

**Brown, Eric P.**

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**From:** Edwards, Nathan  
**Sent:** Thursday, December 14, 2023 3:56 PM  
**To:** Hill, Alexis; Herman, Jeanne; Brown, Eric P.  
**Cc:** Rodriguez, Jamie L; Hickman, Elizabeth  
**Subject:** Fw: Attached Image

Hi all. Below from Beth Hickman in our office is the analysis of Commissioner Herman's newest election resolution that was distributed at the commission meeting this last Tuesday (12/12/23). Please let us know if you have any questions. Thank you.



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**From:** Hickman, Elizabeth <ehickman@da.washoecounty.gov>  
**Sent:** Thursday, December 14, 2023 11:48 AM  
**To:** Edwards, Nathan <nedwards@da.washoecounty.gov>  
**Subject:** RE: Attached Image

Hi Nate,

**1. Paper ballots**

The first provision is "commitment to paper ballots only." State law permits the use of mechanical voting devices, but does not require it except in certain circumstances. Therefore, it is within the purview of the BCC to require the use of paper ballots with two exceptions. Mechanical voting may be required for some voters to comply with the requirements of the ADA (every polling place is required to have a mechanical voting machine per NRS 293.2955(1)(a)(IV)) and approved electronic transmission of a ballot is permitted for military and other overseas absentee voters under NRS 293D.

- 2. Hand counting paper ballots at precinct locations by residents of that district with equitable representation of political affiliations** – This packs four distinct requirements into one provision. (I'm following up with the SOS on the status of the operative regs that will govern hand counting, so this analysis may change slightly when the new regs are adopted).

Exercising power over the procedures for a hand count is not within the purview of the BCC; however, the decisions whether to conduct a hand count in accordance with applicable administrative regulations implemented by the SOS is within the purview of the BCC. The State, through this temporary regulation, has demonstrated its clear intent to exercise authority relating to the procedures for hand counting votes. The most recent temporary regulation permitted each

county to conduct a hand count of the ballots as the primary method of tabulating the results, but only if the county followed certain procedural requirements including submitting a plan to the Secretary of State 30 days before the election detailing how the hand count will be conducted. The temporary regulation governing the hand count detailed, among other things, the number and duties of elections workers to oversee the hand count, the requirement that the hand count be repeated until the results for each contest match exactly twice, and even set forth requirements for the positioning of hand count teams around a table, the manner in which hash marks were to be made, and the writing devices that were permitted to be used to tally.

The SOS has dictated, via regulation, the composition of the election board teams charged with hand counting ballots in regulation. The four members of each election board must not be of the same political party. If Washoe went a step further to require "equitable representation of political affiliations" that would not conflict with the regulations, so this is likely a valid requirement within the purview of the BCC. It's important to note that Nevada recognizes two major political parties and two minor political parties, so there is ambiguity in what "balanced representation" means. It may be impossible to field sufficient election board teams to complete the hand count if each must have one member of each party, including the minority parties, so if the intention is an even split between the major political parties that should be clarified. If each hand count team had to be comprised of people living in the district of the polling place being counted, as that further narrows the pool of workers, although just as the BCC has the authority to limit election workers to county residents, there doesn't appear to be anything in State law that would limit the BCC from requiring workers assigned to certain jobs (hand count teams) to reside within a district.

I need more time to determine if the hand counting can be done at precinct locations (presumably this means polling places/vote centers). There are security requirements and statutorily required plans relating to holding, tracking and monitoring ballots that I need to discuss with Jamie before I can assess if the statutory requirements could be met in dozens of different spaces.

3. **Counting is public and continues without adjournment until completed** – This provision is already codified in state law, so the BCC's reaffirmation of provision by resolution is not problematic.
4. **Ensure ballot counts are not released until last ballot processed** – This is vague as to what "until the last ballot is processed" means but if it means the counts are not released until the final vote has been cast it is consistent with state law and within the purview of the BCC. If "until the last ballot is processed" means prepared for counting and counted, this is contrary to state law. This identical provision was briefed in my last memo.

I can revise the memo from the summer to address these four provisions if that would be helpful. Please just let me know when you need it by.

Thanks,  
Beth

From: Edwards, Nathan <nedwards@dc.washoecounty.gov>  
Sent: Wednesday, December 13, 2023 4:50 PM

**To:** Hickman, Elizabeth <ehickman@da.washoecounty.gov>  
**Subject:** Fw: Attached Image

Hi Beth. New election resolution from Commissioner Herman. I think it is much the same as the one you analyzed already this summer. Could you look this one over and let me know if there is anything that changes regarding the opinion you already wrote on this? Thanks.



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**From:** Brown, Eric P. <EPriceBrown@washoecounty.gov>  
**Sent:** Wednesday, December 13, 2023 2:30 PM  
**To:** Edwards, Nathan <nedwards@da.washoecounty.gov>; Kandaras, Mary <mkandaras@da.washoecounty.gov>  
**Subject:** FW: Attached Image

Just in case you did not get a copy of what Commissioner Herman submitted yesterday...



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**From:** Mgr\_Color\_Copier@washoecounty.us <Mgr\_Color\_Copier@washoecounty.us>  
**Sent:** Wednesday, December 13, 2023 1:15 PM  
**To:** Brown, Eric P. <EPriceBrown@washoecounty.gov>  
**Subject:** Attached Image

