

Smith, Catherine

From: Galassini, Janis L
Sent: Tuesday, February 20, 2024 12:25 PM
To: Smith, Catherine
Subject: FW: Election Resolution Follow-up
Attachments: 2.5.24 Washoe County Letter.pdf; 12-2023 Election Integrity Resolution memo.pdf

24-0081

Please print for me

From: Hill, Alexis <AHill@washoecounty.gov>
Sent: Tuesday, February 20, 2024 12:23 PM
To: Galassini, Janis L <JGalassini@washoecounty.gov>
Subject: FW: Election Resolution Follow-up

Dear Madame Clerk - Please add to the record for today's meeting. Thanks!

Alexis Hill
She/her/hers
Washoe County Commissioner, District 1

From: Hill, Alexis
Sent: Wednesday, February 7, 2024 9:52 AM
To: Herman, Jeanne <JHerman@washoecounty.gov>
Cc: Brown, Eric P. <EPriceBrown@washoecounty.gov>; Edwards, Nathan <nedwards@da.washoecounty.gov>
Subject: Election Resolution Follow-up

Dear Vice Chair Herman –

I hope this email finds you well! I am following up on the resolution you submitted to the Commission on Dec. 12, 2023. As the County Manager and I stated on the record during several BCC meetings after the resolution was submitted, we were waiting to hear back from the DA's legal review team and the Secretary of State's Office for the item to be placed on the agenda. Please see the attached memo titled "12-2023 Election Integrity Resolution memo" from the DA's Office and the letter titled "2.5.24 Washoe County Letter" from the Secretary of State's Office. Per the Washoe County Commission rules of procedures handbook (found at this link at our website - <https://www.washoecounty.gov/bcc/WC%20BCC%20Rules%20of%20Procedure%202022.pdf>), page 1 5.5 "... Nothing in this paragraph shall be construed to require the inclusion of an item on an agenda if the chair makes the determination, after consultation with legal counsel and the Washoe County Manager, that the item should not be placed on the agenda because it substantially conflicts with the law or with the ability of the county to carry out its administrative operations and duties." Although parts of your resolution are legal or under the jurisdiction of the County Commission, as you can see from the Secretary of State's letter, the proposed resolution would conflict with the County to carry out our required administrative operations and duties to conduct elections. Therefore, this item will not be placed on the agenda.

Thank you,
Alexis

Alexis Hill
She/her/hers

2-20-24 BCC #5
Chair Hill



Christopher J. Hicks
District Attorney

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Reno, Nevada 89501

775.337.5700
washoecounty.us/da

MEMORANDUM

TO: Nathan J. Edwards
Assistant District Attorney, Civil Division

FROM: Elizabeth Hickman
Deputy District Attorney

RE: Legal Analysis of Commissioner Herman's Proposed "Clean Elections"
Resolution

Date: January 9, 2023

As requested, and in accordance with NRS 252.160 and 252.170, the District Attorney's Office has done a legal review of Commissioner Herman's proposed "Clean Elections" Resolution (Proposed Resolution). The Proposed Resolution is attached.

The District Attorney's Office previously provided a legal analysis of an Election Integrity Resolution that was presented to the Board of County Commissioner's (BCC) on March 22, 2022. That analysis, titled "3-22-22 Legal Memo and Analysis of Proposed Election Integrity Resolution 2022 Memo," is included in the supporting material attached to the March 22, 2022, BCC Meeting Agenda (2022 Legal Analysis).

As more thoroughly discussed in the 2022 Legal Analysis, elections are highly regulated by federal and state law, and the county's power to act is therefore limited. The Nevada Legislature has enacted comprehensive state laws governing elections. NRS 293; NRS 293B; NRS 293C; NRS 293D; NRS 294A; NRS 295; NRS 298; NRS 304; NRS 306. The Nevada Secretary of State, as the Chief Officer of Elections in the State of Nevada, additionally is empowered to enact regulations to ensure compliance with state and federal law relating to elections. NRS 293.124. The State has enacted permanent regulations and, as necessary, temporary regulations relating to elections. NAC 293; NAC 293B; NAC 293C; NAC 293D; NAC 294A; NAC 295; NAC 298; NAC 304; NAC 306.

As a political subdivision of the state, the county's limited powers are defined by the state. NRS 244.137-244.146 (Modified Dillon's Rule). Although county authority can be broader when the subject at issue is a matter of local concern, as fully discussed in the 2022 Legal Analysis, election

law is not a matter of local concern. Where the subject matter is not a matter of local concern, if there is any doubt about the existence of any power proposed to be exercised by the county, the power is presumed not to exist. If a power is presumed not to exist the county likely does not have the authority to act on that matter by resolution, regardless of the merits of the resolution. If there is nothing in state law creating doubt as to the county's authority, it is then within the purview of the county to consider the resolution on its merits.

In light of that framework, the assertions made in the introductory clauses and each of the Proposed Resolution's provisions are assessed as either being within the purview of the BCC or not being within the purview of the BCC. This memo assesses the law as it exists in Nevada and as it appears to apply to the Proposed Resolution. It does not weigh the wisdom, quality, or soundness of any provision versus what is provided for, or not provided for, in Nevada Law. Those are policy decisions that belong to the appropriate law makers.

I. Legality of the Introductory Clauses

The Proposed Resolution begins with a recitation of nine "whereas" clauses. Only the following two present legal concerns¹:

A. WHEREAS, the Board of County Commissioners recognizes the State administrative code as useful guidance for election processes while allowing each county latitude over many aspects of elections conducted by their own county.

The Nevada Secretary of State is the Chief Officer of Elections for Nevada. NRS 293.124(1). The Secretary of State is charged with the execution and enforcement of all state and federal laws relating to elections in Nevada, and the Secretary of State has been mandated to adopt "such regulations as are necessary" to carry out his duties. NRS 293.124(2).

When administrative regulations are mandated by the legislature and adopted in accordance with statutory procedures, they have the force and effect of law. NRS 233B.040(1); *Turk v. Nevada State Prison*, 94 Nev. 101, 104 (1978). The State has adopted a significant number of permanent regulations, codified in Nevada Administrative Code, governing elections. NAC 293; NAC 293B; NAC 293C; NAC 293D; NAC 294A; NAC 295; NAC 298; NAC 304; NAC 306.

Insofar as the Proposed Resolution makes the assertion that the provisions of Nevada Administrative Code adopted to ensure compliance with state and federal election laws are "useful guidance," rather than mandatory requirements the County must follow, it is not a legal provision.

The County's power to act in election matters is limited and is defined by the State. To the extent the State has demonstrated its intent to regulate specific election matters, whether by statute or regulation, it calls into doubt whether the matter is within the County's purview. When doubt exists, the County's power is presumed not to exist.

Insofar as the Proposed Resolution makes the assertion that the County has "latitude over many aspects of elections conducted by their own county" despite conflicting administrative regulations,

¹ The factual accuracy and policy choices asserted in the introductory clauses are determinations left to the discretion of the BCC. This memo only assesses whether the BCC has the legal authority to take action on each matter by resolution.

it is not a legal provision.

This introductory clause makes two assertions that may be ambiguous, but can be interpreted as contrary to law. Because the clause conflicts with state law, this provision is not within the purview of the BCC.

B. WHEREAS, State law has mandated mail ballots and a uniform standard for counting and recounting all votes accurately as provided by law and it would only be prudent for Washoe County to eliminate all other forms of ballots.

NRS 293.269911(1) requires the Registrar of Voters to send a mail ballot to each active registered voter in the County. However, eliminating all other forms of ballots would be in direct conflict with multiple provisions of State law and is, therefore, not within the purview of the BCC.

NRS 293.269911(2) allows a voter to elect not to receive a mail ballot. If a Washoe County voter elected not to receive a mail ballot, as permitted by state law, they would be deprived of their right to vote if Washoe County eliminated all forms of ballots except mail ballots. This is clearly contrary to State law.

Mail ballots are not mailed to voters that update their registration or register to vote within 14 days of an election. NRS 293.269911(1). However, Nevada law permits a person eligible to vote to register and cast their ballot in person during early voting and up to and including on election day. NRS 293.5242; NRS 293.5847. These eligible electors would not be able to vote if Washoe County eliminated all forms of ballots except mail ballots.

The Uniformed Military and Overseas Absentee Voters Act allows covered voters to receive a military-overseas ballot electronically and to vote using a system of approved electronic transmission. NRS 293D.320. An elector with a disability is also permitted to use the system of approved electronic transmission to vote electronically. NRS 293.269951. State law also requires a mechanical recording device to be available at every polling place for use by a voter with a disability. NRS 293.2955. The introductory clause in the Proposed Resolution suggesting elimination of all forms of ballots except mail ballots conflicts with numerous provisions of State law. As such, this provision is not within the purview of the BCC.

II. Legal Analysis of the Terms of the Proposed Resolution

A. Commitment to using paper ballots only.

NRS 293B.050 provides, “At all statewide, county, city and district elections of any kind held in this State, ballots or votes may be cast, registered, recorded and counted by means of a mechanical voting system.” This language is permissive, though, and does not require the use of a mechanical voting system to cast votes. Just as every active registered voter in Nevada is mailed a paper ballot each election, there is nothing in State law that would preclude the use of paper ballots for all votes cast in Washoe County, provided an exception is made for voters covered by the Uniformed Military and Overseas Absentee Voters Act and disabled voters.

As previously discussed, voters covered by the Uniformed Military and Overseas Absentee Voters Act must be permitted to vote using a system of approved electronic transmission. NRS 293D.320.

A voter with a disability must also have the option to vote using the system of approved electronic transmission. NRS 293.269951. Last, even if Washoe County chose to use only paper ballots, an exception must be made and Washoe County would be required to ensure a mechanical recording device is available at every polling place for a person with a disability to use to vote. NRS 293.2955.

It is within the purview of the BCC to commit to using paper ballots in Washoe County, provided exceptions are made to ensure compliance with law insofar as voters with a disability must have access to a mechanical recording device and both covered voters under the Uniformed Military and Overseas Absentee Voters Act and disabled voters are able to utilize a system of approved electronic transmission to vote.

B. Ensure paper ballots are cast and hand counted at precinct locations by employees who are residents of that district with equitable representation of major political affiliations.

a. Ensure a hand count of election results.

State law authorizes the use of a mechanical voting system to electronically tabulate the results of an election, regardless of whether ballots are cast electronically or using a paper ballot. NRS 293B.033. State law also authorizes each county clerk, in consultation with the board of county commissioners, to choose to hand count ballots voted in an election. Adopted Regulation R200-22. Determining whether to use a mechanical voting system to electronically tabulate results or whether to conduct a hand count to tabulate results is specifically within the purview of the BCC.

Of note, however, the procedures relating to a hand count of ballots voted in an election are strictly governed by Nevada Administrative Regulation R200-22, which was adopted as a permanent regulation in 2023. The County must notify the Secretary of State of the intent to conduct a hand count 90-days before an election, must provide the Secretary of State with a detailed plan and contingency plan, and must follow the strict procedures set forth in code prescribing with specificity how the hand count must be conducted. It is critical to distinguish that although the decision to conduct a hand count of ballots voted is within the purview of the BCC, the processes and procedures that must be followed to carry out a hand count is set in code and is not within the purview of the BCC.

b. Conduct the hand count at precinct locations by employees that are residents of that district.

When a county elects to conduct a hand count, among the information that must be provided to the Secretary of State is, “The physical location where the ballots will be hand counted and a scale diagram depicting the planned setup of the location.” Adopted Regulation R200-22, Sec. 3.4. Because the regulation governing a hand count contemplates a single physical location where the hand count is to occur, it would be contrary to law to conduct the hand count at various precinct locations. Because any hand count will occur at a single location, employees will not be able to be separated by district. This provision is not within the purview of the BCC.

c. Ensure equitable representation of major political affiliations on hand count tally teams.

A county that chooses to tabulate election results by hand must assemble a sufficient number of hand count tally teams to ensure the hand count is completed by the date required for the canvass of returns. Adopted Regulation 200-22, Sec. 4.1. Each hand count tally team must consist of at least four members, and up to six members, and the members must not all be of the same political party. *Id.* The adopted regulation specifically provides that, to the extent practicable, at least one election board officer on each hand count tally team must be a registered voter whose political party affiliation is nonpartisan. *Id.*

State law requires that all members of a hand count tally team cannot be from the same party, so it would not be contrary to law for Washoe County to require that the major political parties be equally represented on hand count tally teams, provided the County also ensures at least one member of each hand count tally team is registered as nonpartisan, as required by Adopted Regulation 220-22, Sec. 4. If the inclusion of a non-partisan member on each hand count tally team is incorporated, this is likely a valid provision within the purview of the BCC.

C. Ensure the counting procedure is public and continues without adjournment until completed (NRS 293.363).

NRS 293.363(1) provides, “The counting procedure must be public and continue without adjournment until completed.” Because this provision is already codified in state law, the county’s reaffirmation of the provision by resolution is consistent with state law. This provision is valid and within the purview of the BCC.

D. Ensure ballot counts are not released until the last ballot is processed (NRS 293.269935, 293.3606, 293.365, 293.383, 293.2546, and 293.710).

This provision is vague because it is unclear what is meant by “until the last ballot is processed.” If this provision is intended to ensure election results are not publicly released until the last vote is cast, the provision is consistent with state law, valid, and within the purview of the BCC. However, if the provision is intended to ensure no results are publicly released until the last ballot is processed, as in prepared for counting and counted, this provision violates state law, is invalid, and is not within the purview of the BCC.

Election results cannot be publicly released until all polling locations are closed and all votes have been cast. NRS 293.269935 (no voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election); NRS 293.3606 (the returns for early voting must not be reported until after the polls have closed on election day); NRS 293.383(3) (tabulated voting results for a statewide or multicounty race or ballot question shall not be posted until the county clerk has received notification from the Secretary of State that all polling places are closed and all votes have been cast). A provision in a resolution that ensures all election results are not released until the last vote is cast is consistent with State law and within the purview of the BCC.

After polls close and the last vote is cast, county clerks are required to post mechanically tabulated

results as soon as possible at the counting facility. NRS 293.383(2). These results are required by law to be released even though many ballots have not yet been processed, in the sense that they have not been received, prepared for counting, and/or counted. For example, NRS 293.3085(2)(a) prohibits the inclusion of any provisional ballot in the unofficial results reported on election night. NRS 293.3085(2)(b) prohibits the opening of any envelope containing a provisional ballot before 8 a.m. on the Wednesday following election day. NRS 293.269921 provides that mail ballots may be counted for an election if it is postmarked on or before election day and received by the clerk not later than 5 p.m. on the fourth day following the election. State law requires publicly releasing unofficial results on election night, but many ballots are processed over the subsequent days. If “processed” means received, prepared for counting, and/or counted, it would be contrary to state law to ensure no election results were released before the last ballot is processed. A resolution to this effect would not be within the purview of the BCC.

In conclusion, the BCC’s authority is likely as follows:

Introductory Clauses:

WHEREAS, the Board of County Commissioners recognizes the State administrative code as useful guidance for election processes while allowing each county latitude over many aspects of elections conducted by their own county.

- Not within the purview of the BCC

WHEREAS, State law has mandated mail ballots and a uniform standard for counting and recounting all votes accurately as provided by law and it would only be prudent for Washoe County to eliminate all other forms of ballots.

- Not within the purview of the BCC

Provisions of the Proposed Regulation:

Commitment to using paper ballots only.

- Within the purview of the BCC, provided an exception is acknowledged for voters covered under the Uniformed Military and Overseas Absentee Voters Act and disabled voters.

Ensure paper ballots are cast and hand counted at precinct locations by employees who are residents of that district with equitable representation of major political affiliations.

- Exercising power over the procedures for a hand count is not within the purview of the BCC; however, electing to conduct a hand count as the primary method of tabulating votes, in accordance with applicable State regulations, is within the purview of the BCC.
- Conducting the hand count at precinct locations by employees who are residents of that district is not within the purview of the BCC.
- Ensuring equitable representation of major political affiliations on each hand count tally team is within the purview of the BCC, provided at least one election board officer on each hand count tally team is registered nonpartisan, to the extent practicable.

Ensure the counting procedure is public and continues without adjournment until completed (NRS 293.363).

- Within the purview of the BCC

Ensure ballot counts are not released until the last ballot is processed (NRS 293.269935, 293.3606, 293.365, 293.383, 293.2546, and 293.710).

- Within the purview of the BCC if “last ballot is processed” means polls are closed and the last vote has been cast.
- Not within the purview of the BCC if “last ballot is processed” means the last eligible ballot has been received, prepared for counting, and counted.

J

RESOLUTION: _____

Clean Elections

WHEREAS, the Board of Commissioners of Washoe County has received overwhelming public comment that expressed a desire for a commitment to clean, accurate, secure, and prudent elections;

WHEREAS, pursuant to NRS 244.164 and WCC 5.451, the Board of County Commissioners of Washoe County created the office of Registrar of Voters, and appointed a Registrar of Voters to assume all of the powers and duties vested in and imposed upon the Clerk of the county with respect to elections, except the duties imposed by virtue of NRS 293.393 to make out and deliver certificates of election;

WHEREAS, the Board of County Commissioners recognizes the authority of State and Federal law over many aspects of elections conducted by Washoe County;

WHEREAS, the Board of County Commissioners recognizes the State administrative code as a useful guideline for election processes while allowing each county the latitude over many aspects of elections conducted by their own county;

WHEREAS, State law has mandated mail ballots and a uniform standard for counting and recounting all votes accurately as provided by law and it would only be prudent for Washoe County to eliminate all other forms of ballots;

WHEREAS, the Board of Commissioners of Washoe County recognizes a national paper shortage and seeks to reduce costs expended on mail ballots through the accuracy of active voter registration list and the desire of voters to receive a ballot by mail;

WHEREAS, the Board of Commissioners of Washoe County is committed to consistently deactivating ineligible records within its voter database according to NRS 293.503 and provide transparency of active voter records at a nominal cost to ensure fraudulent records do not reappear;

WHEREAS, the Board of Commissioners of Washoe County is committed to the elimination of end of life equipment and all unreliable and/or compromised election equipment; and

WHEREAS, the Board of Commissioners of Washoe County is committed to the transparency, equity, accuracy, security, and fiscal responsibility within processes and procedures of its elections.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY,

Washoe County elections shall be conducted in a manner that best serves local interests, follows the law, ensures accuracy and security, reduces opportunities of fraud, reduces outside influences, ensures fiscal responsibility, ensures the ascertainment by proper proofs of persons entitled to the right of suffrage, and preserves the purity of elections which may include the following:

- Commitment to using paper ballots only.
- Ensure paper ballots are cast and hand counted at precinct locations by employees who are residents of that district with equitable representation of major political affiliations.
- Ensure the counting procedure is public and does not begin until the counting can continue without adjournment until completed (NRS 293.363)
- Ensure ballot counts are not released until the last ballot is processed (NRS 293.269935, 293.3606, 293.365, 293.383, 293.2546, and 293.710)

Adopted this 19th day of December 2023

Alexis Hill, Chairman
Washoe County Commissioner

ATTEST:

County Clerk

Draft Staff Report

SUMMARY

This matter is brought to the Board's attention to publicly set forth on the record challenges within the current system of voter registration and processing of ballots in Washoe County which have been shown to be inadequate in meeting various requirements of the Nevada Revised Statutes, Nevada Administrative Code, Nevada Constitution, and federal laws. This item requests the Board to approve resolution authorizing measures for the same.

Washoe County Strategic Objective supported by this item:

Fiscal Sustainability – Long-Term Sustainability & Efficient Delivery of Regional Services

Economic Impacts – Meet Needs of Growing Community & Support a Thriving Community

Innovative Services – Strengthen Our Culture of Service & Promote Experimentation & Innovation

PREVIOUS ACTION

On July 12, 2023, Washoe County District Attorney provided a legal analysis of one of the resolutions that presented no barriers to commissioners' ability to enact items in the resolution.

On June 20, 2023, Commissioner Herman presented the Board of Commissioners two resolutions to be placed on a future agenda. Neither have been placed on any agenda.

On February 22, 2022, the Board of Commissioners of Washoe County failed to pass a resolution to address the challenges within Washoe County's elections.

BACKGROUND

The Board of Commissioners of Washoe County consistently receives significant public comment expressing a desire to adopt proposals related to the accuracy, security, and transparency of elections.

Pursuant to NRS 244.164 and WCC 5.451, the Board of County Commissioners of Washoe County created the office of Registrar of Voters and appointed a Registrar of Voters to assume all the powers and duties vested in and imposed upon the Clerk of the county with respect to elections, except the duties imposed by virtue of NRS 293.393 to make out and deliver certificates of election.

The Board of County Commissioners recognizes the authority of State and Federal law over many aspects of elections conducted by Washoe County, such as, but not limited to:

Observation (NRS 293.274)	ID requirements (NRS 293.277)
NVDMV registration (NRS 293.524)	Same day registration (NRS.8837)
Early Voting (NRS 293.356)	Ballot harvesting (NRS 293.8864)
ADA provisions (NRS 293.2955)	Recounts (NRS 293.480)
Mail ballots (NRS 293.8844)	Voter challenges (NRS 293.535)
Recounts (NRS 293.404)	Electronic Systems (NRS 293B)

Washoe County also recognizes the Nevada Administrative codes which serve as suggested guidelines for counties in the processes and procedures of their elections. However, there are no penalties for not following the guidelines. This leave latitude for counties to conduct their elections according to the needs and desires of their communities.

Washoe County also recognizes its responsibility to conduct its elections in a manner that follows the law and ensures accuracy and security, reduces opportunities of fraud, reduces outside influences, ensures responsible use of taxpayer dollars and resources, ensures the ascertainment by proper proofs of persons entitled to the right of suffrage, and preserves the purity of elections (Nevada Constitution, Sec. 6). It is recommended that a Resolution be adopted in support of that position and direct measures to be implemented as allowed by law.

Washoe County tax records are 99% pristine, whereas our voter rolls are not. By using the tax records, we can remove all "illegal" voters, as per what the NRS allows for voter property types. This could eliminate at least 11,000 illegal voters.

Washoe County is responsible for maintaining its own voter rolls without influence of third party companies prone to political agendas which may subject Washoe County's data to interference. With fewer than 300,000 legitimate voters and only about 100,000 votes in our elections, 1-2 county workers can easily maintain a list this small, ensuring the county is in control of its own roles and accountable to its voters.

Automatic Voter Registration (AVR) has inadvertently added voters who do not wish to be voters, including people who have moved, died, or lost interest in voting. Allowing people to choose to vote or not will save the county millions of dollars by reducing the number of unwanted ballots and election material mailed out. It also empowers people to decide how they want to vote. The same-day registration and voting is currently allowed by law for those who fail to return the Voter Notification Card, but still wish to vote.

There are numerous nationwide instances of machine counting errors and machines being down, disenfranchising voters altogether by not allowing them to vote. Washoe County averages less than 120,000 ballots to process. Counting them by hand at the precinct level, at several locations, can have all the votes counted a few hours after the

polls close. Decentralizing the counting process greatly increases the efficiency and reliability of the results. Counting went from one day to nearly 6 weeks once machines were introduced. Removing the machines will save tens of millions of dollars and add transparency and reliability into the counting and election process as a whole. Power returns to the people and not one or two people.

Law mandates paper ballots to be mailed/issued to every active voter. It is a mandated cost that does not need to be exasperated by the costs associated with electronic ballots and creating a whole other set of standards, contrary to the Voter Bill of Rights.

Allowing voters to vote in their own precincts or nearby neighborhoods adds convenience and distributes the workload among voters in those precincts, reducing the ROV workload.

Reducing equipment and supplies at polling locations reduces liability and opportunities for error. Providing a ballot receipt at the drop box provides accountability and assurance to voters that their vote is processed legitimately. It offers the best of both worlds for those who don't want to mail their ballots.

Employing local voters from Washoe County to count votes stimulates the local economy and reassures voters that their votes are being counted by neighbors, not strangers.

The public vote counting is not currently happening in Washoe County according to law. Allowing voters to witness their votes being counted and reported in public ensures proper handling and counting while protecting the secrecy of the voter's vote. Once the ballot is removed from the envelope, there is nothing linking that ballot to a particular voter.

Banks have great standards ensuring signatures match. Washoe County must ensure the people's right to suffrage is handled legitimately. People will still have the ability to cure signatures as they do now under law.

Adjourning before the count is complete is not only a violation of the law, it results in errors and disinformation. Washoe County absolutely should not begin counting until it can be assured it can be completed without adjournment.

Releasing partial counts or any information about the counts (ie Democrat, Republican, Non-partisan, etc.) is the very definition of voter suppression, coercion, and election interference; all things that are in violation of election laws. Any election count or result shall absolutely not be released until all ballots have been received.

Election employee burnout has long been an issue that continues to be ignored. It is unrealistic to expect employees to perform their duties to the best of their ability when worked beyond reason. Washoe County is also discriminating against the majority of

the citizenry by demanding a commitment to 14 days straight. Dual and split shifts must be implemented both inside the office and at the polling locations.

Further trust of the voters might be obtained by having each commissioner announce the results for their district.

LAWS ENABLING THESE CHANGES:

Counties in Nevada have the authority to choose the systems and methods used to cast, transport, record, count, tabulate, adjudicate, report, and store ballots:

Nev. Const. Art 2 Sec 6: Registration of electors; test of electoral qualifications. Provision shall be made by law for the registration of the names of the Electors within the counties of which they may be residents and for the ascertainment by proper proofs of the persons who shall be entitled to the right of suffrage, as hereby established, to preserve the purity of elections, and to regulate the manner of holding and making returns of the same; and the Legislature shall have power to prescribe by law any other or further rules or oaths, as may be deemed necessary, as a test of electoral qualification.

Nev. Const. Art 4 Sec 20: Certain local and special laws prohibited. The legislature shall not pass local or special laws in any of the following enumerated cases—that is to say:

Regulating the election of county and township officers;

Providing for opening and conducting elections of state, county, or township officers, and designating the places of voting;

NRS 244.194: Boards of county commissioners may rent, lease or otherwise acquire voting or counting devices in whatever manner will best serve local interests.

NRS 293B.105 General authority.

The board of county commissioners of any county or the city council or other governing body of any city may purchase and adopt for use at elections any mechanical voting system and mechanical recording device. The system or device may be used at any or all elections held in the county or city, for voting, registering, and counting votes cast.

293B.110 Adoption of different systems or devices for different precincts or districts.

A mechanical voting system or mechanical recording device may be adopted for some of the precincts or districts in the same county or city, while the remainder of the precincts or districts in that county or city may be furnished with paper ballots or any other mechanical voting system or mechanical recording device.

N.R.S. 293.269925 Establishment of procedures for processing and counting mail ballots. The county clerk shall establish procedures for the processing and counting of mail ballots. The procedures established pursuant to subsection 1:
(a) May authorize mail ballots to be processed, verified and counted by computer or other electronic means;

N.R.S. 293.3075, 6. If the ballot is voted on a mechanical recording device which directly records the votes electronically, the election board officer shall. . . .
Exception to county choice, N.R.S. 293.2955:

- (a) (2) (IV) Equipped with a mechanical recording device which directly records the votes electronically and which may be used by a voter with a disability; and
- (b) Provide ballots in alternative audio and visual formats for use by a voter who is elderly or a voter with a disability; and
- (c) Provide, in alternative audio and visual formats for use by a voter who is elderly or a voter with a disability, all materials that are:
 - (1) Related to the election; and
 - (2) Made available to a voter in printed form at the polling place.

As an alternative to carrying out the functions described in subsection 3, if, in the opinion of the county clerk, the needs of voters who are elderly or disabled requiring the use of specially equipped voting devices will be best served by placing such devices at centralized voting locations, the county clerk may so provide. If the county clerk provides for the placement of specially equipped voting devices at centralized locations, a voter who is elderly or disabled and requires the use of such a device to be able to cast a ballot without assistance may cast his or her ballot at any centralized voting location designated by the county clerk.

Section 288.110 – Elections, Nev. Admin. Code § 288.110

“1. All elections conducted pursuant to chapter 288 of NRS will be conducted under the supervision of the Board or its agent.”

Section 293C.150 – Conduct of voting, Nev. Admin. Code § 293C.150

“The number of replacement ballots that may be issued to a voter who spoils his or her ballot may be decided, in good faith, by the election board. (b) The chair of the election board shall make a record of the cancelled ballots.”

“After the completion of an election: (a) In polling places in which a mechanical voting system is not used, ballot boxes must be returned by the chief law enforcement officer of the city or representative of the city clerk and placed by him or her in a secure storage area designated and provided by the city clerk. (b) In polling places in which a mechanical voting system is used, all ballots and paper records of VVPATs must be returned by the chief law enforcement officer of the city or representative of the city clerk and placed by him or her in a secure storage area designated and provided by the city clerk.”

Section 293.160 – Conduct of voting, Nev. Admin. Code § 293.160

"1. The chair of the election board shall designate the officer of the election board who is to make the proclamation required pursuant to NRS 293.273. That officer shall make the proclamation at the entrance or inside of the polling place."

"The board of county commissioners shall prepare abstracts of votes on a form which was submitted by the county clerk to and approved by the Secretary of State. Nev. Admin. Code § 293.160 Sec'y of State, Conduct of Elections Reg. §§A-22 – A-34, eff. 2-28-80-NAC A 7-18-88; 3-22-94; R217-97, 5-26-98; R072-06, 7-14-2006; A by R089-21A, eff. 2/22/2022 NRS 293.124, 293.247, 293.273"

Section 293B.040 – Security of ballots, results cartridges and VVPATs, Nev. Admin. Code § 293B.040

"Except as otherwise provided in this subsection, each county clerk shall, not later than the 90th day before the primary election, submit to the Secretary of State for approval a plan to carry out the provisions of paragraph (l) of subsection 3 of NRS 293.247 concerning the procedures to be used to ensure the security of the ballots, results cartridges and VVPATs."

Section 293B.090 – Testing of equipment and programs; reporting and correction of certain errors; use of mechanical recording devices which directly record votes electronically, Nev. Admin. Code § 293B.090

"170, inclusive, the county clerk in a county using a mechanical voting system shall ensure that each mechanical recording device which directly records votes electronically, each VVPAT and the automatic tabulating equipment and programs to be used in the election will accurately record the votes cast for all offices and on all measures by completing the tests required pursuant to this section and chapter 293B of NRS."

Section 293.250 – Procedures after voting, Nev. Admin. Code § 293.250

"The chair of an election board is responsible for the safe delivery of the ballots and VVPATs to the central place designated by the county clerk for the counting of ballots, except that a ballot pick-up board, if established, is responsible for the delivery."

Section 293.480 – [Effective through 12/31/2023] Requirements; participation in pilot program for 2022 Primary Election and 2022 General Election, Nev. Admin. Code § 293.480

"That has conducted a risk-limiting audit of a previous election may conduct a risk limiting audit of the 2022 Primary Election. (c) Must conduct a risk-limiting audit of the 2022 General Election."

"Each county clerk conducting a risk-limiting audit of an election shall randomly select one race for countywide office to be audited at the election using a method determined by the county clerk in which all races for countywide office on the ballot at the election have an equal chance of being selected. The county clerk must notify the Secretary of

State which race for countywide office has been selected for the risk-limiting audit at least 15 days before the date of the election."

Section 293.225 – Procedures regarding election supplies and manner of voting for each polling place, Nev. Admin. Code § 293.225

"The county clerk may prepare for each polling place any additional supplies he or she considers necessary or desirable for carrying out the election."

"At each polling place within the county, the county clerk shall allow voters to vote their ballots conveniently and in a manner that allows their voting to be protected from the view of others."

The tabulating of mail ballots can begin 15 days before the election, NRS 293.269931(1), and counting early voting ballots can be commenced after 8 a.m. on election day, NRS 293.3606(1). The counting of the ballots must be done in public.

NRS 293.269931(1) ("The counting procedure must be public."); NRS 293.3606(1) (specifying that counting must be done "in public"). Despite allowing counting to begin before all votes are cast, the statutory schemes governing both types of ballots expressly prohibit the release or public dissemination of results before the polls have closed. NRS 293.269935(3); NRS 293.3606(5). The county clerk is responsible for establishing procedures for counting mail ballots that do not conflict with the prohibition against prematurely releasing results in NRS 293.269935. NRS 293.269925(1) & (2).

NRS 293.269935(3) reads as follows: "No voting results of mail ballots may be released until all polling places are closed and all votes have been cast on the day of the election. Any person who disseminates to the public in any way information pertaining to the count of mail ballots before all polling places are closed and all votes have been cast on the day of the election is guilty of a misdemeanor."

NRS 293.3606(2) and (5) provide, respectively, as follows: "The returns for early voting must not be reported until after the polls have closed on election day." "Any person who disseminates to the public information relating to the count of returns for early voting before the polls close is guilty of a gross misdemeanor."

Washoe County has the authority to hand count ballots. The case of *Progressive Leadership All. of Nev. v. Cegavske* discusses a regulation that allows counties in Nevada to hand count votes as their primary vote count method. The court ultimately upheld the regulation, which suggests that Washoe County could rely on it as a basis for hand counting ballots.

Additionally, the cases of *Hawkins v. Blunt* and *Sandusky County v. Blackwell* both discuss the flexibility that states have in implementing the Help America Vote Act

(HAVA). This flexibility could provide a basis for Washoe County's decision to hand count ballots, as it would be within the state's discretion to choose this method.

The case of Am. Civil Liberties Union of Nev. v. The Cnty. of Nye also discusses a regulation in Nevada that governs the use of hand-count methods for tabulating ballots. This regulation could provide another basis for Washoe County's authority to hand count ballots.

The DA's own internal memo states most of this can be done. Let me know if you need a copy.

FISCAL IMPACT

Increased labor costs will be offset by reduced costs associated with maintenance, management, and replacement of electronic systems.

RECOMMENDATION

It is recommended that the Board accept this resolution and direct the Registrar of Voters office to provide estimated cost savings and increases associated with proposed changes to process improvements..

POSSIBLE MOTION

Should the Board agree with this resolution, a possible motions would be, "Move to accept the Clean Election Resolution and direct the Registrar of Voters to implement procedures enforcing policies by the 2024 Primary election."

FRANCISCO V. AGUILAR
Secretary of State

STATE OF NEVADA

GABRIEL DI CHIARA
Chief Deputy Secretary of State

MAGGIE SALAS CRESPO
Deputy Secretary for Southern Nevada



ERIN M. HOUSTON
Deputy Secretary for Securities

SHAUNA BAKKEDAHL
Deputy Secretary for Commercial Recordings

MARK A. WLASCHIN
Deputy Secretary for Elections

**OFFICE OF THE
SECRETARY OF STATE**

DEBBIE I. BOWMAN
Deputy Secretary for Operations

Manager Brown,

Senior staff in the Secretary of State’s office, as well as our counsel with the Office of the Attorney General, have reviewed the draft resolution at your request.

First and foremost, it’s important that we highlight that the legal review provided by the Washoe County District Attorney’s office is accurate¹: much of the text of the resolution is unviable, as it seeks to adjust policy at a county level that is clearly incompatible with applicable statutes and regulations. As such, even if the item were to be brought forward and passed, it would not be actionable. Contrary to the opinion of the staff report’s author, the Nevada Administrative Code is not a collection of ”suggested guidelines” that can be disregarded without penalty; they carry the full weight of law.

The Secretary is committed to keeping Nevada’s elections transparent, secure, and accessible. It’s important that Nevadans, regardless of the county they reside in, can trust that the electoral process is executed pursuant to state and federal law. For this reason, the Secretary will not hesitate to fulfill his statutory duty to enforce all elections laws to ensure that each county is complying with state and federal elections requirements.

The memo from the District Attorney’s office clearly states that it does not weigh the wisdom, quality, or soundness of any provision in the draft resolution. As the resolution implicates state-level policy decisions, and you have requested our input, it is appropriate for the Secretary of State’s office to weigh in on those matters.

Our opinion is the resolution, and the attached draft staff report, are full of legal, technical, and procedural inaccuracies. Our office has addressed these inaccuracies, and others like them, at length under both Democratic and Republican Secretaries.

¹ We note that in addition to the covered individuals identified in the memo that would need an exception to using paper ballots only, an exception would also need to be made for registered voters who are tribal members and who reside on an Indian reservation or colony. See Senate Bill 216 (2023) § 3.5(b)(2).

#10
BCC
Mike Clark
2-16-24

We are highly concerned that such inaccuracies reduce faith in the democratic process.

As such, going through each of the inaccuracies in the resolution and staff report would not be a sensible exercise. We are engaged in assisting each of Nevada's 17 counties in lawfully conducting the Presidential Preference Primary, and cooperating with them on ensuring that both statute and regulation are carried out. Secretary of State staff is working hand in hand with clerks and registrars, including the hard-working team in Washoe County who are doing a remarkable job of administering an election through extreme adversity. We would hope that anyone seeking to change the administration of elections would make those changes through the legislative process, and not through attempting to undermine their clerk or registrar.

We hope this letter has been helpful, and that we can continue to assist Washoe County, your Registrar, and all of your voters to the best of our abilities.

Respectfully,

Francisco V. Aguilar
Secretary of State

By: 
Gabriel Di Chiara, Chief Deputy

RESOLUTION: _____

Ballot Count Resolution

WHEREAS, the Board of Commissioners of Washoe County has received overwhelming public comment that expressed a desire for a commitment to clean, accurate, secure, and prudent elections;

WHEREAS, the Board of County Commissioners recognizes the authority of State and Federal law over many aspects of elections conducted by Washoe County, as well as the State administrative code as a useful guideline for election processes while allowing each county the latitude over many aspects of elections conducted by their own county;

WHEREAS, State law has mandated mail ballots and a uniform standard for counting and recounting all votes accurately as provided by law and it would only be prudent for Washoe County to conduct parallel counts; and

WHEREAS, the Board of Commissioners of Washoe County is committed to the transparency, equity, accuracy, security, and fiscal responsibility within processes and procedures of its elections.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY,

Washoe County elections shall be conducted in a manner that best serves local interests, follows the law, ensures accuracy and security, reduces opportunities of fraud, reduces outside influences, ensures fiscal responsibility, ensures the ascertainment by proper proofs of persons entitled to the right of suffrage, and preserves the purity of elections which may include the following:

- Commitment to utilizing hand counts in parallel to electronic counts.

Adopted this 27th day of February, 2024

Alexis Hill, Chairman
Washoe County Commissioner

ATTEST:

County Clerk

2-20-24 BCC #5
Commissioner Clark



Tretton, McLean top 2022 season's North 5A All-League softball

SPORTS, 1B

RENO GAZETTE JOURNAL



ONLINE AT RGJ.COM | TUESDAY, MAY 24, 2022

PART OF THE USA TODAY NETWORK



In 2007, not long before Las Vegas' frenzied real estate market imploded, Nevada lawmakers approved a seemingly minor tweak to a tax law. The change ensured property owners could use a range of entities when shifting real estate to an affiliate to exempt these transactions from transfer taxes, according to an investigation by the Las Vegas Review-Journal. L.E. BASKOW/LAS VEGAS REVIEW-JOURNAL VIA AP

UNINTENDED SWEETENER?

Oops! Washoe mail-in ballots have faulty envelope instructions

Mark Robison
Reno Gazette Journal
USA TODAY NETWORK

Washoe County's mail-in ballots contain a mistake in their instructions.

When putting your completed ballot in the envelope, the instructions say, "Do not tape or seal this envelope."

That's because the plan had been to have self-adhesive envelopes. This didn't happen.

Here's an email conversation with Washoe County spokesperson Candee Ramos to learn more.

RGJ: Why is the envelope instruction incorrect?

WC: There was miscommunication with the vendor that the product would be a peel and seal (self-adhesive strip). The final product did not include the peel and seal.

RGJ: How should people seal their ballots?

WC: Voters can choose to lick their envelope, place Scotch tape to seal it, or use a glue stick. It is not recommended to use liquid glue or any kind of tape that would cover their signature on the other side of the flap.

RGJ: If someone doesn't feel comfortable dropping their ballot in the mail, where else can they take the envelope – and what days and hours?

WC: They may visit the Registrar of Voters office at 1001 E. Ninth St., Building A, any day of the week between 8 a.m. and 5 p.m., including weekends. They may also choose to wait until the early voting period begins – Saturday, May 28 – and take their ballot to any Vote Center and hand it in there.

The following are instructions from the Washoe County registrar of voters:

Remember to put only one ballot per envelope or

SWEETENER?

Newspaper: 2007 Nevada tax change cut cost of property deals

ELI SEGALL
Las Vegas Review-Journal

LAS VEGAS — In 2007, not long before Las Vegas' frenzied real estate market imploded, Nevada lawmakers approved a seemingly minor tweak to a tax law.

The change ensured property owners could use a range of entities when shifting real estate to an affiliate to exempt these transactions from transfer taxes, according to an investigation by the Las Vegas Review-Journal.

Since then, the exemption has been cited in several lucrative deals on or near the Las Vegas Strip resort corridor — and an attorney who lobbied for the change indicated recently that this trend wasn't the intent of the legislation.

At the time, a lobbyist for a Las Vegas developer did not pitch this as a way to help people avoid transfer taxes in lucrative purchases, but as a way for real estate investors to avoid being taxed more than once in certain land deals.

Overall, at least two dozen or so transactions in the Las Vegas area, totaling \$27.5 billion, have closed since 2007 without any publicly reported real estate transfer taxes, according to a Review-Journal report titled "How Las Vegas' biggest real estate deals result

See TAX, Page 2A

The following are instructions from the Washoe County registrar of voters:
Remember to put only one ballot per envelope or else neither will be counted.
Nevada's primary election day is Tuesday, June 14.

See BALLOTS, Page 3A

USA TODAY

Biden: Military an option if China invades Taiwan

President Joe Biden, at a news conference Monday in Tokyo, said "yes" when asked if he was willing to get involved militarily to defend Taiwan if China invaded. "That's the commitment we made," he added. 9A

Lessons along a river

The Confederated Salish and Kootenai Tribes' River Honoring brought about 400 children a day on Tuesday and Wednesday to the Flathead River outside of Moiese, Montana, for its largest turnout since 2019. The goal was to teach children about the river and natural resource programs. Family, 5B

TODAY'S HIGHLIGHT BUSINESS, 8A



Last summer, a group of ambitious friends banded together to open Huntsman's Brewing inside one of downtown Reno's oldest buildings. Just nine months later, they're shutting it down.

Who is funding Washoe school board trustee candidates?

Kristin Oh
Reno Gazette Journal
USA TODAY NETWORK

From labor unions and elected officials to Washoe County residents, here are the people and organizations supporting Washoe County School Board Trustee candidates.

The following information is from the candidates' latest contributions and expense reports filed with the Nevada Secretary of State's Office, which covers Jan. 1 to March 31. It was due on April 15. The second contributions and expense report will be due on July 15 and will cover the donations and expenses reported from April 1 to June 30.

All candidates across the state are required to file an electronic C&E report four times per election cycle.

Elected officials are required to submit one annually.

The report requires candidates to list the type of contribution they received, such as if it was received as a loan or if they received any monetary donations in excess of \$100. Candidates must also list the type of expense they made, such as whether the total monetary expense was paid in excess of \$100 or less than \$100.

The reports are also available for the public to view on the Nevada Secretary of State website.

District B

Ellen Minetto (incumbent)

Minetto reported \$0 in contributions and a total of

See BOARD, Page 2A

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83 children remain missing in Nevada; 25 more than last year

ASSOCIATED PRESS

LAS VEGAS – State and national advocacy groups say 83 children remain missing in Nevada, 25 more than last year at this time.

Officials with the Las Vegas-based nonprofit Nevada Child Seekers said a majority of the children reported missing to law enforcement in Nevada each year are from Las Vegas and many are considered endangered or abducted.

“We’re a 24-hour entertainment city,” Heather Doto, program manager of Nevada Child Seekers, told the Las Vegas-Review Journal. “There’s a lot to do out here. We’re a hub and these streets are dangerous. Unfortunately, where there’s more people you’re more

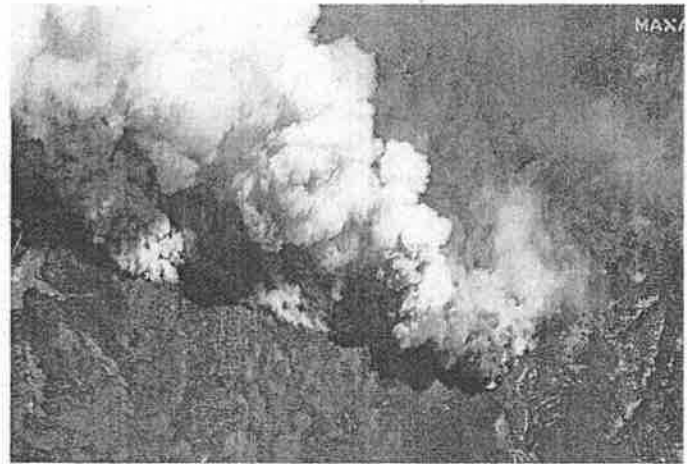
likely to have more predators.”

Nevada Child Seekers works on about 500 cases per year and reports a 90% success rate in finding children, according to Doto.

She said the pandemic led to a rise in predators using the internet to lure children away from their homes because “predators go where children go.”

Doto said Nevada Child Seekers avoids the term runaway on its missing children posters because it leads to the public paying less attention to those children.

She said children who leave home are, in most cases, “running to something or they’re running away from something.”



The biggest fire in New Mexico’s recorded history has been burning for six weeks now, and some of the hundreds forced to evacuate say their financial resources are dwindling. MAXAR TECHNOLOGIES VIA AP, FILE

Some NM fire evacuees worry about their future

ASSOCIATED PRESS

MORA, N.M. – As more than 2,700 firefighters in northern New Mexico continued to battle the nation’s largest wildfire on Sunday, many evacuees were growing concerned about their future after weeks away from home.

The biggest fire in the state’s recorded history has been burning for six weeks now, and some of the hundreds forced to evacuate say their financial resources are dwindling.

Amity Maes, a 30-year-old Mora resident who said she is 8½ months pregnant and penniless, told the Santa Fe New Mexican that she bounced around for weeks before finding shelter at a center in Glorieta, where she believes she contracted COVID-19.

Officials at Glorieta Adventure Camps said there have been 67 coronavirus cases among evacuees, including some that required hospitalization.

After her isolation period, Maes said she was urged to leave and go to a hotel in Santa Fe where she could be closer to a hospital if she went into labor.

But the hotel didn’t have her reservation when she arrived. When she finally

got a room, it was only for one night.

“They keep encouraging us to go to Albuquerque” where evacuees are being housed in hotels, Maes told the newspaper. “We don’t have gas. We don’t have no income. There’s no gas vouchers. There’s no anything. I’m on a quarter-tank of gas, and I don’t know what I’m going to do.”

The Glorieta retreat center has housed hundreds of people this month and hosted a dozen organizations providing services to evacuees. But it is scheduled to close its shelter this week to prepare for its summer camps.

Staff members are trying to ensure all of the center’s guests have a place to go when the doors close, but some families are uncertain where they will land.

Heather Nordquist, who has been engaged in issues affecting northern New Mexico residents, said evacuees’ needs are not being met.

She has collected about \$3,000 in donations, which she has used for food, gift cards and supplies for evacuees.

“I am so deeply discouraged that our tax dollars aren’t finding their way to these evacuees,” Nordquist said. “My heart breaks for the people of Mora.”

Ballots

Continued from Page 1A

Returning by mail: You may return your ballot by mailing it, postage prepaid, through the U.S. Postal Service.

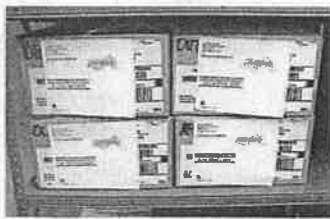
Mail-in ballot drop boxes: Secure mail-in ballot drop boxes will be available at all early voting and election day vote centers.

Ballots must be dropped off at a drop box location by 7 p.m. on election day or postmarked on or before election day and received in the registrar of voters’ office by 5 p.m. on the fourth day following election day to be counted.

Anyone may deliver a completed ballot on behalf of any voter.

Completed ballots may be returned by mail, dropped off at one of the county’s drop-off locations or vote centers during Early Voting and on Election Day, or in person at the Registrar of Voters office, which is in the Washoe County Administration Complex, at the corner of Ninth Street and Wells Avenue, Building A, Room 135.

Mark Robison covers local govern-



Boxes of ballot envelopes are seen at the Washoe County Registrar of Voters Department office in Reno on April 27. JASON BEAN/RGJ

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