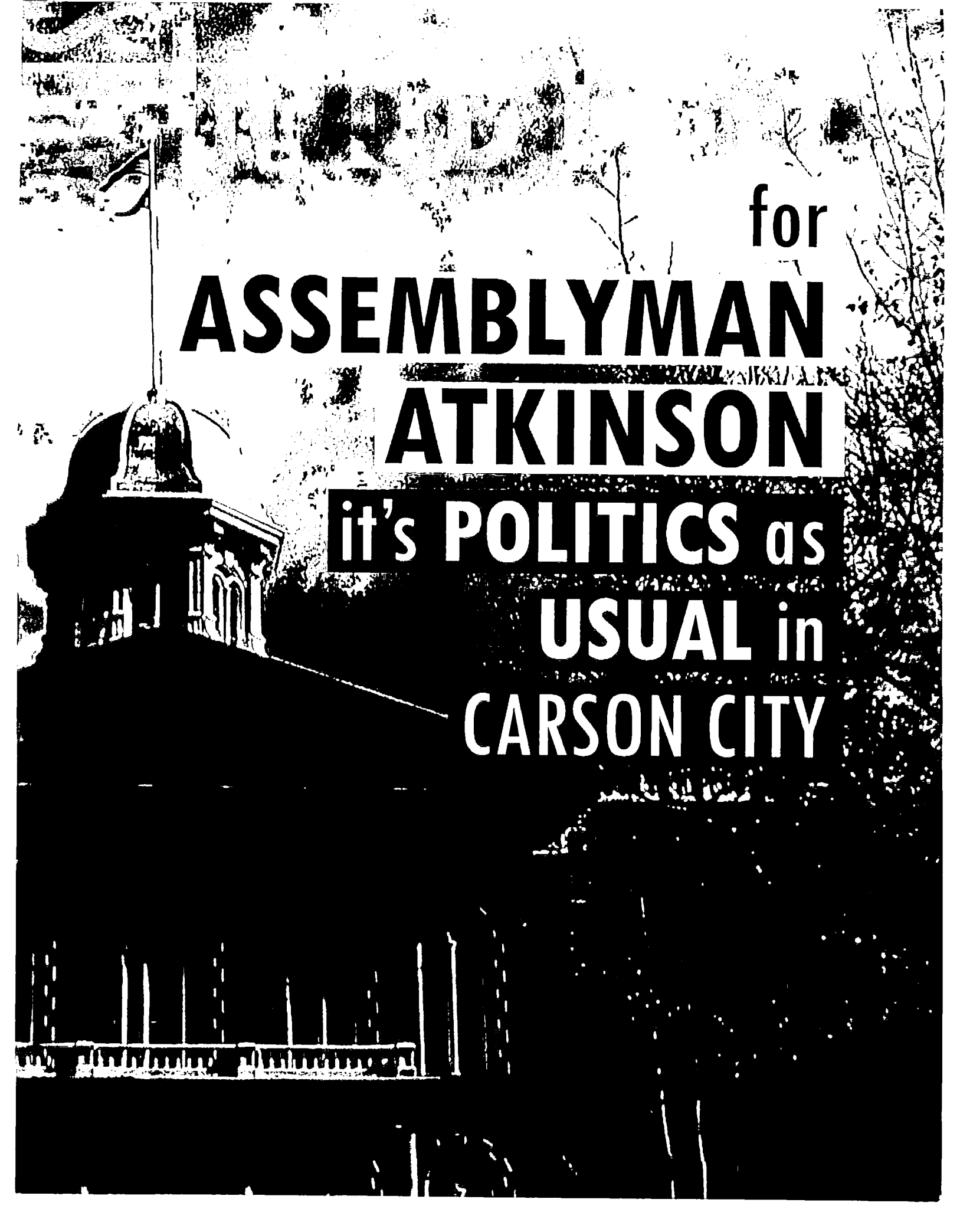
*A billion dollar increase  
is only a small amount  
to Kelvin, but Nevadans  
are struggling....*



Call Assemblyman Atkinson at

Tell him it is time to represent  
Nevada working families.

# **EXHIBIT 3**



for  
**ASSEMBLYMAN  
ATKINSON**

**it's POLITICS as  
USUAL in  
CARSON CITY**



PRESORTED  
STANDARD  
US POSTAGE  
**PAID**  
DMI

**THE PRIMARY  
SPONSOR OF AB416**  
**... have ...  
... ers \$1 BILLION!**

## YOUR BILL

NV TAXPAYER 00683

ENERGY RATE INCREASE

*A billion dollar increase  
is only a small amount  
to Kelvin, but Nevadans  
are struggling....*

Total

**\$1 BILLION**

Thank You — Please Come Again

*Thank You!!!*

Call Assemblyman Atkinson

**(702) 457-9995**

Tell him it is time to represent  
Nevada working families.

# **EXHIBIT 4**

**ROSS MILLER**  
*Secretary of State*

STATE OF NEVADA

**SCOTT W. ANDERSON**  
*Deputy Secretary  
for Commercial Recordings*

**NICOLE J. LAMBOLEY**  
*Chief Deputy Secretary of State*



**SCOTT F. GILLES**  
*Deputy Secretary for Elections*

**ROBERT E. WALSH**  
*Deputy Secretary  
for Southern Nevada*

**OFFICE OF THE  
SECRETARY OF STATE**

**RYAN M. HIGH**  
*Deputy Secretary  
for Operations*

October 4, 2012

Mr. John Flynn, Esq.  
Vice President and General Counsel  
Americans for Prosperity  
2111 Wilson Blvd., Suite 350  
Arlington, VA 22201

**Re: Alleged Violations of Election Law:**

- **Complainant v. Americans for Prosperity Our File C12-39SOS**
- **Complainant v. Americans for Prosperity Our File C12-40SOS**
- **Complainant/Petition v. Americans for Prosperity Our File C12-49SOS**
- **Notice**

Dear Mr. Flynn:

This office is in receipt of the above-captioned complaints dated August 10, 2012, August 13, 2012, and September 21, 2012, respectively. Pursuant to Nevada Revised Statutes (NRS) 294A.410(3), the Secretary of State is providing copies of the complaints and all accompanying information to Americans for Prosperity. Included in the complaint entitled C12-49SOS is a petition signed by 1,406 people which can be found at this web address: <http://signon.org/sign/koch-brothers-afp-violations>

The Secretary of State, as the Chief Elections Officer for the State of Nevada, is responsible for enforcement of the election laws contained in Title 24 of the NRS. Pursuant to NRS 294A.410(3), any response you wish to forward to the Secretary of State's office must be accompanied by a short statement of the grounds, if any, for objecting to the alleged violations.

Lastly, we have received and considered your response letter dated August 3, 2012. Nevertheless, we believe violations of Chapter 294A have occurred. This letter is to inform you pursuant to NRS 294A.420(1), that the Secretary of State is referring these matters, as well as Nevada State Democratic Party v. Americans for Prosperity, our file C12-33 SOS, to the Nevada Attorney General's office, with instructions to cause the appropriate proceedings to be instituted in the First Judicial District Court for violations of NRS Chapter 294A.

NEVADA STATE CAPITOL  
101 N. Carson Street, SUITE 3  
Carson City, Nevada 89701-4786  
Telephone: (775) 684-5708  
Fax: (775) 684-5725

COMMERCIAL RECORDINGS  
MEYER'S ANNEX OFFICE  
202 N. Carson Street  
Carson City, Nevada 89701-4201  
Telephone: (775) 684-5708  
Fax: (775) 684-5725

LAS VEGAS OFFICE  
555 E. Washington Avenue Ste. 5200  
Las Vegas, Nevada 89101-1090  
SECURITIES  
Telephone: (702) 486-2440  
Fax: (702) 486-2452  
CORPORATIONS  
Telephone: (702) 486-2880  
Fax: (702) 486-2888

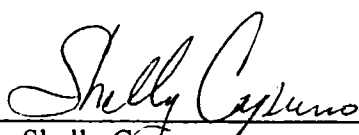
RENO OFFICE  
500 Danmore Ranch Pkwy, Suite 657-A  
Reno, Nevada 89521  
Telephone: (775) 687-9950  
Fax: (775) 853-7961

Please direct future communications regarding these matters to the Attorney General's Office.

Kevin Benson, Senior Deputy Attorney General  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1100  
Fax (775) 684-1108

Respectfully,

ROSS MILLER  
Secretary of State

By:   
\_\_\_\_\_  
Shelly Capurro  
Elections Officer

Enclosure

cc: Kevin Benson, Esq., Senior Deputy Attorney General  
Eric Wang, Esq., Legal Counsel, Americans for Prosperity  
Complainant  
Complainant  
Complainant