

Nevada's Governor Brian Sandoval, a Study in Constitutional Contradictions?

A public letter to, Brian Sandoval, Nevada's first Latino Governor, a history of government employment, Republican and self-proclaimed supporter of both the United States and the Nevada Constitutions.

Dear Governor Sandoval,

It is now appearing, that you are retreating from your Constitutional platform that you ran on during your election campaign for the Office of Governor.

To refresh your memory:

During your campaign, you made the following statements which are still available on your campaign website:

"I have a profound respect for the United States Constitution and believe it should be strictly interpreted." He was appointed as a United States District Judge for the District of Nevada by President George W. Bush in October 2005." [1]

In regard to public corruption, you created the unit that prosecutes corrupt officials, as noted in the following quote:

"Elected officials must actively work to protect the trust placed in us by citizens. As Attorney General, I set up the first public integrity unit to investigate and prosecute officials who violated the public trust and I am committed to restoring honesty and integrity to state government." [1]

"The Nevada Constitution is clear: As a result, the Governor filed a suit asking the Nevada Supreme Court to order the legislature to comply with the Nevada Constitution." [1]

Nevada Constitution:

18. Sec. Unreasonable seizure and search; issuance of warrants. The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by Oath or Affirmation, particularly describing the place or places to be searched, and the person or persons, and thing or things to be seized.

United States Constitution:

Fourth Amendment. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court ruled that a party is considered to have been searched, for Fourth Amendment purposes, if that party had a "reasonable expectation of privacy".

The "selling" points of the smart meters are the ability to "monitor" your energy usage. However, the monitoring will not be private. It is accessible to the power company and possibly outside parties including hackers. As a result, their marketing spin regarding privacy is false. The expectation of privacy is just that--you have the right to privacy in your home unless you choose to allow access. These meters are violating our constitutional right to privacy.

We don't need a new harmful and invasive smart meter to monitor our energy use. We already know how much energy we are using through our utility bills, and we can verify those usage numbers each month by checking the meter on the outside of our home.

The analog meters protect your privacy by disseminating only your monthly usage of electricity to the utility company without giving them complete wireless access to your home. With the smart meters, your information is dispersed wirelessly at 15-minute intervals. These intervals will allow energy companies to have detailed information about what you are doing in your homes every 15 minutes. For example, fluctuations in energy usage will provide specific, private information such as what time you wake up (energy use goes up), when you leave for work (energy use goes down), and when you are away on vacation (no energy fluctuations). That type of detailed information will also be very desirable to private investigators, criminals and others.

On a related note, the U.S. Supreme Court recently held that the government's act of physically attaching a GPS (global positioning system) device to the undercarriage of a car is a physical trespass. This unauthorized invasion of privacy is clearly prohibited by the Fourth Amendment as it was originally understood in the 18th century. The Court's decision stated that it "may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy.

"Writing alone, Justice Sotomayor makes the strongest case for updating our Fourth Amendment jurisprudence to protect privacy in this digital age. She states, by way of explaining her signature on the majority opinion, that the physical trespass of attaching the GPS device was a violation of the Fourth Amendment. But, "[of] course, the Fourth Amendment is not concerned only with trespassory intrusions on property." This, she says, "reflects an irreducible constitutional minimum." "[2]

This Supreme Court ruling confirms that any type surveillance device is a violation of the Fourth Amendment. Smart meters are an exogenous device placed upon a person's home to monitor their private activities via energy usage. NVE keeps stating ad nauseum that the time of use trials will "not" result in charging customers' varying rates

predicated on when the energy is used. If there are no plans for a schedule of rates that vary based on usage, why is NVE conducting this “behavior study”?

One can very easily extrapolate that the mendacious, concerted threats by NV Energy’s employees--such as Peter Easler (Director of Deployment) and Schad Koon (Customer Service Manager)--to ratepayers, that failure to accept “federally mandated” smart meters would result in denial of service. During the December hearing of the Nevada Public Utilities Commission (PUC), NVE admitted that the meters were, in fact, not federally mandated. They also admitted that they had not been offering customers the option of being placed on the postponement list, and they did not do a good enough job of educating the public.

The PUC gave NVE permission to deploy the meters contingent upon customers’ acceptance of the meters. This statement was even referenced by NVE’s General Counsel Paul Kaleta’s October 8, 2010, PowerPoint presentation titled “NV Energy Smart Grid: Opportunities and State Regulatory Challenges” at the 2010 EEI Fall Legal Conference. From page 16 of his presentation: “In approving the project, the Commission expressed its general concern with customer acceptance of the project and noted that, “it is the Companies’ responsibility to ensure this [customer acceptance] occurs.” [3] This was also reiterated by a PUC staff attorney after reviewing NVE’s compliance to the PUC’s order. In a February 10, 2012, memo by Sam Crano, Assistant Staff Counsel: “NV Energy was warned by the Commission in the Order in Docket 10-02009 that it would be responsible for customer acceptance.” [4]

On December 6, 2011, the PUC entered an Exhibit 6 (i.e., the NVE postponement letter) that provides irrefutable proof that NVE acknowledges that these meters are in fact surveillance devices. This letter was produced by NVE’s resolution dispute center. It explicitly allows a customer to choose to not have a smart meter installed upon their property. Ironically, it is an altered version of a letter that was already being used by utility customers in several states. [5]

As you know from contract law, this letter--once signed by a customer and accepted by NVE--constitutes a contract. An offer was extended and accepted and, therefore, the terms of the contract have been fulfilled.

The strong arm tactics by NVE to rewrite the Energy Bill, where their funding came from, clearly states that these meters are only mandated on federal housing and buildings, and the public is to be given the option to opt out. There is absolutely no language in the bill that states any citizen who elects to opt out is to be penalized under the terms and conditions of the grant for said deployment of meters. Or that the public is to reimburse the energy companies for the meters they voluntarily purchased.

The recommended extortion (a/k/a “opt-out”) fee will be prohibitive to those who are already on limited budgets—including the elderly, disabled, low income and unemployed families in the state. Because they will be unable to afford these unlawful

fees, many Nevadans will be forced to accept something against their will and in violation their rights.

It is important to note that the funds for these meters came from the American Revitalization and Recovery Act--which was intended to "create jobs". NVE, with malice and forethought, accepted this grant; and in accepting it, fired more than 100 employees. However, their required quarterly report falsely states that they "created" jobs. Those so-called new jobs were merely temporary in nature and/or were provided through their outside contractor--Scope Services.

If they actually had savings from the implementation of the smart meter program and they received \$138 million from the federal government, why did this result in yet another rate increase to Nevadans? Even more egregious, they transferred several of their highly paid executives into new roles for the smart meter program. If these highly paid executives were so easily transferred out of their previous positions within NVE, you could conclude that those employees were not necessary and those individuals could be eliminated--resulting in a true savings for Nevada energy customers.

Governor Sandoval you are now ignoring both the United States and Nevada constitutions.

On January 3, 2011, when you voluntarily repeated the oath as required by NRS 282.020 (which you have done numerous times before) you again reassured the residents of Nevada of your commitment to uphold the Constitution :

"NRS 282.020 Form of official oath. Members of the Legislature and all officers, executive, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

I,, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of, on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury."

Governor, why are you now reneging on your oath and election campaign platform and violating our state and federal constitutions?

Many of your campaign supporters have contacted you personally to keep your campaign promise and uphold the oath that you took of your own free will. Your Lieutenant Governor has also been contacted regarding this issue. It seems that neither of you are willing to uphold the so-called values you both touted nor the constitutional laws that were part of your oath of office.

During your administration, you will have the opportunity to appoint or reconfirm another PUC Commissioner, as the term of the current PUC commissioner, David Noble, ends in September 2012.

The recent so-called “workshops,” conducted by the PUC under Docket Number 11-1007, were merely a well-executed use of the Delphi Technique. In case you haven’t heard of the Delphi Technique, it was developed by the RAND Corporation for the U.S. Department of Defense back in the 1950s. It was originally intended for use as a psychological weapon during the cold war. However, it was soon recognized that the steps of Delphi could be used to manipulate ANY meeting toward a predetermined end. This is the process that was used during the recent PUC workshops on smart meters.

How do you think the state of Nevada is going to be perceived when we shine the light on this latest violation of the constitution and the industry-biased views of the Nevada PUC (which is supposed to protect the rights of utility customers)?

During your election campaign, you pointed out that you set up the “first public integrity unit” to investigate and prosecute officials who violated the public trust. If you are truly interested in the public integrity of state leaders, I “highly” suggest that you read the transcript of the PUC hearings from December 2011 and January 2012 and review the submissions under Docket #11-10007. Also, be sure to read the public comments that were not allowed to be posted on the Docket.

These appointed Commissioners took the same oath as the Governor, so they have the same fiduciary duty to uphold the state and federal laws, statues and regulations.

Governor Sandoval, only you can define your legacy. Will you make honorable and thoughtful decisions that are best for the public good, or will you fail the citizens of Nevada and succumb to the high pressure tactics of the utility corporation?

It’s time to take a stand and show your leadership as the Governor of Nevada. As citizens of Nevada, we encourage you to showcase Nevada as a state that supports our constitutional rights. With the right leadership and ethical choices, Nevada can become a national showcase for enticing new businesses and inviting people to become residents.

Sincerely,

The residents of Nevada

REFERENCES

1. <http://www.briansandoval.com/issues>
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3. <http://www.eei.org/meetings/Meeting%20Documents/2010.10FallLegalKaletaPauIPres.pdf>
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