

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Third Session  
February 10, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:52 p.m., on Thursday, February 10, 2005. Co-Chairwoman Ellen Koivisto presided in Room 3142 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mrs. Ellen Koivisto, Co-Chairwoman  
Mr. Harry Mortenson, Co-Chairman  
Mr. Marcus Conklin, Co-Vice Chairman  
Mr. Bob McCleary, Co-Vice Chairman  
Mrs. Sharron Angle  
Mr. Mo Denis  
Mrs. Heidi S. Gansert  
Ms. Chris Giunchigliani  
Mr. Brooks Holcomb  
Ms. Kathy McClain  
Mr. Harvey J. Munford  
Mr. Bob Seale  
Mr. Scott Sibley

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Michelle Van Geel, Committee Policy Analyst  
Teresa Horgan, Assistant Director, Assembly Administrative Services

Jasmine Shackley, Committee Manager  
Celeste Gunther, Committee Attaché  
Kasey Sheldon, Committee Assistant

**OTHERS PRESENT:**

Dean Heller, Nevada Secretary of State  
Renee Parker, Chief Deputy, Nevada Secretary of State's Office  
Larry Lomax, Registrar of Voters, Elections Department, Clark County, Nevada  
Barbara Reed, Clerk-Treasurer, Douglas County, Nevada  
Alan Glover, Clerk-Recorder, Carson City, Nevada  
Richard Siegel, President, American Civil Liberties Union of Nevada  
Anita Hara, Private Citizen, Washoe County, Nevada  
Cathy Bradford, Private Citizen, Washoe County, Nevada  
Kate Marshall, Private Citizen, Washoe County, Nevada

**Co-Chairwoman Koivisto:**

[Meeting called to order. Roll called.] We're going to hear about election issues from the Secretary of State's Office.

**Secretary of State Dean Heller:**

I'll be walking through the past, present, and future of our election division, and what we're doing statewide in Nevada. You'll also hear from the county clerks and registrars. I, Renee Parker, or Ellick Hsu will report in front of your Committee. We're making some great strides in this state.

Moving back, the 2003 Legislative Session got us where we are today (page 2 of [Exhibit B](#)). The big discussion two years ago was the Help America Vote Act of 2002 (HAVA) federal legislation that mandated changes in our election laws (page 3 of [Exhibit B](#)). Nevada was to receive approximately \$20 million to \$21 million. We've received the bulk of that up to this point. Nevada appropriated 5 percent in matching funds, a little over \$850,000, so that we could receive the dollars from the federal government. That all worked out very well.

The HAVA requirements are in front of you (page 4 of [Exhibit B](#)), but I will tell you that, as mandated by the federal legislation, by 2006 all of these requirements will be in place. With the exception of the statewide voter registration system, which we are currently working on and which should be in place by the first of 2006, we should meet all the requirements of the Help America Vote Act.

[Dean Heller, continued.] That is different from other states. I went to a conference last week with the National Association of Secretaries of State (NASS), where numerous secretaries were concerned that they would not meet the requirements in a timely fashion, and they were looking for extensions. Fortunately, we are moving forward quite well and I think Nevada has benefited from it.

The Help America Vote Act, which was signed into law by President Bush on October 29, 2002, came out of the 2000 presidential election. You're all well aware of *Bush v. Gore* [531 US 98 (2000) *per curiam*], and all of those issues. Obviously a lot of people, on both sides of the aisle, were uncomfortable with how that election was run. There were concerns in Florida, but Florida wasn't the only state that had problems; Florida just had enough electoral votes to make a difference. New Mexico, California, Wisconsin, and Washington State, also had problems in 2000.

The government decided to work at the federal level and to give the states the necessary money so that they could make those changes. So we have the Help America Vote Act. It was the responsibility of the states to come up with a State Advisory Committee and a State Plan. Nevada came up with a State Plan, with quite a few people, including clerks and registrars, on the State Advisory Committee. There are other people in the audience today that were part of that State Advisory Committee (page 5 of [Exhibit B](#)).

The plan included upgrading voting systems, developing a statewide voter registration system, and procedures for provisional voting. One of the concerns was that on Election Day, people would go to their polling places and find that their name was not on the "registered" list. Though they felt they had registered, for one reason or another they weren't on the list. So they were turned away from the polling place. Through the federal legislation, that is no longer allowed. Now, voters are handed a provisional ballot, and they can vote at that point – for federal races only. In this case, it would be president, United States Senate, and Congress.

We had over 6,000 provisional ballots cast in our last general election. Forty percent of them were deemed valid. We counted over 2,000 of them, so that is over 2,000 people that otherwise would have been turned away on Election Day. I think the law did what it was supposed to do if we can give several thousand people who should have been able to vote the opportunity to do so.

[Dean Heller, continued.] The 2003 election reforms were to put the HAVA provisions into State law (page 6 of [Exhibit B](#)), through the help of the Legislature. The voting machines, the statewide voter registration system, provisional voting, et cetera took a lot of time, and, frankly, a lot of money. The Committee on Ways and Means, Senate Finance, Government Affairs, and this Committee were very supportive, and they weren't in other states. There were other state legislatures that wouldn't bring up the legislation; some passed the legislation but didn't pass the 5 percent matching funds; some did both and when it got to the governor's desk the governor vetoed it. There are a lot of reasons why the Help America Vote Act hasn't been implemented in other states, but we didn't have any of those problems, so we were able to go forward.

Other election reforms from 2003 included the Voter's Bill of Rights, which were posted at every polling place during the last election cycle. We combined the C&E Reports [Campaign Contribution and Expenditure Reports]; Dispositions of Unspent Contributions; and Contributions in Excess of \$10,000; into a single annual report. That made it easier for candidates and those holding office, making it less difficult to get all the forms in. Previously you'd put two forms in and you'd find out that you needed a third form, when you thought you'd filed all the forms that were required. Now there are only two forms, one Ethics Commission Financial Disclosure and one that combines the Disposition, Greater than \$10,000, and C & E Reports. So we made it a little bit easier to file those reports.

The final thing, is the additional ten days for voter registration. That was probably one of the bigger changes that we made during the last legislative session. We had over 22,000 people, or 3 percent of registered voters, actually register to vote in that ten-day period. In a lot of cases people aren't prepared, so when they start concentrating on the election, they find it's too late to register, they should have done it thirty days previously. By adding the additional ten days, they are able to walk into the registrars' and clerks' offices to file these registrations. It made a tremendous difference.

I made a proclamation on December 10, 2003 (page 8 of [Exhibit B](#)) to decertify all punch card machines in the state. Through the Help America Vote Act and the funds that were available, we took the machines they had in Clark County and distributed them to the other 16 of the 17 counties. If you had a punch card system in Carson City, optical scan in Washoe County, punch cards in Douglas County, it didn't matter. All 16 of the counties outside of Clark County replaced their voting machines with a touchscreen voting system (page 8 of [Exhibit B](#)).

[Dean Heller, continued.] We picked it because Clark County already had the touchscreen voting system, and they were in the process of buying additional voting machines with that software added to it. It made sense, instead of replacing everything in Clark County, which we had the opportunity to do. Diebold, Inc. approached my Office and said they would replace every machine in the whole state for \$X. But we would have had to replace all of Clark County's machines. At that point I asked Diebold if they could attach a paper trail to their machine and they said that they couldn't.

Sequoia Voting Systems, Inc., fortunately, said, yes, they could change their machines to accommodate a printer. So for many reasons Sequoia made a lot of sense. Clark County already had the machines and Sequoia agreed with the printer. As a side note, in talking with Diebold, I asked how they could print so many receipts for their ATMs, but not for their voting machines. They said they had never been asked before to provide a paper trail on these electronic voting machines, so they were not a position to agree with it. Diebold announced last month that they now have a paper trail attached to their voting machines, but they did not while we were in negotiations for this particular contract.

Decertifying punch card machines (page 8 of [Exhibit B](#)) also decertified Clark County's absentee process, because that was done on punch cards. We replaced that with optical scan. So there were no punch cards used in the state of Nevada during this last presidential election. Obviously there was the selection of a uniform statewide touchscreen voting system; that was Sequoia (page 8 of [Exhibit B](#)).

Finally, the requirement of a paper trail (page 8 of [Exhibit B](#)) was a difficult decision to make because there was such a short period of time. You can see this proclamation was made on December 10; we had a primary election 9 months later. The system actually had to be in place within 7 months. We had to work with the vendor-contractor who had to invent the system, produce it, and then it had to be certified through the federal government. It was a very difficult process, but, obviously, it worked. Sequoia did a tremendous job in supporting us, and we supported them, to make sure we had the system in place. It was the talk of the nation: Nevada was the only state to have the electronic voting machines with the paper trails attached.

It cost approximately \$21 million with the 5 percent matching funds (page 9 of [Exhibit B](#)). There are a lot of people to be credited for the changes that we made, but without that 5 percent match none of this could have happened. You see the breakdown of the HAVA funding (page 10 of [Exhibit B](#)). We spent

\$9.4 million on the purchase of the 2,000 touchscreen voting machines with the printers. We also purchased additional printers for Clark County. They had about 750 of the touchscreen systems in place in the county, we added printers to those, on top of replacing their absentee process. Part of that \$9.4 million was maintenance, additional servers, and then the 37 optical scan machines necessary for absentee voting using the optical scan system.

[Dean Heller, continued.] On top of that we spent another \$5.5 million for the statewide voter registration system. I came to this Committee and the money committees during previous legislative sessions asking for dollars for a statewide voter registration system. You can see it's not an inexpensive program and, fortunately, through the Help America Vote Act, we have the necessary funding so we can go forward. We don't have 17 separate counties' elections divisions with separate databases. We can track voters and decrease the issue of fraud. It also makes it easier for candidates and elected officials. If they want a list of registered voters in the state of Nevada, they don't have to go to 17 different clerks or registrars in order to get that list. So there are multiple uses for the statewide voter registration system, and it is a requirement of the Help America Vote Act.

Other portions of the \$5.5 million were spent on election night reporting; voter education; and provisional voting telephone lines, whereby voters were able to find out whether or not their provisional vote had actually been cast.

You see the box on the bottom of this (page 10 of [Exhibit B](#)). This really interested the Ways and Means Committee, as you can imagine. We have bumped up into an issue with the voting machines. There's about \$4.4 million left of the HAVA funds after we had gone through the \$9.4 million and the \$5.5 million for the statewide voter registration system. We had an understanding with the vendor. Clark County has two different electronic voting systems. Those [legislators] from Clark County may be aware of the full face system that they have. But we couldn't add a printer to the full face machine. So early voting used all electronic touchscreen, with the printers.

On Election Day there was at least one of those machines with the printer at every polling place. But, obviously, they didn't have enough of those touchscreen machines to cover all the polling places. So the full face machines were used, but voters were given an option between using the machine that had a paper trail and a machine that did not. Part of the proclamation was that all machines must have a paper trail by 2006. As part of the \$4.4 million we were going to retro-fit the full face machines with printers. We were told about

two weeks ago, and we still haven't received the report on my desk, that the vendor will not be able to retro-fit those machines for the printers.

[Dean Heller, continued.] This \$15 million has been added to the Secretary of State's Office budget; it's not in The Executive Budget and it's in addition to the budget that was submitted by our Office. We need this money. I feel it's a state obligation to go into Clark County to replace all the full face voting machines that do not contain a printer for a voter-verifiable receipt. We would also add additional machines in Washoe County; the longest lines during this last election cycle were in Washoe County. Douglas County also needs some additional machines. I feel strongly—I think the Committee understands this—if you don't replace the full face machines in Clark County, they will go back to optical scan. I have promised, and am in a position to require, the paper trail, so we can do recounts, audit the results, have accountability, and, frankly, so that when we're done with the election there's validity to that process. Ways and Means understood that.

I like some of these stories (page 12 of [Exhibit B](#)). My favorite is the one from Maryland, as to why a paper trail is needed on electronic voting machines. Some of you may know, Maryland bought several Diebold electronic voting machines. At a state fair they were presenting the machine and letting anybody in the public cast a vote on the machine so they could get used to it. We did that here in Nevada. We went around to different organizations and showed them how the machines worked. In Maryland, one of their United States Senators cast a vote and went through the process on one of these machines. They pulled the voter card out of the machine, tabulated it, and it was different from what she had selected on the screen. Of course, she wasn't happy with that. She had some reporters with her, and the reporters asked if they could have the machine, because they'd like to run some tests on it. A poll worker there agreed to that. So the machines went to the press. When the elections commission in Maryland found out that this poll worker had given a machine to one of the members of the press, they had a court order to get the machine back, and fired the poll worker. So there are a lot of questions and a lot of issues pertaining to what you see on the screen versus what is actually being tabulated.

We had several examples here in Nevada. One was in Tonopah during the primary. Voters cast votes on a particular electronic voting machine and when they pulled the card out to put it into the machine that tabulates the votes they couldn't read it. So the card, which had recorded 150 or 200 votes, was unreadable in the machine. They were able to later pull that information off the card. But they also had a paper backup. So if there are any problems, and

you're unable to read the card, there is always the voter-verifiable receipt available. There are a couple of other examples (page 12 of [Exhibit B](#)). Senator Raggio didn't see any problems with those six states, but, needless to say, those are issues and they do creep into this process.

[Dean Heller, continued.] Another example came up at the NASS [National Association of Secretaries of State] conference last week. Georgia bought Diebold voting machines statewide before the 2002 election. They did a poll after the 2002 election, when they had a senatorial race and a governor's race. After that election, they went to the public because there were a lot of people discussing the need for a paper trail in that particular state. The question was asked, "Do you feel that your machine accurately reported the votes that you cast on Election Day?"

The results were interesting. Only 57 percent of the white population was "very confident" that their vote had been recorded accurately. The minority communities said "very confident" by 33 percent. So there were some real questions as to whether or not having an electronic voting machine without a paper trail attached may suppress minority votes, because they're uncomfortable with the technology that is presented to them for one reason or another. But to see the printer, to see the votes, and not rely heavily on the technology of the pushbuttons, that's the discussion. Whether that's a reality or not, that was the result of that particular poll.

We got kudos from *Consumer Reports* magazine (page 13 of [Exhibit B](#)). To see them do an article on electronic voting machines, and request readers to lobby "for the kind of machines used in Nevada," I thought was a plus for Nevada. Then we had [electionline.org](http://electionline.org), a nonpartisan group (page 14 of [Exhibit B](#)) talking about electronic voting machines, getting into the specific issues of glitches, and being reinforced by the paper trail. Probably best stated by President Ronald Reagan when he said, "trust but verify" (page 15 of [Exhibit B](#)). I do trust the electronic voting machines, if they are accurately programmed. But I do think we also ought to verify it and the paper trail does that.

The state of Nevada, during this last election cycle, led the nation in three areas (page 16 of [Exhibit B](#)). One was the guarantee of the accuracy of the election. Nevada is very different from, say, the state of Georgia. We guarantee the accuracy. We audit before the clerks and registrars go to their county commissioners with the abstracts. They take 3 percent of the machines, and check the paper against the results of the machines themselves. So we guarantee to our voters the accuracy of the machines, through an audit trail. In other states, if they're not [auditing] they're basically telling the voters to prove

to them that they did something wrong. I think as elected officials we have an obligation to prove to the public that we did it right. I don't think that they have enough information to come and determine whether or not we did something right or wrong. It's a very sophisticated process. I think we have an obligation to prove to the public that we do it right.

[Dean Heller, continued.] We have the lowest percentage of undervotes in the nation. Having a paper trail attached on the side of the machine adds another step so people realize that they may not have cast a vote in a particular election. If you didn't vote between Bush and Kerry, and you left it blank, the screen will ask you if you meant "no selection". It will keep asking you that question as you go through the process. Even when you print it on the piece of paper, it'll tell you "no selection" in that particular race. At that point, you can go back to the machine to make a selection; to make sure you have cast votes in every election.

The other reason is that we had "none of these candidates" on the ballot. We are the only state in the country that had "none of these candidates" in the presidential race. So if you don't like Bush, or if you don't like Kerry, and you don't want any of the minor candidates, you have an opportunity to protest by voting for "none of these candidates." In other states they would leave it blank. We give voters that option. Because of that our undervote was 0.3 percent, versus the highest, around 3 percent. News organizations think that's the greatest thing. For some reason they believe that truly measures the efficiency and effectiveness of the election process in your state. From Secretary of State down to registrars and clerks, and the people who are actually casting votes, when residual votes are low, people understand the process and are getting the opportunity to cast their vote.

With respect to voter fraud prevention Clark County does something different than I've seen in the rest of the country. During early voting and on Election Day, the next day they will post your name online. So if you cast your vote and you want to make sure that your vote has actually been cast and counted, you can go to their website and see if your name comes up. I think that's great, because obviously if it doesn't you're going to make a phone call. But they're also asking to know if you find names on there that don't belong. I think that's good, too. You can go through the list of people that cast a vote, and if you see a [former] neighbor's name, you may want to call the clerk's or registrar's office and recommend that they double check and make sure that person is registered properly. It's another preventative method, that I think the public has a right to look at, to make sure that they feel confident that their elections are being run in a fair and equal manner.

[Dean Heller, continued.] I was asked in the Elections, Procedures, and Ethics Committee last session about the audit trail and how the paper trail actually works. I think there were some people who thought you just used it in the case of a recount. But we go a step further than that; we actually have an audit before they go in front of their commissions and board of supervisors (page 17 of [Exhibit B](#)). In a county with a population of less than 100,000 people a minimum of 3 machines or 3 percent of the total machines must be audited. They actually take the paper and compare the paper with the results of the electronic voting machine after it's been tabulated. If your county's population is greater than 100,000, a minimum of 20 machines, or 2 percent of the total machines, are audited. Washoe County audited more machines than any other county, because they had more machines with a paper trail than any other county. Clark County did the minimum of 20 machines in their audit process.

You can see the results of the audit (page 17 of [Exhibit B](#)). In the primary election we audited 116 machines, and in the general we audited 145 machines; 64,000+ ballots were audited, and the accuracy was 100 percent. People tell me that there's no reason for the paper trail, because this proves it's 100 percent accurate. My argument is that every one of these machines is reprogrammed for every election; so you want to make sure it's 100 percent every single time, that there are no errors or mistakes. I was very pleased to see the 100 percent, I trusted the machines, but clearly we verified the machines also.

There were other voting machine options. We looked at the ones that they used in Florida and we chose not to purchase their machines (page 18 of [Exhibit B](#)). I got a phone call from *Good Morning America*, asking me to go on television, because they wanted to show our voting machines. But it was two days before the general election, and I couldn't fly to New York. So I didn't do it, but I did watch our voting machine, on *Good Morning America*, be touted as the most secure and auditable election machine in the country at the time.

Total voter registrations were over 1,000,000 this election cycle; the first time Nevada has registered over a million voters (page 19 of [Exhibit B](#)). You'll hear more from the clerks and registrars about what a difficult process that is, with literally tens of thousands of registrations coming in the last couple of weeks. I know that's a very difficult process. There were too many duplicates [photocopied forms] and some questions on whether or not they were valid forms. Overall, if you look at the big picture, the fact that we registered over a million people to vote in the state of Nevada is very good news.

[Dean Heller, continued.] Total voter turnout was 77 percent. There were over 6,000 provisional votes cast, almost 2,500 or 40 percent were counted, that's very good news also. Take a look at the total early and absentee votes. You'll see that a total of 52 percent of people cast votes before Election Day. There is a comparison with 2000 (page 19 of [Exhibit B](#)), which was the last presidential election, prior to 2004. Of the states with the greatest increase in voter turnout in 2004 (page 20 of [Exhibit B](#)) Nevada did quite well, almost made the top five [at number 6].

The last 10 days of registration were very tough on the clerks and registrars (page 21 of [Exhibit B](#)). Three percent or more than 22,000 people registered in that small window of opportunity. I pushed this through because I felt that there were a lot of people who start focusing on elections at the last minute and found out that they were not registered. In a state like Nevada, where we have so many people moving in and moving out, we need to do as much as we can to give people the opportunity to register. You can see, by adding the additional 10 days, you're adding 3 percent, or 22,000 more voters. I think the experiment was well worth the effort.

We have some statistics showing that we continue to grow (page 22 of [Exhibit B](#)). If you want to measure the effectiveness of this Office, at least its Elections Division, maybe the effectiveness of this Committee and Government Affairs, look at the impact it's having on elections, clearly it's very positive, and the trend is upward.

One of the biggest voting-related issues in 2004 was long lines at the polls (page 23 of [Exhibit B](#)). This was a transparent issue, especially in Washoe County, even in early voting. Most of it had to deal with poll worker education.

I went to several malls, Park Lane Mall specifically, where during the first couple of days of early voting, the wait was at least an hour. They had 7 or 8 machines in Park Lane Mall at the time, but only 3 were working. It all had to do with training issues and making sure everything was up and running. Regarding the long lines in Washoe County on Election Day, remember that Clark County had some long lines also, in their first attempt to bring in electronic voting. The allocation of electronic voting machines was based on the information that the clerks and registrars gave to us. In fact, our ratio of the number of individuals per voting machine is the lowest in the nation.

One of the problems we ran in to, especially in Washoe County, is the early voting turnout. We saw early voting very high in Clark County, very high and

growing in Carson City and Douglas County. For some reason, it was very low in Washoe County. Clearly they're going to have a much higher turnout on Election Day, and I think that was part of the reason the lines were so long on Election Day. Some efforts ought to be made in the future. I don't think it will be nearly as difficult during this next election cycle, since it is a non-presidential year.

[Dean Heller, continued.] But be prepared, especially for the next presidential election, which I anticipate to be huge. You're seeing in newspapers now, I think it was *USA Today* yesterday, they're already taking polls as to who the frontrunner is, in both the Democrat and Republican parties. They're starting four years early. If it's Hillary Clinton and Rudolph Giuliani or John McCain, it's going to make this election look like a high school student body election, compared to the intensity of the election in 2008.

Changes need to be made. Washoe County needs more machines, but I also think they should do what Clark County does. Clark County put a line item in the budget of the registrar's office, where they advertise for early voting. They use billboards, radio and television advertisements to push early voting. To get that high level of early voting relieves the strain on Election Day. These are some of the issues that we have to deal with. I think they're workable. For most of the state having new machines, new printers, new procedures, new provisional ballots, all of it, if you take the big picture it was a very successful election. Of course, there were reasons why people didn't vote, because of the long lines for example (page 24 of [Exhibit B](#)).

For our 2005 legislative package (page 25 of [Exhibit B](#)) we will be bringing in front of your Committee the initiative petition process. The clerks and registrars will talk to you about how difficult it was to run this last election. If you look at the last bullet point, one of the issues will be a discussion on moving the primary date from September back to May. At one point we were at mid-summer twenty years ago, or so. At that time the decision was either to move it to September or move it back to June. They wanted kids to be in school, because they figured mid-summer most families were on vacation, and this date was chosen in September. But things have changed dramatically in our election process. We have early voting now, so there's a two-week window before that, and absentee voting is a much better understood and used process. I think the issues of whether your children are in school or out of school were resolved many years ago, through the updates and changes in our election statutes. That will be a discussion we will have with your Committee.

**Assemblywoman McClain:**

Are we going to move the candidacy filing period too, then? Back to what?

**Dean Heller:**

You would have to, probably to the first of the year, in January. It's interesting, when I first ran for the Legislature in 1990, it was a 3-month window to file as a candidate, from January through March. I'm not advocating anything here. Now it's 2 weeks, but at one time it was 3 months, so it's been very flexible over the years.

The initiative petition process caused the most consternation during this last election cycle. We want to make some changes in our initiative and referendum process, with petitions addressing only a single issue. We had some real deception on some of the ballot questions last time, where the text of the question and the title of the question were exactly the opposite. We'd like to clean up that [statutory] language. We had problems, in fact we had some petitioners who were put in jail because there was a misunderstanding of what it means to allow signature gatherers into public places. We want to add penalties for those public buildings and public properties that choose not to allow petitioners to gather signatures. We also had quite the issue on the "last preceding general election" and we want to clarify that language.

We want to look at some of the deadlines on legal challenges because they delay the ability of the clerks and registrars to prepare their sample ballots and the ballots themselves. So some of those dates need to be moved. We're also going to discuss judicial review and confirmation of ballot language because we ran into issues with that. We'll come in with cleanup bills, and again, moving the primary.

Some anecdotal information here, talking about how much it cost per electoral vote. You can see that George Bush and John Kerry both spent quite a bit of money per electoral vote here in the state of Nevada, second only to the state of Ohio. That note on the bottom (page 26 of [Exhibit B](#)) is interesting. In this state the difference between victories was only 97 votes in the two presidential election cycles [2000 and 2004].

**Assemblyman Seale:**

You were talking about the voter registration package. This morning you said something about that being a third-party vendor, separate from Sequoia.

**Dean Heller:**

Right, the statewide voter registration system is a separate vendor from the one that produces the voting machines.

**Assemblyman Seale:**

Is that so you've got some independence from Sequoia?

**Renee Parker, Chief Deputy Secretary of State:**

We did an RFP [request for proposal] process, and Sequoia was one of the vendors that initially came in, but they chose not to bid at the end.

**Assemblyman Seale:**

So all the voting machines in the state of Nevada are now Sequoia machines, is that correct?

**Dean Heller:**

That's correct.

**Assemblyman Seale:**

With the statewide voter registration package, how does that work? Is that the same everywhere as well?

**Dean Heller:**

That is one statewide system. So all 17 counties are using the same system and read through the same system. We have a duplicate of the same system for Clark County and Carson City, for obvious purposes of having a backup. Clark County will be using that system down there, for speed and accuracy. All 17 counties will be tied into the same single system.

**Assemblyman Seale:**

Will be—but they aren't now?

**Dean Heller:**

They are supposed to be, through the HAVA legislation, by January 1, 2006.

**Assemblyman Seale:**

I don't think Clark County had to change their machines. Are they changing statewide?

**Dean Heller:**

Every county had to change to the statewide voter registration system.

**Assemblyman Seale:**

Did that cause any problems?

**Dean Heller:**

It was a bid process. We looked at the system that was used in Clark County and asked them to present a statewide voter registration system bid. They had a county system, but they did not have available a statewide system. They would have had to build that for Nevada. The system that we went with is in 5 or 6 other states. It was, through the bid process, relatively cheaper. The long-term, ongoing costs were also relatively cheaper than the bid from the company that was in Clark County. For that reason, going through the bid process, we were able to justify the necessary changes.

**Assemblyman Seale:**

Did this whole process end up costing a lot of money?

**Dean Heller:**

It was \$5.5 million for the statewide voter registration system. That system, which I've advocated over the last ten years, was never implemented simply because the cost of it was prohibitive. Fortunately, through this federal legislation we were able to do it. We didn't go with the Clark County system. I think that most clerks and registrars would have loved the Secretary of State to go with their system and expand it to every other county. We couldn't keep everybody happy all the time. A tough decision had to be made, someone had to make it, and I made it.

**Assemblyman McCleary:**

I want to congratulate you, Mr. Heller, on what a smooth election you ran. I think you remember last time, I was one of your biggest cynics and critics, and didn't have a lot of faith in what was going to happen. But I am impressed, you did a good job.

**Dean Heller:**

I appreciate it, but the men and women sitting behind me, too, have a lot to do with that, the registrars and the clerks. It's tough to carry out the tremendous number of changes that were advocated by me, that we went back and forth with a few times during the last legislative session. Every time I make a change, or I tell them to do something differently, it has far more impact on their shops than it does on ours. So I appreciate their hard work and effort.

**Assemblyman McCleary:**

There are some very competent people back there. I understand on your report we had about 6,100 provisional votes cast. Out of that 2,400 were counted. How did it happen that they were not on the list of registered voters? What's a typical reason?

**Dean Heller:**

I think it would be better if the clerks or registrars answered that question, because they are closer to it. There are numerous reasons, and I can give you some of them, but they can give you the specific answer to that. There are numerous reasons why ballots had to be counted provisionally.

**Assemblyman Holcomb:**

My compliments to Mr. Dean Heller. When I first heard about the voting machines, the very first thing I asked was, is there a paper trail? When I was assured there was, I felt very reassured, and I think I am speaking for a lot of voters out there. So job well done.

**Dean Heller:**

Federal legislation has been introduced by Nevada Senators John Ensign and Harry Reid to require all electronic voting machines, nationwide, to include the paper trail. I went back to Washington, D.C. to ask if they would reimburse us the \$15 million we spent if this bill passed, to retroactively reimburse the state that's at the leading edge of all this. They assured us, if the bill were to move forward, there would be funding attached to that, and that they would do everything they possibly could to reimburse the State for that cost.

**Assemblyman Denis:**

The \$5.5 million for the registration system, how does that system actually work? Is that a computer system that each one of the clerks is using? I know the voting machines, it's an easy thing, you go and vote. How does the registration work?

**Dean Heller:**

It was a difficult decision for me, of whether to go through the registration system process first, because I thought that was critical, since it had to do with voter fraud, and the multiple voting issues that we had, or to go with the voting system first. The clerks and registrars convinced me to do the voting system first, because that's what the public would see. Now that we're into the registration system process, it will be a connection. As required by the Help America Vote Act, all 17 counties will connect into a central database.

[Dean Heller, continued.] If you were to move from Clark County to Washoe County and reregister to vote, your name, Social Security number, driver's license number, et cetera, would let your previous clerk or registrar know that you registered to vote in another county. It keeps track of the registered voters and where they are within the state.

As registration forms come in, they fill it in, it updates the system. It's a live system, so if you wanted a list of all the registered voters today, you could get that list. It's linked to all 17 counties as they enter the registration forms that have come in through the mail, or email, or however they receive them.

**Assemblyman Denis:**

They've got a central database. They all connect through some type of a secure connection, I assume, so that no one else could get on. So they have some kind of a security system set up.

**Renee Parker:**

We're working with the Department of Information Technology. They do it through secure data lines, and they're putting in the network infrastructure. We're not having the vendor do that because we have to address state standards, as well as federal FISMA [Federal Information Security Management Act] standards. So they will interconnect. Some of the rural counties, right now, only have a dialup network, that will be improved through this process.

**Assemblyman Munford:**

Early voting has been successful in stimulating voter turnout and people not being concerned with the long lines. But there is a concern about early voting because if something were to happen to one of the candidates, that affects their character, between the early voting and the general election, there's nothing in place. That voter has already cast his ballot, he can't change his mind or anything, he's just caught. That's something I would be concerned about, because I might say his character doesn't follow along the ideals of what I expect a representative to be. People have always brought that up to me.

**Dean Heller:**

That's a risk you take in voting early. It's the choice that an individual makes, he doesn't have to vote early if he is concerned that additional information will come out; he has the opportunity to vote on Election Day. That is the risk that you run into by casting an early vote. I, for one, am an early voter. I find myself very busy on Election Day, so it makes sense for me to vote early, and I don't think I've run into that situation, but obviously I could.

**Assemblyman Munford:**

Then some people are traditional, and they always want to wait until Election Day. That's the traditional way, and that's in the *U.S. Constitution*. The early voting is something that was implemented later.

**Dean Heller:**

It's a good point. It is a risk that you do take. It is a choice also.

**Assemblyman Conklin:**

It seems like last time we discussed this same issue. We have discussed shortening early vote, or adding a longer period at vote time. But it really doesn't matter because information could become available today while we're all sitting up here. Not only is it a choice that they make, but who knows the character of an individual except on a day-by-day basis. Voters are very happy with early voting.

**Dean Heller:**

Early voting is very popular. Over 50 percent of the people are casting their votes by absentee voting and early voting. So clearly it's a popular mechanism in the election process. If you want to talk about changing those dates, you might want to talk to the clerks and registrars. I know they have some issues and they appreciate the opportunity to reduce those lines on Election Day by having early voting.

**Co-Chairman Mortenson:**

Early voting is a two-edged sword. There has been a lot of criticism, because if some late development occurs, as Mr. Munford said, you don't know about it and you've already cast your vote. But, conversely, I can think of an election, roughly a decade ago, in which a very excellent candidate was smeared on the last day of voting. He had no chance to respond and he lost the election. So I get a great deal of comfort out of early voting.

**Dean Heller:**

There are a lot of voters out there who just want to vote and get it over with. If they're starting presidential election polling now, you can imagine how tired voters are going to be of this by 2008. There are a lot of people who go to the polls with their minds made up. They want to vote so they don't have to worry about the inundation of mail, radio, and television advertising. For a lot of people it's soothing that you actually get it out of the way, because you've heard so much about it for so long. Nevada was an example of that this time.

**Assemblywoman Giunchigliani:**

I am a traditionalist. If you want to exercise your right to vote, then you go to vote on Election Day. Early voting has become a convenience. It has generally, until this last year, not increased turnout.

For those of us who work on political campaigns, or whose spouses do, the numbers have not changed with early voting or without: 45 percent vote Democratic, 45 percent vote Republican, and then you've got to convince that other 10 percent on who to vote for. Unfortunately, negative campaigning works; that's part of what drives some of the early voting, people do get turned off. As much as we all dislike it, we've never been able to define negative campaigning. The saddest part is it probably keeps people home. That is the one thing we have found. If they don't go vote, they stay home and say forget it, they don't want to have anything to do with it.

It also has impacted costs. You now have to run a multitude of campaigns, rather than focusing on Election Day, where you're communicating with one individual body.

I don't think I'll be successful in getting rid of it, but I've always tried to at least shorten it or make it more reasonable. I think we should practice the right to vote and believe in it, go, take the time and make the effort.

Part of the focus I have in a bill draft is to look at how those early vote sites are selected. To make sure that we have them equally distributed in the minority areas, in various geographic regions. If I can't get rid of it, at least we can equalize it.

**Assemblywoman McClain:**

I love early voting. I think it's a great incentive to get people out to vote.

**Co-Chairwoman Koivisto:**

This is a discussion that's going to be ongoing.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO REQUEST A COMMITTEE RESOLUTION DRAFT URGING PUBLIC AND PRIVATE ENTITIES TO WORK TOGETHER TO ESTABLISH A STATEWIDE SYSTEM OF CARE FOR PATIENTS SUFFERING FROM STROKES.  
(BDR R-1159)

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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ASSEMBLYWOMAN McCLAIN MOVED TO REQUEST A COMMITTEE RESOLUTION DRAFT DECLARING FEBRUARY 13-19, 2005, CAREER AND TECHNICAL EDUCATION WEEK AND COMMEMORATING CAREER AND TECHNICAL EDUCATION STUDENT ORGANIZATIONS. (BDR R-1100)

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

- BDR 17-193: Provides for independent audits of institutions that house juvenile offenders. (ASSEMBLY BILL 54)

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED FOR COMMITTEE INTRODUCTION OF BDR 17-193.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

ASSEMBLYMAN CONKLIN MOVED TO REQUEST A COMMITTEE RESOLUTION DRAFT TO RAISE AWARENESS OF ISSUES OF HOMELESS YOUTH AND ORGANIZATIONS HELPING HOMELESS YOUTH. (BDR R-1160)

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Co-Chairman Mortenson:**

Last session Elections, Procedures, and Ethics and Constitutional Amendments were separate committees. I'm very happy that we are now sharing this time with Elections, Procedures, and Ethics. This session the committees were to be

separate but we were sharing the time slot, then the committees were combined so that they are all one now.

**Larry Lomax, Registrar of Voters, Clark County, Nevada:**

We'd like to give you an overview of the 2004 elections, and various issues it raised in our eyes. We're here to answer any questions you have, but we're not attempting to propose solutions in this particular forum. We have a clerks' bill in which we will have solutions to the issues we're going to highlight here. When we go through that, I'm sure they'll all be discussed in detail.

As an overview, what we saw in the 2004 election was completely different than the 2000 election. For the first time, the national parties had identified clearly the states that they wrote off; for example, California had been given to the Democrats. They came up with "battleground states," and we, being a battleground state, received national focus, and a lot of national money was poured into the state; you're all aware of that.

That had a huge impact on us down in the trenches. In Clark County, the money generated in one area was used to hire people to register voters and then to get people to go out and vote on Election Day. It was far and above anything we had ever seen in the past. The people they were hiring were being paid to register voters, and although state law prohibits them from being paid by the form or by quota, they were being paid by the form, and they were being paid by quota. We know that because they mistakenly would turn in their pay sheets to us.

In the 2000 election, in Clark County, in the 15-week period before the primary and ending on the last day to register for the general election, we were averaging a little over 4,000 forms a week. In this election, that went up to over 12,200 forms a week. On the last week of registration alone we received almost 30,000 forms. That's good. It's great that all these people are out there registering to vote. But approximately 1 out of every 8 of those forms was fraudulent. They were either duplicate forms, or they were out of the phonebook, made up forms, et cetera. It is a huge waste of our manpower and our resources, because when we're entering that many forms, we don't have time to go through and screen them. Occasionally we pull them out. We'll notice a big stack with identical handwriting, yank those out, and attempt to turn those over to law enforcement. But it's an issue that needs to be addressed.

We have some solutions we will propose in our bill. The problem, right now, is there is virtually nothing in the Nevada statutes that governs this area. We give

people forms and they can do anything they want with them. There's no accountability, there's no requirement for them to tell us what they did with the forms, who got the forms, who was out registering the voters, et cetera. We have some good laws governing field registrars, people we train to do this. We think we could transfer these laws to everybody, which might help us out a bit.

[Larry Lomax, continued.] I'm not going to go into early voting; as Assemblywoman Giunchigliani says, this is a biennial discussion. We strongly support early voting, for a lot of reasons, but we can talk about that later.

The area of initiative petitions, as was highlighted by the Secretary of State, caused us great problems. We were taken to court repeatedly when petitions failed. In no instance did any judge or anyone accuse us or find us guilty of not complying with the law. They took issue with the law, or the *Nevada Constitution*. In some cases [the judge] ruled Nevada's *Constitution* unconstitutional. We need clarification in the laws to eliminate some of these issues. For instance, when they forgot to turn in 6,000 signatures in the marijuana petition, they took us to court. The law states that we're not supposed to accept them after the deadline, but it's not really crystal clear. The judge backed us up on that, and we weren't required to take the signatures that were turned in late.

There is an issue when they're getting people to sign petitions. If the person isn't registered they'll try to have them fill out a registration form at the same time. The law clearly says that they're going to be counted as registered on the day that form is turned in to us. That's the way the law reads, and it's very clear. Two different groups took us to court on that. Each lost that particular issue, but we need to make it clearer, or if it's going to be changed then we need to make it clear as to how it's going to be changed. We have to get out of court.

I'm not sure, especially since some of you are new, if you know how long it takes us to prepare for an election. You hear us talk about "printing the ballot." Well, we don't print a [single] ballot. For instance, after the primary election, when we have a new slate of candidates, we have to print mail ballots, we have to print the AVC full-face ballots, we have to print our sample ballots, we have to prepare audio ballots, and we have to program the touch-screen machines with the ballots. In that particular election [2004] there were 288 versions of the ballot in Clark County. There's not one ballot. You're all from different districts. If you take all the permutations and combinations that were in the last election, we had 288 versions of each of those ballots in English and in Spanish. With our printer working a 24-hour day, it takes us a

month to prepare, print, proof, and do all the things we have to do. That's okay, but it doesn't allow for any hiccups.

[Larry Lomax, continued.] In the 2004 elections, a suit was brought against the Secretary of State for the "explanation for Question 3." That was done after the primary election; it put us on hold and we couldn't print. In fact, we had to throw away a half-million dollars worth of mail ballots that had already been printed. It delayed our ability to print the sample ballot. For those of you in Clark County, when you got your sample ballot there was a big blue insert, that was the result of this late decision. This is an area that needs to be addressed.

The Secretary of State mentioned provisional voting. That's an area that causes us a lot of challenges. There's nothing wrong with provisional voting, but we need to clarify the rules. When the clerks sat down with the Secretary of State's Office, we drafted the language for provisional voting, and it was presented to the Legislature. A lot of it ended up in the regulations. The intent was not to make provisional voting an excuse for someone to intentionally go to some other polling place on Election Day than the one they were assigned.

HAVA [Help America Vote Act] requires provisional voting for two reasons. If we don't show you as registered, but you think you're registered, we have to let you vote provisionally. No argument with that. If you're required to show an ID and you don't have it, we have to let you vote provisionally, you can bring it to us before the Friday after the Tuesday election, and we'll count your ballot. But we never intended it to allow people to vote at any polling location. If you're a registered voter, our intention was, you still go to your polling place and vote a full ballot.

There were a little over 4,500 provisional ballots cast on Election Day in Clark County; we counted a little over 1,500. About 5 to 10 of those were people who said they were registered, but they weren't on the list, and subsequent research confirmed that they were actually registered, so those votes counted. The other 1,490 were people who went to the wrong polling place and refused to go to the right polling place.

A significant reason why this occurred in this particular election was because of something we've never seen before. We had an enormous number of out-of-state poll watchers bussed in, flown in, from all over the country, but primarily from California. Worst case in Clark County, there were 14 poll watchers in one polling place; the average around the valley was 4 to 5 poll watchers in a polling place. Almost all of them were from outside the state. They were not that familiar with our rules in Nevada. But more than that, they

did not care about the Nevada races. They were sent in here to get a presidential candidate, one or the other, elected.

[Larry Lomax, continued.] A voter would walk into a polling place and if they were in the wrong polling place, we would direct them to the correct location. The voter would start to leave, and they [the poll watchers] had a system set up. A person inside the polling place—because they're not allowed to talk to the voter inside the polling place—would contact the poll watcher outside the polling place, or else they'd chase them outside. Voters, many of them, are easily intimidated, and they would force this person, verbally, back into the polling place and convince them to vote provisionally, thereby disenfranchising them of their right to vote for all of the Nevada issues. Because when you vote provisionally you're voting only for federal races. So all these people did not cast ballots in the state contests.

There were about 1,500 of these people who ended up doing that. Not every one of them was driven back in; obviously, there were some that just didn't want to go somewhere else. This is an issue I think we need to address because I really believe that the combination of all these out-of-state poll watchers, all this out-of-state money, and the chaotic situation we found ourselves in with voter registration. It's a very fine line between chaos and control when you're trying to put on an election. If Dean Heller, the Secretary of State, is right, and the 2008 election makes this 2004 election look like a cakewalk, then it's going to be a chaotic mess unless we get some control over some of these issues.

I understand people's right to do a lot of things, but poll workers have a right to work in a polling place and conduct an election without being badgered by 14 individuals, most of them lawyers who can be very intimidating. It's getting more difficult all the time because of the rules, regulations, and changes in electronic voting that constantly get poured upon us. Add the harassment and pressure of a bunch of individuals critiquing everything you do, in many cases not having an idea what they're talking about.

In Clark County, if you read the stories about the poll workers that called me, crying, in the middle of the day, that's not a lie, that's exactly what was happening. It's a tough environment, I understand that, but we need to do what we can to make sure we have fair elections under the control of Nevada, not manipulated by out-of-state lawyers.

There's an individual in this room who called me, telling me that something had to happen, he was trying to protect me from ten lawyers in California who were ready to sue me. I got these phone calls constantly. Most of my meetings prior

to the election were with lawyers from Washington, D.C. representing various groups. I've never had to deal with this kind of stuff before. I caution you that the poor states that end up becoming battleground states, and I don't see any reason why we're not going to be one again, are the focus of a lot of attention and a lot of money.

**Co-Chairman Mortenson:**

At the end of your presentation could you give us a thumbnail account of what your bills are that the clerks and registrars have submitted, just plain old English instead of legalese?

**Assemblyman McCleary:**

To get back to that provisional voting again. Does the law currently require you to allow those people to vote provisionally, that you know, in fact are in the wrong polling place?

**Larry Lomax:**

Because we apparently didn't write it clearly enough, my attorney in Clark County advised me that if we were sued over this issue, and I was told that we were going to be sued, we would probably lose. So her opinion is that it needs to be re-addressed.

**Assemblyman McCleary:**

Is this being addressed in your BDRs? [Mr. Lomax nodded in the affirmative.]

About these people that were violating the law during registration, who were paid for registering people. I understand you referred some of these to law enforcement. Did law enforcement take any action on the tips that you gave them?

**Larry Lomax:**

We met with the FBI [Federal Bureau of Investigation] and gave them what I would describe as a crateful of what we'd determined were fraudulent forms. About a week later they said they were not going to do anything about that; we went to our District Attorney, same thing. I went to the Secretary of State because Dan Burk, the registrar in Washoe County, was experiencing similar problems, and so were some of the other clerks. We asked the Secretary of State if there was anything he could do, he got the Nevada Department of Investigation involved.

They conducted an investigation. All I know is what I read in the newspaper. The result in the newspaper was that they conducted an investigation, and they

determined it was not an attempt to sway the outcome of the election. It was simply people ripping off their bosses so they could make more money turning in these forms. I concur with that conclusion, but, still, thousands and thousands of fraudulent forms were turned in to us, and nothing's been done about it. We can't just let this go on unpunished, and even say, yes, they were doing it, but we let them.

[Larry Lomax, continued.] For example: at the DMV [Department of Motor Vehicles], which is a primary place where people register to vote, there were people representing themselves as working for the Elections Department or as working for the DMV. Both of these are lies, because if you register to vote at the DMV, you do it inside. If you watched what was going on, there were lots of groups there. They would register voters and then at the end of the day the guys getting paid to get Democratic forms would swap forms with the Republicans' guys and vice versa. So at the end of the night they all got each others' forms. And they would turn their forms in so they could each make money that way. We had people setting up little businesses charging \$1 a form to register voters. We were getting complaints of that all over town.

We had ladies calling us—and this wasn't isolated, this happened nightly—saying they were being chased through the parking lots at grocery stores. They had filled out the form, but they'd put fraudulent information on it, because they didn't want this person to get their real information. So they were calling us to give us a heads-up, when we got their form, not to put it into the system. We had complaints from minorities that they were being told it would help them get their citizenship if they registered to vote. It was a mess out there.

It was an absolute mess, and we were unable to really put a stop to it. At the end I think I got enough publicity in Clark County that those kinds of complaints went down. But what these people discovered is, there's nothing in the law that says you can't register the same person 20 times. The people paying them obviously had terrible quality control, and that's what we had at the end.

I spent 3 days inputting forms myself, so I would know what was going on. About 1 out of every 7 or 8 forms would be a duplicate. We need some more accountability in these organizations so we can trace it back, and identify the person who actually was committing the fraud.

**Assemblyman McCleary:**

Is that also being addressed in your BDRs? [Larry Lomax replied in the affirmative.]

**Assemblywoman Giunchigliani:**

I think the issue of fraud, when we label it as such, is not always reflective of everything that occurred. You've got some who fraudulently filled out forms, you've got some who allowed their name [to be used fraudulently]. The voter, at some point, should be responsible to say, I'm already registered, I don't need to fill out another form, instead of playing that game, too. So there's some responsibility and obligation.

I check out and sign out forms to my precinct walkers, so that if they come to somebody at the door they leave the form with them.

I noticed that I had somebody register at O Circle Park, which is a park in the middle of the Maryland Parkway in Las Vegas. I didn't catch them in time for the challenge period. Could we talk about, when we get to that, how to clean up the list for you when we see addresses that are inaccurate? That isn't even an issue of challenging, but that's the only alternative we have.

**Larry Lomax:**

Absolutely.

**Assemblywoman Giunchigliani:**

That might be something to think about down the road. There's a lack of teeth in some cases.

We talked about signing out the forms, possibly, so that there's some tracking, because you don't want to restrict registration. We still have a low voter registration in the state. It was a unique presidential year. I don't think you're going to see that every election. But we should learn from some of those areas.

We narrowed provisional voting; we only adopted what the federal government required. I even got calls on the opposite side, asking why we didn't let them vote the full ballot. We weren't sure how it was going to work the first time around, truthfully. We wanted to make sure that we didn't have people choosing to just go vote because they didn't want to drive across town to their correct voting area. It's unfortunate that they chose not to. That saddens me, that 1,500 people who were legally registered didn't bother to go back to where they should have, and then as a result they only got to vote for the president and vice president. So we will need to do some tweaking on that part of it, this time around.

**Barbara Reed, Clerk-Treasurer, Douglas County, Nevada:**

Like Larry Lomax, and every other clerk in the state, I don't think we've ever seen an election quite like this one, and I've been doing them for 31 years. In addition to having a large increase in the number of voter registration applications, I was one of the punch-card counties. There were 7 punch-card counties in the state, 8 with Clark County for their absentee voting. Sixteen counties made the conversion to the touchscreen. Kudos to all of those clerks. We received the machines after July 1, the printers at a later date than that. You know when our primary was, when early voting starts. They did an incredible job turning the election around, and not having any significant problems in the state. Douglas County had a 92 percent turnout. It was incredible, what we did across the state.

In addition to some of those problems that Larry Lomax was addressing, one other issue that did come up, was the "No electioneering within 100 feet of the polling location." I had full-fledged sheriff's deputies in every single polling location. They had been given very detailed instructions. When these people arrive, a lot of them were from out of state, and they have the strongest personalities. The deputies later told me that they'd deal with traffic violations, any day, over this.

People came in and challenged the 100-foot marker law that we have. They said they were not electioneering, they were non-partisans, they had a right to come in and assist voters, talk to voters. As with many other issues, we need to look at putting some teeth in these laws, a little more than what we've had in the past. Nevada has not been a Florida or an Ohio or a Washington, and I don't want us to get there, either. I'd really like to get this Battle-Born State out of that battleground status.

It was a very challenging election. We sifted through thousands of applications and that's a situation we've never seen before. In Douglas County we did end up having one voter who voted twice; we have turned that over to the District Attorney, and he has assured me that he will prosecute. So that will be handled. Applications came in, the pile kept getting higher and higher. I've never seen anything quite like it. We had great support amongst ourselves, we learned a lot through this election, and hopefully through our bill drafts we will be able to bring you some key issues that we can address to make the system work even better, and be ready for the next onslaught.

**Alan Glover, Clerk-Recorder, Carson City, Nevada:**

I can't add much to what Larry Lomax and Barbara Reed have already said. The Secretary of State brought up the issue of undervotes. I'd like to bring up the

issue of overvotes. On a touchscreen machine, you cannot overvote. That's the beauty of those machines; they're very accurate in that area. However, you do get overvotes on the optical scan absentee ballots. I thought it was interesting, we only had 17 overvotes for president in absentee ballots. We only had 2,500 absentee ballots, but 17 of them overvoted, clear overvotes.

[Alan Glover, continued.] When we were on punch-cards, we had 25,000 people voting punch cards and we only had 33 people overvote out of 25,000. I have, as a clerk, and I know the Democratic Central Committee here in Carson City has, really encouraged people to early vote, as compared to absentee voting, which some of the national parties and different organizations were encouraging people to do. These optical scan ballots have a fairly high error rate, acceptable, much lower than we've had in the past, but they're not the best.

Touchscreen voting really is the way to go. It's so accurate, and it works so well. The paper trails worked fine for us with no problems at all. We know that the technology will change as time goes by, and we don't want to be married to our machines.

The two major problems Carson City had were because the petitions and the litigation held up everything just like it did for everyone else. We chose to copy the military and overseas ballots and mail them out because we had not received them from the printer yet, and the deadline was there. We had to duplicate all those ballots when they came back. Clerks don't like to do that. It's time-consuming and always has a chance for error. We had to assign extra people to make sure that they were marked exactly the way they were. If it hadn't been for that litigation, our lives would have been much easier.

We're supporting the Secretary of State on asking for a change in the date of the primary election. That crunch is getting to the point where it's impossible to live with. I thought we had a very good overall election. We have good election laws, thanks to this Body over the years, much better than most states. We're looking forward to trying to work with all of you to make it even better.

**Richard Siegel, President, American Civil Liberties Union of Nevada (ACLU):**

I was struck that there are a lot of ways to see an election. There's a way to see it from the point of view of a candidate, and legislators are very good at that. There's a way of looking at it from the point of view of the election officials, and they do a very good job of it. I spent most of the election looking at it from the view of the ogres of the last two hours, those people who came

from out of state, looking at the questionable aspects of our law, and the difficulties in our process. We will be agreeing with them on a number of issues.

[Richard Siegel, continued.] The ACLU got heavily involved on a daily basis. We were virtually an election organization for about 3 months during this election. We were brokering between the Secretary of State's Office, the registrars, et cetera. I was the guy who called Larry Lomax and said that if this would happen or that would happen, he'd be sued. I think I prevented 5 lawsuits by getting adjustments. We had good communication. Larry Lomax, Dan Burk, and Renee Parker were available on the phone. We solved half of the problems that were going to lead to lawsuits, sometimes two hours away from that process.

Some of the problems we didn't solve, I wanted to ask you to consider solving them. Some of them you've expressed some sentiment the other way, but I want to ask. Forty-four states in this country allow provisional ballots for everything on the ballot. Why is Nevada in those other 6 states? Sure, there are people who could go somewhere else. There are other people who are 70 years old and would have to take a bus to somewhere else. They deserve to vote and they deserve to vote on the ballot. They also need consistency. We were fighting all over the country on what kind of provisional ballot would count, depending on where the person went.

In some states, you had to be in the right voting precinct. In other states, you had to be in the right congressional jurisdiction. That was the ruling in Nevada: you had to be in the right congressional jurisdiction. In other states, you just had to be in the right county. It's really a matter of philosophy. Where do we want people? Do we want them to count or don't we?

The word in our law now says "jurisdiction." The ACLU was ready to sue, and will sue the next time, that "jurisdiction" means "county." It certainly doesn't mean congressional district, as far as provisional ballots counting. In Clark County, if you were across the street in the wrong congressional district, your provisional ballot would not get counted. We want it to be counted; it gives a consistency. It may mean that a vote for a particular person may not count, but Larry Lomax was able to tell me they can count a provisional ballot for all but one office, like a senator or a U.S. congressman. So we want that clear, and we'll put that in writing. We want methods put on the board about voting fraud. One county might make a provision of putting names up on a website to check whether you voted. Our voting law should be consistent statewide. If we have a provision to check whether somebody voted, a system, it should be statewide.

[Richard Siegel, continued.] Challenges should be statewide. We were very worried about challenges throughout this election. If I say Assemblywoman Angle should be challenged, and I meet the standard that was appropriately set, that I was in her congressional district, she then has to show an ID. If she doesn't have that ID with her, she can only vote for the four federal offices. If you want to, you can easily abuse the power of challenge. We're very worried about that. We don't like the idea that the power of challenge means that you can insist that somebody provide an ID, when the federal law does not otherwise require that.

When you ask what the American Civil Liberties Union represents, we have been absolutely consistent. We have wanted the latest possible registration, the widest possible use of provisional ballot, the widest possible counting of provisional ballots. We really don't care very much how it affects an individual candidate for office. We care about the people who run the election, but if the law is wrong, the law is wrong.

The Secretary of State's Office lost half of the ballot question decisions by the federal judges. Sometimes the law was written poorly; other times the interpretations by the Attorney General's Office and the Secretary of State were bizarre. The idea that they tell you how many signatures, you get them in on time, and then they tell you that you needed 20,000 more because we had another election, that's bizarre, they lost. The 13-out-of-17-county rule is now essentially dead. It was essentially dead two years ago in Idaho, the Ninth Circuit Court of Appeals ruled that. But we just ignored it. The U.S. Supreme Court wasn't going to overrule the Ninth Circuit on the Idaho decision two years ago that killed the 13 [-out-of 17-county rule]. We'll be arguing about the law, because the law is the essential thing. I also want to clean up the law.

The ACLU, Laura Mijanovich and I, will be here on every detail of the law, because we think you're writing the most important law in this Legislature, even more important than the budget committee. You decide whether people are disenfranchised or not. And you partially disenfranchised a couple of thousand people last time, with the provisional ballot law that you wrote and I'm really sad about that. I hope that won't happen again.

**Co-Chairwoman Koivisto:**

I only have one comment about the 13-county rule. If we don't use that, Clark County is the 800-pound gorilla that can roll over the whole state.

**Richard Siegel:**

That's the same in our general election law; the same principle. From *Dungan v. Sawyer* [250 F.Supp. 480 (DC Nev., 1965)], we just waited 30 years to apply it to the ballot question issue. It was first done in Idaho in the Ninth Circuit Court of Appeals, and now they applied it to Nevada. It's on appeal, but you're appealing a Ninth Circuit decision that they've already made. People tell me all the time that they think this one-person-one-vote thing is terrible. It means that every one of us has the same voting power. If it means that 70 percent of the voting power is in Clark County, so be it. That is the way it has to be. I don't think that the majority of you want to change that. It has to be applied in Nevada. Somebody made a point before, they're overruling the *Nevada Constitution*. That was the point, that they overruled the *Nevada Constitution*. The *Nevada Constitution* is not in full compliance with equal protection under the law. It wasn't on that point, it isn't on a number of points.

**Co-Chairwoman Koivisto:**

That's not terribly surprising, considering it was written so long ago by a bunch of cowboys.

**Anita Hara, Private Citizen, Washoe County, Nevada:**

We are a volunteer group working on election reform under Frankie Sue Del Papa, the former Attorney General. We submitted some suggestions for legislative changes this week. Our group represents the user group in a lot of ways. We were the people trying to register voters, trying to explain how to fill out a mail-in ballot, trying to talk people through getting in to the registrar's office, getting the right information when the phone lines were busy. So we bring a unique perspective that way.

I want to applaud this group, and especially the Secretary of State for his paper trail; it was great to have that in our county. I also wanted to thank him for adding a \$15 million budget item for more machines, because we definitely need those too. You've heard repeatedly long lines were an issue in Washoe County. Machines, or the lack thereof, were really a part of it. Having said that, Dan Burk did a great, incredible job of trying to supply so many new voters with access to voting. Our county was very active registering people to vote as well. Yet there are many things that, having gone through the process, and now that the dust has settled, we'd like to give input on. There are many ways to improve.

We are here today to speak to you about some of those things. I will just touch on a few things I heard here today that I applaud. Moving the primary is a good idea. But I think, from a local perspective, local candidates can be handicapped

by having the deadline moved too far ahead. That makes them have to have a long campaign, and there's often not a lot of financing for that. I hope you consider the entire process before making that decision.

[Anita Hara, continued.] The other thing I'd like to touch on is the unevenness of polling sites. One of the problems was access to a computer. In some sites, people could look up registrations right there and send voters to different places. The registrar from Clark County said that they had computer access. Not all of our sites had computer access. So people weren't able to be easily relocated; that caused confusion at the voting location and contributed to the long lines.

The other thing that we need to look at is poll worker education. There were so many people who had different ideas about how to accept ID, what needed to be verified, when they could split their district lines up, et cetera. It led to a lot of confusion from a lack of clarity in the statutes. The training could be improved and made easier for everyone, getting things out there a lot earlier.

**Cathy Bradford, Private Citizen, Washoe County, Nevada:**

I'm a Nevada attorney, and I acted as a poll observer on Election Day. I was assigned to one of the precincts in Reno. They had the longest lines in all of Washoe County, and maybe even in the whole state. We had three-hour waits, we had 200 people in line when the polls closed, it was utter chaos. As Anita Hara said, we didn't have a computer.

I'd like to touch on some of the problems that I saw at the polling place. I also wanted to emphasize the importance of a poll observer. I was trained by the Democratic Party in a two-hour class where we were given a Nevada law summary. I think we were pretty well informed on what we should do, what we could and couldn't do, and not to interfere with the voting process. I viewed my role, in part, as assisting voters, whether they were Democrats or Republicans.

I wanted to give one example. At the very beginning of the day, a voter came in. She'd asked for an absentee ballot, but she didn't get it, which was pretty common in this last election. The poll worker sympathized but would not allow her to vote because she didn't have her absentee ballot to surrender. I turned to her, very discreetly. From my training, I knew that the voter could sign an affidavit saying she'd lost her ballot and she could vote a full ballot. The poll worker found the affidavit [form]. She was very grateful to me, the voter was ecstatic, she couldn't thank me enough.

[Cathy Bradford, continued.] So I wanted to encourage you to think about the role of the poll observer; it can be an important role. I agree you might not want to have 5 people back there. But you do need somebody there to make sure that the voting is going according to law and people aren't being disenfranchised because a poll worker doesn't know what the rules are. We didn't have a big problem at our poll with provisional ballots. But we did have a few people who came in who needed the provisionals.

One case was a woman who was a doctor, and her husband had registered to vote with her at the same time. His name was on the rolls, her name wasn't. She wanted to vote a full ballot. Because she's a doctor, she wanted to vote on the state measures, the medical malpractice in particular. She started crying, because we couldn't let her do it. She said it was very important to her, since she is a doctor she wanted to vote on this issue, and we couldn't let her do it. I would agree with Mr. Siegel that we should expand it to let provisional voters vote on state measures.

Another problem that I saw was the registrar's office had given people the wrong information. Precinct 237 was supposed to vote at another school. The registrar's office sent out sample ballots saying go to Damonte Ranch School. Some people called that day, and they said, go to Damonte Ranch. People stood in line for three hours, got up to the counter, and were told they were at the wrong precinct. We didn't have computers, we couldn't verify that they were actually registered voters. We said go to this other polling place and vote over there. Go stand in line over there for 2 hours. So I'd encourage you to think about the role of provisional voting in terms of that situation. If the voter goes to the wrong poll and it's not their fault, they can't go spend another hour waiting in line. That's another issue I'd like to see addressed.

As Anita Hara said, it's very unfair that some polling places had computers and others didn't. That creates discrimination against a voter who happens to be in a polling place without adequate resources. I'd like to have computers at all the polling sites.

Another problem we had was because the schools are open on Election Day you have problems with space in the polling places. We were put in a very small hallway, there were 200 to 300 people in line, they had to be outside because school was in session; they were cold. When they got inside, there were 9 machines all crammed together and people could see who other people were voting for; there was no privacy. There are all those kinds of issues. There were students running around making faces at us and all of this. So we'd like to

encourage you to think about the idea of mandating an in-service day for Election Day. That would be real important.

[Cathy Bradford, continued.] It would also permit students, who are allowed under the statutes, to be poll worker trainees when they're 16 and older. They'd have the day off from school and they could actually help with some of these elections, and it'd be a great civics lesson for them. I let my daughter cut school that day, and she volunteered with the Democratic Party. I think it was invaluable that she had that experience. This would give them a legitimate way to do it.

A lot of the problems we had in this election, in terms of voters being disenfranchised, were because we vote on a "precinct only" basis. You have to go to the precinct where you're registered. A lot of people don't work anywhere near their registered precinct. They have to drive all the way across town. I live in a brand-new neighborhood. As I was driving to the polling place that morning there were construction workers working right next to the polling place. They couldn't just walk over to that polling place and vote on their lunch hour. Instead, they have to drive across town [to their own precincts] to vote. So the concept I'd like you all to think about would be having voting done on a county-wide basis, the way early voting is done, and there's a computer in every large polling place. The voter gets to vote anywhere that's convenient for him. That would lead to a reduction of costs in the long run, if you did it that way. We have the technology now because we've done it for early voting.

One other pet peeve that I have is that the schools are not getting involved enough with teaching their students to register to vote. I know there's an administrative code that says schools need to have voter registration forms, but I'd like to take that a step further and make them voter registration agencies. Have one person in the school be a field registrar to register those children who are turning 18. I had my daughter go in today to the office at her school and ask for a voter registration form. They didn't have any, and they couldn't tell her where to go. They couldn't give her the phone number. So clearly our schools aren't doing enough to get our youth involved in the voting process.

**Kate Marshall, Private Citizen, Washoe County, Nevada:**

I, also, am part of this committee working with Frankie Sue Del Papa. I was a poll watcher. I was not born here, but I do live here. I'm not from California, I live in Nevada. Frankie Sue asked me to call the Secretary of State of Oregon and talk to their elections manager about their experience. As you know, they do a total mail-in ballot. That, probably, is unlikely to happen here, because we've invested in machines. However, I would like to give you some idea about

cost reductions for mail-in ballots, in case you are encouraged to promote mail-in ballots as a way of early voting.

[Kate Marshall, continued.] The Secretary of State's Office in Oregon has achieved a cost reduction of 17 cents per voter by using mail-in ballots. This is not a reduction to the counties, that's only to the Secretary of State's Office. I also had the opportunity to interview one of the county managers from Washington County up in Oregon, which is one of the larger counties. Her office, she believes, was able to reduce their cost by \$500,000 by going from the kind of voting system we have to just mail-in voting. While I don't think we would be able to achieve that kind of reduction in costs, simply by promoting mail-in voting we might be able to achieve some reduction in costs to help offset that \$15 million ticket that the Secretary of State had up there.

One of the ways that Washington County in Oregon was able to achieve that reduction in costs was because they did not have to spend so much money on temporary poll workers. So when they did a regular election, like the kind we're talking about, the last time they did that was 1996. They spent \$100,000 a day on temporary poll workers. This last election, which as you know was a rather hectic election, they spent \$42,000 in total on temporary help. It's just a huge difference.

There's been a lot of discussion of long lines, but there hasn't been much discussion about the time off work. As you know, people are allowed to get time off work to go vote. If the line is very long, it may not be that the person doesn't want to complete their civic obligation, it may be that their time off work is running short. So when you think about trying to shorten the long lines, think about it in conjunction with the time off work that they get. If someone lives in Clark County, and they work on the other side of Clark County, I daresay it's going to be a while.

There's been a lot of discussion about the provisional ballot being only for federal issues and people running for federal office. It's important to know that Nevada is one of only six states that use a provisional ballot in that way. Forty-four states use the provisional ballot to vote on all measures and all persons running for office, state, federal, and local.

There was some discussion about voter registration, and the ensuing fraud issues that came up with voter registration in this last election. In Washoe County, Dick Gammick [Washoe County District Attorney] has said that he does not believe that he has jurisdiction to enforce any potential fraud issues. I heard from the county manager from Douglas County that they believe

that their district attorney can prosecute when necessary. That is not the position of the prosecutor in Washoe County. So that may need clarification as to who has jurisdiction to enforce these laws should there be a breach. There was some discussion about the number of ballots that are created to do an election. One possibility, certainly this is picked up by the State of Oregon, and may be of interest to the State of Nevada, they mail their mail-in ballot with the sample ballot. Each county has been given a non-profit designation, which lowers the postage cost to 8 cents an ounce.

[Kate Marshall, continued.] The issue also came up of the machines and how the machines provide a paper trail. It's our understanding that there are a number of rural areas in the state of Nevada that do not have a paper trail. Perhaps they are encountering the same situation as Clark County, I don't know. We had some people from rural areas come to us and represent that there was no paper trail when they voted. I have no personal knowledge of it.

**Co-Chairwoman Koivisto:**

The State purchased new machines with the printers for every county, except Clark, for the last election. So they had them.

**Kate Marshall:**

I'm glad to hear that, Madam Co-Chairwoman.

There was some discussion by the Secretary of State about auditing. One question that I would have is whether it is a barcode to barcode audit. If you look at the paper that the computer prints out, it has a barcode on it for each voter. If you run an optical scan on that barcode, and you run an optical scan on the machine, you are still doing data-to-data, you are not doing a visual check, barcode to barcode.

If you go to Macy's [department store] and buy a shirt, they give you the barcode and they stick it on the little tag on the shirt, and also on your receipt. So if I wanted to compare those, I could run the barcode off the shirt tag, and the barcode off your receipt, and they'd match up as long as they were the same. So when the Secretary of State says that he does an audit, is he just running the barcode off the paper printout, against the barcode off the computer?

**Renee Parker, Chief Deputy Secretary of State:**

No, it isn't. There is a barcode printed out on the paper trail, but currently the audit requires the comparison of the actual ballots on the paper trail to the results from the machine. We are working with a vendor that's doing an

open-source barcode reader, a different vendor than Sequoia. At a certain point you could run the barcode that contains the information that prints on the paper trail to the machine results. But it's two different sets of results that are being compared.

**Kate Marshall:**

It's always good to hear that the State of Nevada is ahead of the game.

One last thing I forgot to talk about, in the vote-by-mail. The Oregon Secretary of State's Office stated that in special elections, where you generally have a very low turnout, they were able to increase their turnout from 18 percent to 30 percent by pushing vote-by-mail. I'm talking about special elections where generally many people don't vote. So I would encourage vote-by-mail.

**Assemblywoman Giunchigliani:**

On the poll worker issue, we used to train poll workers, and then as candidates you signed a document so that you knew who to expect down at the polling area. That seems to have gone away, I don't know if that was statewide or not, so maybe we could take a look at that. Did you have to fill out any kind of documentation?

**Cathy Bradford:**

I attended a training session, and then I had to get a letter of appointment saying I was a representative of the Democratic Party and I was entitled to be a poll observer. There's either a statute or an administrative code that says political parties are entitled to appoint representatives to act as poll observers.

**Assemblywoman Giunchigliani:**

So that was still in place in Washoe County as well. I was not sure if that was handled consistently across the state.

**Cathy Bradford:**

I would just add that there were other groups there that were not affiliated with either political party, independent groups. I'm not sure how they got in, to tell you the truth.

**Assemblywoman Giunchigliani:**

That's where I was going to go with it. Poll watchers have always been permitted as long as they don't interfere with the people there. We'll have to dig into that a little bit.

[Assemblywoman Giunchigliani, continued.] One night a friend was delivering a ballot for a constituent, and we went to one of the satellite offices. Unfortunately, it was a part of North Las Vegas where they had never received their sample ballot, so the individuals there did not know what poll to go to. They were told to go to this one where there was only one voting machine and people were watching what they were voting on, because it was facing out into the area. There was a real problem with that. In fact, Dean Heller came into the building that night, at the same time that all of this was going on, so I pointed it out to him. There are things that we need to deal with in anticipation of what could go wrong. It's great that we had the volume of voters, but we want to make sure that people are protected in their secrecy and make sure that there is equalization of access to the voting machines; that was not there.

**Co-Chairwoman Koivisto:**

Is there anything else to come before the Committee? Seeing nothing, we're adjourned [at 6:05 p.m.].

RESPECTFULLY SUBMITTED:

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Celeste Gunther  
Committee Attaché

APPROVED BY:

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Assemblywoman Ellen Koivisto, Co-Chairwoman

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Committee Name:</b> <u>Elections, Procedures, Ethics, and Constitutional Amendments</u>			
<b>Date:</b> <u>February 10, 2005</u>		<b>Time of Meeting:</b> <u>3:45 p.m.</u>	
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
***	A	*****	Agenda
***	B	Dean Heller, Secretary of State	Presentation of 2003 and 2005 Session issues and proposals by the Secretary of State's Office.