

**MINUTES OF THE  
SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-fourth Session  
February 27, 2007**

The Senate Committee on Legislative Operations and Elections was called to order by Chair Barbara K. Cegavske at 1:32 p.m. on Tuesday, February 27, 2007, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Barbara K. Cegavske, Chair  
Senator William J. Raggio, Vice Chair  
Senator Warren B. Hardy II  
Senator Bob Beers  
Senator Bernice Mathews  
Senator Valerie Wiener  
Senator Steven A. Horsford

**GUEST LEGISLATORS PRESENT:**

Mike McGinness, Central Nevada Senatorial District

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Michelle L. Van Geel, Committee Policy Analyst  
Brian Campolieti, Committee Secretary

**OTHERS PRESENT:**

John L. Wagner, The Burke Consortium  
Vinson W. Guthreau, Nevada Association of Counties  
Janine Hansen, Independent American Party; Nevada Eagle Forum  
Michael Weber  
Barbara J. Griffin, Clerk/Treasurer, Douglas County  
Sharron Angle, Former Assemblywoman

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Craig Walton, Nevada Center for Public Ethics  
David K. Schumann, Independent American Party  
Matt Griffin, Deputy for Elections, Office of the Secretary of State  
Richard R. Ziser, Chairman, Nevada Concerned Citizens  
Tonja Brown  
Larry Lomax, Registrar of Voters, Elections, Clark County  
Alan Glover, Clerk/Recorder, Carson City

CHAIR CEGAVSKE:

I open this meeting today with Senate Bill (S.B.) 80.

**SENATE BILL 80**: Designates certain elective offices as nonpartisan offices.  
(BDR 24-818)

SENATOR MIKE MCGINNESS (Central Nevada Senatorial District):

Senate Bill 80 was requested following the primary election in Churchill County. A county office was vacant due to the retirement of a long-time officeholder. Three persons of the same political party filed as candidates and one of them received 50 percent plus three votes in the primary. According to law, that person is declared the winner and only their name goes forward to the general election. Senate Bill 80 is not about that person—in fact, they support this bill. In several instances, one party or the other has been left out of voting due to this circumstance. I heard from several constituents following this vote and was encouraged to sponsor legislation. My only purpose in presenting S.B. 80 is to allow all voters to participate in the election of county officers. Perhaps, this is not the correct way to approach this problem. I understand Senator Dean A. Rhoads sponsored S.B. 80 to institute the 50-percent-plus-one legislation several sessions ago and still believes it is the right way to address the issue. Barbara J. Griffin is here to testify on S.B. 80. As written, she is opposed to the bill and has good reasons. I commend her, not only because she is one of my constituents, but because she came with her suggestions to make changes. I will let her make the case for changes which are well thought out and positive. My duty is to try to make elections available to everyone so one party is not shut out of an election.

CHAIR CEGAVSKE:

I remember the debate and discussion about getting 50 percent plus one vote which enabled a candidate to enter the general election. The rationale was the rule would save taxpayers money. I agree that not allowing voters a vote on

more than one person in the general election is a disservice. However, I do not know having only nonpartisan candidates is the way to go.

SENATOR RAGGIO:

We made sheriffs nonpartisan. If we carry this forward, why not make the State Treasurer, Secretary of State and State Controller nonpartisan? Those are administrative offices as well.

SENATOR MCGINNESS:

Senate Bill 80 intends to add county assessors, county clerks, commissioners, recorders, treasurers, district attorneys and public administrators. Most rural counties have little distinction between political parties within these races. The reason I want nonpartisan is out of deference to Senator Rhoads because he strongly believes in this. I am open to suggestions. If we can get S.B. 80 rolling, I understand some statewide offices are more administrative.

CHAIR CEGAUSKE:

Thank you Senator McGinness, we will accept any public testimony on S.B. 80.

JOHN L. WAGNER (The Burke Consortium):

I would like an amendment offered for S.B. 80. If there are three candidates in the primary, the top two should have a runoff to enter the general election. In the case of multiple party candidates, whoever gets the most votes should run against the other candidate who wins the most votes for his or her party. From that point, those two candidates would run against each other in the general election.

VINSON W. GUTHREAU (Nevada Association of Counties):

We would like county commissioners to be omitted from S.B. 80 as nonpartisan; aside from this, we are neutral.

JANINE HANSEN (Independent American Party):

I have presented testimony ([Exhibit C](#)) from Washoe County Commissioner Bonnie Weber, District 5. [Exhibit C](#) states Ms. Weber's disapproval of S.B. 80. The purpose of party primaries is for members to choose their candidate. We have no opposition to the suggestion by Mr. Wagner to have a primary as a runoff. During the last election, the Independent American Party had over 13 people running for offices listed in S.B. 80. It is important to leave these positions as partisan offices. There is more interest, debate and accountability

from voters and candidates because they are partisan positions. This is not the way to resolve the problems Senator McGinness has brought forward. The majority of our candidates were in races where the only opposition was an Independent American; there would not have been a choice in that race if our party had not participated.

CHAIR CEGAVSKE:

If you have further suggestions for S.B. 80, we will accept them anytime.

MS. HANSEN:

My only suggestion is the same as Mr. Wagner's; only if there will not be another party on the ballot.

MICHAEL WEBER:

I am here to testify on Senate Bill 79 but want to acknowledge my wife is Washoe County Commissioner Bonnie Weber and remind you Exhibit C is testimony against S.B. 80.

BARBARA J. GRIFFIN (Clerk/Treasurer Douglas County):

I am concerned S.B. 80 will encourage more recall petitions. Some counties may only need 50 signatures to get a recall measure on the ballot. The cost to the counties is tremendous. I do not want to see recalls become frivolous or used when not appropriate. I also have concern with appointments. The Governor makes appointments to the county commissioners and commissioners make appointments to other elected officers if positions become vacant. If they become nonpartisan, those appointments no longer have to be by party. For example, if there is a democratic vacancy in a commissioner's seat and there is a republican governor, he or she could appoint a republican commissioner to that seat. Those appointments could become political in nature by party rather than qualifications. If we run nonpartisan, we are put in the position of advertising our party affiliation and promoting that more than we have done in the past. Our process has worked for decades and should be left alone.

CHAIR CEGAVSKE:

I will introduce Bill Draft Request (BDR) 17-310.

**BILL DRAFT REQUEST 17-310** Creates the Legislative Committee on Child Welfare and Juvenile Justice and the Legislative Committee on Senior Citizens and Veterans. (Later introduced as Senate Bill 170.)

SENATOR BEERS MOVED TO INTRODUCE BDR 17-310.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CEGAVSKE:

I will introduce a BDR for drafting to recognize hemophilia awareness month.

SENATOR BEERS MOVED TO INITIATE A BILL DRAFT REQUEST  
TO RECOGNIZE HEMOPHILIA AWARENESS MONTH.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CEGAVSKE:

I open the hearing on Senate Joint Resolution (S.J.R.) 1.

**SENATE JOINT RESOLUTION 1**: Proposes to amend the Nevada Constitution to remove requirements concerning affidavits that must be affixed to referendum petitions and initiative petitions. (BDR C-688)

SHARRON ANGLE (Former Assemblywoman):

I support S.J.R. 1. This should have been done in 2005 since *Heller v. Give Nev. A Raise, Inc.*, 120 Nev. 481, 96 P.3d 732 (2004). As the author of The Angle Property Tax Restraint Initiative, I have stood on the corner of streets and asked people to sign petitions. We always ask if a person is a registered voter because only registered voter signatures verify at the county clerk's office, but there is no way to know if a person is telling the truth. I do not get to check their identification. Requiring me to sign an affidavit almost makes me a criminal. There is no way I can know if signers are registered. Someone could lie and say they are registered and sign the petition.

Secondly, the affidavit requirement is meaningless because, even though we are required to have that notarized, the county clerks will verify those signatures on their own. They will not take my word. As a result, we have to collect at least 50 more signatures because that is about how many will not verify for various reasons. In addition, this affidavit is a fee to block citizen initiatives and referendums charged to the citizenry. When I collect signatures, I am required to have those signatures notarized and that costs money.

CHAIR CEGAUSKE:

I have received e-mails supporting and opposing S.B. 79 and S.B. 80 ([Exhibit D](#) and [Exhibit E](#)).

CRAIG WALTON (Nevada Center for Public Ethics):

We support S.J.R. 1 in order to bring the petition and initiative processes into agreement with the freedom of speech ruling by the Nevada Supreme Court. Abuses of the process have been occurring and S.J.R. 1, understandably, is not designed to address any of these abuses. We look forward to antifraud legislation to give the Secretary of State the tools and enforcement authority to punish fraudulent signatures, wordings or other deceptions. We need an open and accountable process in which the initiative states a clear and unambiguous public purpose for which allowed methods of signature-gathering are open and honest so Nevadans are not deceived. For example, we had State Question No. 4 versus State Question No. 5 regarding a ban on smoking. This created great debate throughout the state. The problem is a person can put together a deceptively worded measure. When that measure comes up, the Secretary of State has no authority to parse the logic and see if it makes any sense or if deception exists. We need to address the question of how measures should be worded. We hope to come up with a suggestion by 2009.

JANINE HANSEN (President, Nevada Eagle Forum):

We support S.J.R. 1. I have collected signatures as well and trained signature gathers. As Ms. Angle mentioned, requiring affidavits affixed to petitions is useless. There is no way I can verify if a signer is a registered voter. Additionally, I have had to gather signatures from several counties at one time. There is no way possible to verify those signatures. Verification matters at the level of the county clerk, not at the level of the petition circulator. Notarization is also a burdensome process that costs us time and money. With regard to the process being open and accountable, it is because the clerks are checking the names.

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DAVID K. SCHUMANN (Independent American Party):  
I support S.J.R. 1.

SENATOR RAGGIO:  
Is this obsolete language with regard to the Nevada Supreme Court decision?

BRENDA J. ERDOES (Legislative Counsel):  
Yes, even if it is left in, it is not enforceable.

SENATOR RAGGIO:  
We do not have an option on this; we have to pass S.J.R. 1 in order to be consistent with the Nevada Supreme Court ruling.

SENATOR BEERS:  
I support S.J.R. 1, but how can the courts find the *Constitution of the State of Nevada* unconstitutional?

MS. ERDOES:  
It is part of the hierarchy. The *Nevada Revised Statutes* (NRS) can be unconstitutional in the *Constitution of the State of Nevada* and the *Constitution of the United States of America*.

SENATOR RAGGIO:  
They did that when we had one senator for each county. It was determined the *Constitution of the State of Nevada* was unconstitutional.

MR. WAGNER:  
I support S.J.R. 1. I would add that the notary process circulators must go through turn people off to participating in our form of government.

MATT GRIFFIN (Deputy for Elections, Office of the Secretary of State):  
The Nevada Supreme Court decision declared the requirement of an affidavit unconstitutional. The first part of the decision hinged on the undue burden to get these signatures. Article 19, section 3, subsection 1 of the *Constitution of the State of Nevada* requires:

Each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such

document was at the time of signing a registered voter in the county of his or her residence.

The Nevada Supreme Court, coupled with NRS 295.055, requires a voter be registered in the county where they live. That was seen as a roundabout way to get to the former requirement declared unconstitutional that petitions could only be circulated by a registered voter.

I do not see the affidavit requirement as unconstitutional. If there is interest in establishing a requirement that the circulator file an affidavit stating no signatures were gathered unlawfully to his or her knowledge, that affidavit could be filed with the Secretary of State's Office. This would help our office and the county clerk's office in determining if fraud existed. That aside, we are in support of S.J.R. 1.

Ms. ERDOES:

We could look into this further if the Committee would like.

SENATOR RAGGIO:

I can foresee a circulator purposely getting signatures of unregistered voters. Without an affidavit requirement, is there something in the law to charge that person because he or she knowingly gets unregistered signatures?

MR. GRIFFIN:

There is a law, but I cannot remember what it is. Ultimately, the signatures would be thrown out.

SENATOR RAGGIO:

People from outside Nevada have come and paid for signatures. Is there a way to charge those people without having an affidavit requirement?

CHAIR CEGAVSKE:

Senate Bill 78 addresses that area.

Ms. ERDOES:

*Nevada Revised Statutes* has a provision that you could charge them under; although, it is not used frequently.



SENATOR HARDY:

This is a policy decision for the Legislature to make. It sounds like the Secretary of State has concerns with removing the affidavit.

MR. GRIFFIN:

That is a fair statement. The removal of the affidavit, without looking into this further, may prevent us from keeping an enforcement mechanism. It is worth exploring whether the affidavit also ties into any type of criminal liability on the part of the circulator. We realize the burden of identifying who is registered and where they live.

SENATOR HARDY:

Does the Secretary of State feel we can sufficiently address his concerns for fraud through statute instead of the *Constitution of the State Nevada*? That would be my preference, but I would like to get the Secretary of State's input.

CHAIR CEGAUSKE:

Mr. Griffin, you should review S.B. 78 because it may alleviate some concerns.

MR. GRIFFIN:

I will review that and get back to the Committee.

RICHARD R. ZISER (Chairman, Nevada Concerned Citizens):

We are in support of S.J.R. 1. However, we do have a concern with the kinds of penalties for citizens trying to solve a problem. I am not sure punishment would do any good. As previously said, signatures are checked by each county. There will always be cheaters and frauds at all levels.

CHAIR CEGAUSKE:

I will close the hearing on S.J.R. 1 and open the hearing on Senate Bill 79.

**SENATE BILL 79**: Requires the use of the permanent paper record produced by a mechanical voting system for the recount of ballots cast at an election.  
(BDR 24-739)

MS. ANGLE:

I am in favor of S.B. 79. I sent an e-mail to each member regarding the issue of elections. Last year, I watched a television interview with the former United States (U.S.) Election Assistance Commission Chairman appointed by the

President. In the interview, he stated he gave up his appointment because the Bush Administration was not interested in accuracy and the security of elections. They were more interested in the status quo. That is the basis for my testimony on S.B. 79 which makes the paper ballot the true ballot.

I have provided a packet ([Exhibit F](#), original is on file in the Research Library) which you can read to augment my testimony. When we put in the verified voter ballot, that ballot is our safety net and would be counted. Those paper ballots make voters feel good, but are no more than a paper tiger. There is no accuracy or security in this voting machine system because the paper ballot does not guarantee anything. It will never be counted; it is only used as an audit tool. If something goes wrong with voting machines, it could negate the whole election and cause a special election. I draw your attention to [Exhibit F](#) and the expert testimony. You see an article about certain experts and what they say about these voting machines. It is not an impossibility to make the paper ballot the official ballot. I have been in contact with another expert who has made a way for us to take a paper ballot and scan it with optical scanners. There are many ideas on how to make the voting process more secure and accurate. As Legislators and citizens, that is what we want. Everyone wants accurate and secure elections.

I draw your attention to the U.S. House of Representatives Resolution (H.R.) 811 of the 110th Congress: To amend the Help America Vote Act (HAVA) of 2002 to require a voter-verified permanent paper ballot under Title III of such Act and for other purposes. This was brought by U.S. Representative Rush Holt from New Jersey. He goes further than S.B. 79 in his assessment of what needs to happen to have secure and accurate voting. More information on this federal legislation is provided in [Exhibit F](#). If H.R. 811 passes, it would apply to federal elections in Nevada.

It has been proven that voting machines can be hacked into and votes changed. You may hear testimony that paper ballot spools can jam and if that particular machine malfunctions, it should be taken offline and a paper ballot provided.

The state of Oregon has done away with all voting machines and become a mail-in, ballot-only state. Nevada could do this as well if we want to ensure a paper ballot count that could be recounted. A Washington State attorney sued jurisdictions using Sequoia AVC Edge voting machines and won in one county. I have been told the bugs will not be worked out of these voting machines until

2010. That is too late for the next presidential election. Washoe County could be the deciding county for the entire United States for that election as well; we need to be alert and prepared in order to avoid being the next Florida.

CHAIR CEGAVSKE:

I had the opportunity to go to the Clark County Registrar of Voters. How would someone other than the Clark County Registrar of Voters change something in the machines?

MS. ANGLE:

I am not a technological person. I had an expert tell me these machines are susceptible to electronic impulses. Anything that puts out an electronic impulse can impact a machine.

CHAIR CEGAVSKE:

What I understand is if you have two cell phones and you want to give someone else information, it beams it through?

MS. ANGLE:

Yes, that is true. Another thing that came up in expert research concerning the Sequoia AVC Edge voting machines was the calibration of the touch screen based on height. If you are short, you may get a different vote than a taller person because of the way they are calibrated. These malfunctions and glitches have happened, and you will find more on them in [Exhibit F](#). It is not always intentional fraud; when you talk to people about the accuracy of these machines, they will tell you they can get within 1 percent. However, I have been told no research has been done on the margin of error with these machines. The best they can do is residual voting records which means under-votes and over-votes to get to 0.6 percent. I lost my election by less than that, so the margin of error would have come into play.

CHAIR CEGAVSKE:

You are saying this could be by machine. My cell phone could alter the machine?

MS. ANGLE:

I am unsure whether it is possible for a cell phone to alter a vote tallied in a voting machine.

CHAIR CEGAVSKE:

I am trying to get an idea of where something could have occurred. When I voted, I could not see how fraudulent activity could have happened.

MS. ANGLE:

Any electronic device like a cell phone could beam a signal to a voting machine. It does not take much to throw one of these machines off. Software can be manipulated without much effort.

CHAIR CEGAVSKE:

Are you saying I could pick a candidate for U.S. President and someone could command the machine to choose another? Is it that simplistic?

MS. ANGLE:

One machine malfunction was when people voted for one candidate, it was tallying all those votes for the opponent.

CHAIR CEGAVSKE:

Is there documentation of that?

MS. ANGLE:

Yes, the documentation is in [Exhibit F](#).

CHAIR CEGAVSKE:

Do you know the cost to retrofit each machine with a paper trail?

MS. ANGLE:

I am not sure. The way a paper ballot works is the machine releases a paper copy of your vote and you take it to a Scantron.

CHAIR CEGAVSKE:

Would you have one that stays in the machine as well?

MS. ANGLE:

No, the paper copy would not stay in the machine; it would print the ballot out and you would have a hard copy to take to the Scantron.

SENATOR HARDY:

The Committee needs to get to the bottom of this serious issue. We need to have the manufacturers of these voting machines in to give a presentation. I have seen things like this on television which appear to be conspiracy theories. We need to determine fact from fiction. I do not feel comfortable making a decision on S.B. 79 right now.

MS. ANGLE:

Senate Bill 79 is not about fraud; it is not about whether these machines are fraudulent. Senate Bill 79 is about security of the voter when he or she votes. If a malfunction occurs while voting, we need a hard copy so those votes will be counted. A paper ballot was intended as a safety net to say every vote counts.

SENATOR HARDY:

My concern is those safeguards do not exist. We need additional legislation to move forward.

CHAIR CEGAUSKE:

I was asking those questions to figure out when and how this fraud takes place. I have not heard anything from my constituents until S.B. 79 was created.

MR. WALTON:

We support S.B. 79. Our entire electoral system hinges on truthfulness and trust from Nevada voters. With hackable computers, a permanent paper record might be the only uncorrupted evidence in a challenged race. The heart of everything we do politically hinges on legitimacy. The faith and trust of the people is our responsibility. There is a reasonable fear among Americans that the electoral system can be manipulated and twisted.

MR. WEBER:

I am in favor of S.B. 79. To start with something we all can understand, if we file an electronic tax return and are summoned for an Internal Revenue Service (IRS) audit, we tell the auditor because it was done electronically, it must be correct. If asked to produce records showing the validity of our return, we reply, "Trust me. It is right." The agent looks back at us and says, "Well, that is good enough for me." We walk out having satisfied government requirements, right? Of course not. If we are audited by the IRS, they require a paper trail. When it comes to accountability for our votes, we seem to have a lower standard. Electronic voting machines count our votes without verification independent of

the machines; hence, the government tells the voters to trust it. How do we know it is right?

I manage public works projects involving millions of tax dollars. Most of my time is occupied creating mounds of paperwork for inspection, testing and financial records to show the project was constructed properly. If I have no records and tell the state auditor to trust me, not only would I be fired, but the firm I work for would never work for the state again. Trust has never been good enough for government work. It must not be good enough for counting votes.

In 1998, the Washoe County Board of Commissioners appointed me to serve on a blue-ribbon task force for elections. We were charged with reviewing election processes and making recommendations for improvements. During the hearings, we investigated the newer electronic processes and invited testimony from manufacturers to talk about the machines. After lengthy discussions, concerns remained that electronic voting machines lacked independent audit capabilities. Bob LeGoy and I asked one manufacturer if the machines could be fitted with printers to create printed ballots. He stated this could be done easily. As a result, the task force unanimously recommended Washoe County elections always have printed paper ballots to independently verify the machines. However, leave it to the courts to confuse this simple concept. The legislation allowed a paper trail, but the courts would not permit the printed ballots legal standing to audit the electronic process. What was the purpose of adding printers to the machines? The Washoe County system was created so printed ballots could independently verify the electronic process. The physical ballots could be counted and recounted by anyone without special training to audit a machine. Just as I am hired to provide accountability to you for state construction projects, it is your duty to provide accountability to those who hired you. In Washoe County, accountability of the electronic process already exists. I am asking you to correct the legislation to make it meaningful.

MR. WAGNER:

Anyone who has played a computer game knows that keyboard keys have different functions. The keyboard is no longer for typing; it becomes a game controller. When you vote, you insert a card into the machine and it reads data from the card. Is it possible for someone to load data in a way to alter the software within the machine? A result could be a vote for candidate A that the machine gives to candidate B without acknowledgment on the paper spool. It is also possible to program in such a way that after a period of time, the program

inside suddenly disappears. I know people who have done the same thing on personal computers.

CHAIR CEGAVSKE:

Are you saying even with a paper trail, a person's vote could be altered? The paper trail would say one thing and the data card would input different information.

MR. WAGNER:

That is correct. The paper trail would not reflect the vote within the computer record. Who would know the difference?

CHAIR CEGAVSKE:

This concerns me when you say someone could create a fraud-producing card. We have no safeguards or guarantees?

MR. WAGNER:

Yes, except for the paper trail. The paper could reflect how you voted, but the machine tally could come out wrong.

CHAIR CEGAVSKE:

Then the paper is not a guarantee.

MR. WAGNER:

The paper is a guarantee because it is printed.

CHAIR CEGAVSKE:

Which vote are they calculating, what the machine records or what the paper reflects?

MR. WAGNER:

In the case of a recount, the paper trail is the one counted, not the electronic tally. The machine could still have the wrong data. I was led to believe by former Secretary of State Dean Heller that the official vote count is from the paper trail and it is not.

CHAIR CEGAVSKE:

We were introduced to the process by former Secretary of State Heller.

MS. HANSEN:

We support S.B. 79. I have heard it said, "it does not matter who casts the ballots, it matters who counts the ballots." That is the truth of what we are looking at today. If voters knew the paper trail was not used to verify their vote, they would be up in arms. Voters are under the impression the paper trail secures their ballot. Before HAVA, we had a voting system that worked. Voting machines have created distrust about the accuracy of the election process. Senate Bill 79 is the most important ethics bill in the Legislature today.

MR. SCHUMANN:

We had better security and accuracy with mechanical voting machines 40 years ago. We were led to believe the paper trail was official, now it is only for audits. That is unacceptable; we need a real ballot because the machines can be hacked. We should not be concerned about the cost of security for elections.

TONJA BROWN:

I support S.B. 79. I believed the voter verification paper spool was my ballot and learned otherwise. We need a paper trail to secure votes and eliminate fraud. A group of women throughout the rural counties came to the Carson City Justice and Municipal Court last year with concerns about where the voting machines were stored. The candidates and their staff worked in the same building and had access to the machines.

LARRY LOMAX (Registrar of Voters, Elections, Clark County):

Senate Bill 79 is important. I have heard misinformation today concerning the security of the voting process. Little of what you heard is accurate and true. The machines are accurate, secure and cannot be hacked. It is beyond my comprehension that a cell phone could manipulate a voting machine. If I have access to any election equipment, I can change it at will. That is why we have administrative controls and security in place. I agree, it is important that voters trust the election process.

The voter verifiable printed record is intended to help us keep the process accurate. The voting machines were designed to record the votes of the people using them. They were designed to be redundant in order to prevent losing ballots. The results are stored in three different locations and subsequently federally certified by laboratories. We never lost an electronically recorded ballot in the ten years I have worked with elections. The paper printer was not designed or produced in the same circumstances.



After the 2000 presidential election, distrust became prevalent throughout the nation. As a result, Sequoia Voting Systems (SVS) created a certified paper trail printer we could attach to the machine. However, there is no redundancy and no backup; if the paper jams, the ballot is lost. I have a paper spool that shows a jam which gives an example of our ability to find these problems. Remember, the paper spool is intended for the voter to verify the vote was recorded. They were never intended as ballots. The intent was to audit the tapes by randomly selecting a statistically significant number and matching the electronically recorded results with what is on paper.

Theoretically, if a paper jam occurs, the voter brings it to the attention of the poll worker. Voters are not that concerned about elections fraud. They trust the Election Department. The distrust is from a small percentage of people; nationally 88 percent of voters have confidence in elections. Most voters do not spend time verifying the paper printout. We had a situation in 2006 where 13 voters had voted on a machine that jammed. The previous 12 voters never complained and verified their printout.

CHAIR CEGAVSKE:

Were those 13 votes counted?

MR. LOMAX:

We tally the electronic votes, not what is printed on paper. The results of an election come from the electronic ballot. The intent of the voter verifiable paper trail was for all voters to diligently verify their ballot. We have found they do not do that. If the paper record becomes the ballot, you lose votes and may disenfranchise voters who fail to check.

CHAIR CEGAVSKE:

How long do you store the paper records?

MR. LOMAX:

They are stored for the federally required 22 months. After that, they are destroyed by a company through shredding or burning. My printers are 99.9-percent reliable, which is high for mechanical equipment. In 2008, we will have over 600,000 people vote in Clark County. If my printers remain that accurate, paper jams will occur 600 times during the election. We should only use the paper record as an auditing tool. The *Nevada Administrative Code* requires us to randomly select 2 percent of the machines and compare the

electronically recorded votes with the paper record. We found they always match. My pictorial document ([Exhibit G](#)) gives a perspective of the paper spool length.

SENATOR BEERS:

Do you ever compare the number of votes cast on a machine with the number of signatures on the roster?

MR. LOMAX:

We always compare the roster with the machine records.

SENATOR BEERS:

The key is the comparison between the computerized system and the manual system. The signature count would be the check.

MR. LOMAX:

The signature count verifies no extra ballots on the record. Sometimes, the record is one or two off, which we identify when we certify the election for the county commissioner.

SENATOR BEERS:

Is that required for all counties?

MR. LOMAX:

Yes. The second issue concerns early voting. Early voting in Clark County during 2008 will generate approximately 5,500 paper spools. A recount will be administratively time-consuming and difficult to accomplish. [Exhibit G](#) gives an example of results in Georgia's first audit test. Human beings always make mistakes. The Georgia personnel were dealing with something never intended for the paper record.

CHAIR CEGAVSKE:

How many states use these machines?

MR. LOMAX:

Virtually every state in the nation has moved to electronic voting. Some are even returning to optical scan.

SENATOR BEERS:

My understanding is these machines go above and beyond HAVA requirements. Nevada exhausted its federal money within 16 of 17 counties, excluding Clark County, with these expensive machines. I recollect a study where they tested the number of errors voters self-caught during the act of voting. It appeared that reading back a ballot was more effective in people catching their errors.

MR. LOMAX:

The HAVA provided money for states under mandates. Many states went to one electronic voting machine in every polling place and used optical scan for the other ballots. Oregon uses optical scan and implemented voting for disabled people over the phone. A state could use the money in a variety of ways to meet HAVA requirements. However, it is not enough money to solve all problems.

CHAIR CEGAVSKE:

How many voting machines do we have in Nevada?

MR. LOMAX:

Clark County has 4,500 machines and 5,000 printers.

CHAIR CEGAVSKE:

Are there extra machines available in each county if one breaks down?

MR. LOMAX:

We have backups and spares if we need them.

CHAIR CEGAVSKE:

If a person could hack a machine, is it possible to alter a machine after votes have been cast?

MR. LOMAX:

No, it is not possible. My people in the polling place would never give access to a machine.

CHAIR CEGAVSKE:

Can the machines be compromised in a storage place?

MR. LOMAX:

No, they cannot be compromised there either. Due to comments and innuendo, people think voting machine manufacturers preprogram codes to throw votes one way or the other. This is fallacious because there is no way the factory will know how we are going to program each machine. I suppose a bug could exist to make the whole system collapse, but there is no way to manipulate the election.

SENATOR MATHEWS:

How many voting machine vendors exist?

MR. LOMAX:

There are four major vendors, SVS, Election Systems & Software, Diebold Election Systems and Hart InterCivic machines.

SENATOR MATHEWS:

Are these machines all alike?

MR. LOMAX:

Not necessarily, they are all touch screen with minor differences.

SENATOR MATHEWS:

They are essentially the same. If hackers can break into the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI), how can they not get into a simple machine like this?

MR. LOMAX:

No one can hack a voting machine. When the CIA and FBI are hacked, they are accessed from a network. We are not on a network; everything we do is stand alone. There is nothing to break into.

SENATOR MATHEWS:

I am neither computer savvy nor believe in conspiracies, but the more I hear of this, it appears someone is out to get us.

SENATOR HORSFORD:

The reports I have heard of hacking are not single instances. They happen more frequently than what Americans expect from their voting process. I understand you control the programming with the vendor. Once those machines download

the information into a master tally, what role does the vendor or anyone else play? What protections exist between the vendor and election officials?

MR. LOMAX:

Clark County and Washoe County do not contract out with a vendor. The only contact I had with the vendor is when I purchased the machines. The vendor plays no role in our elections; we do everything ourselves.

SENATOR HORSFORD:

Nothing is absolutely certain when it comes to computers. Just like there is human error, there is computer error. Who is involved with programming the tally system?

MR. LOMAX:

The program within the voting machine that registers each vote is part of the machine. We have nothing to do with that; it comes with the machine as does the Windows Election Database System (WinEDS). We create a database of candidates and number them. The entire system is tested and verified by each political party before and after each election. A copy of the database is sent to the Secretary of State's Office prior to the election so anyone challenging its integrity has a copy of the software outside our control.

SENATOR BEERS:

Nevada law requires names on the ballot to appear in alphabetical order. Are there states where other than alphabetical order is the law?

MR. LOMAX:

Yes, there are. We program a name and the computer assigns that name a number.

SENATOR BEERS:

There is no way the manufacturer of the machine knows in advance what name is assigned to a number. With that, I can see the source of your confidence with the machine. I have concern when the data is compiled. Do you see that as the riskiest part of the process?

MR. LOMAX:

No, because of the testing we do. Our testing is completely accurate. Whether you tabulate by hand, computer or optical scan, it continues to be an issue.

A paper record is a way to instill voters with confidence, but it needs to be done properly in the sense of matching those results against the electronic recorded results on the machine. Do not make the paper record the ballot. That piece of equipment will not always reproduce a ballot and the voters will not always catch it. We would lose votes we capture electronically.

CHAIR CEGAVSKE:

If you have to implement a paper ballot received by the voter, would that require another machine or hookup to part of the machine?

MR. LOMAX:

Nothing new is being requested. Our printer prints the names of the people the voters selected; the paper spool becomes a long list of ballots.

CHAIR CEGAVSKE:

The machine has a printer on one side; how would you administer an additional paper trail?

MR. LOMAX:

Any additional mechanisms on the machines need certification by the U.S. Election Assistance Commission (EAC). About two or three months ago, part of HAVA put the EAC in charge of certifying all equipment used in federal elections. Their first requirement was certifying laboratories to do the certification. The EAC has certified nothing because they just accepted this responsibility. The EAC has agreed any state can continue to use equipment allowed by that state's laws. Beginning in December, the EAC will require all equipment to be to the 2005 Voluntary Voting System Guidelines. The standards are more stringent than previous standards. One standard stipulates if a state uses the printout as the official ballot for a recount, that ballot must be verifiable to the voter. With this, the EAC has legislated technology that does not exist. We will have to feed the paper spool through a machine that will read it to someone who may be visually impaired. That will be a federal requirement.

CHAIR CEGAVSKE:

You have heard concern from the public and Legislators toward this process. I take this seriously as you do because we want Nevada voters to feel confident about voting.

MR. LOMAX:

Things will become worse if the paper record becomes the official ballot.

CHAIR CEGAVSKE:

Why would the paper record be bad as the official ballot?

MR. LOMAX:

Because ballots will be lost. Why would you take a system never designed to produce ballots and make the paper record the official ballot even though you will lose 1 percent of those ballots?

SENATOR HORSFORD:

The current technology does not support an official paper ballot? Do we need to work toward such technology? When I vote, the machine brings the paper record up on the spool; why not have the ballot printout for me to keep? Could we have the technology sometime in the future?

MR. LOMAX:

All laws in the United States prohibit voters from keeping a paper ballot because it leads to the potential for vote-buying or vote-selling. Not providing a paper copy of your ballot protects the privacy of your vote. You asked me if a vendor can create a printer that will never fail or lose a ballot; I do not know.

SENATOR HORSFORD:

Just because the computer says a vote exists, why should we take that as the record?

MR. LOMAX:

I can statistically prove the accuracy of the machines.

SENATOR MATHEWS:

In Oregon where all ballots are by mail, voters could keep a record by copying the ballot. That puts holes in your theory about selling or buying votes. Your theory is out the window.

MR. LOMAX:

Laws in every state prevent us from tying the ballot back to the voter.

SENATOR BEERS:

This hearing is less about making the paper trail the official ballot like S.B. 79 states and more about confidence in the election process.

SENATOR HARDY:

It appears the potential problem does not exist with the individual machines. The potential problem exists where ballots are tallied. Any conspiracy takes 5,000 people to compromise every machine in Clark County.

CHAIR CEGAUSKE:

It is worthwhile looking at the process to see what election workers do.

SENATOR HARDY:

I am sure those tours and demonstrations are available to the public as well. Is an online demonstration offered on what occurs in the process? Part of the problem is the process is mysterious, and most people do not understand technology. It would be helpful if information was available online concerning the process.

ALAN GLOVER (Clerk/Recorder, Carson City):

County clerks throughout the state agree with Mr. Lomax's testimony. Carson City has used SVS for years. It does not matter what voting system is used if it can be manipulated, whether it is optical scan, punch cards or direct recording devices. Historically, paper ballots were abandoned because they were corrupt. One trick used during the early days of voting in Nevada was to fraudulently fill in votes for voters. Everyone wants a magical system that is flawless; it is not possible. It depends on the integrity of the people running the election. Nevada has not had scandal concerning elections. The Sequoia AVC Edge voting machines prevent over-voting and eliminate any ballots being thrown out. We do rigorous testing on these machines to ensure the election is flawless. A comment was made that the accuracy of elections cannot be determined. In Carson City, the error rate with our machines is zero. We want accurate elections. There is a lot of misinformation out there about electronic voting.

SENATOR MATHEWS:

You do a great job with our elections. However, you underestimate the power of people to make mistakes, either on purpose or by accident.



MS. GRIFFIN:

I concur with everything Mr. Lomax has said. We would be happy to bring a voting machine in and demonstrate how it operates.

CHAIR CEGAUSKE:

We could also arrange a tour of the Carson City facility.

MR. GLOVER:

We could show you the system, including WinEDS, and how we tally the votes.

CHAIR CEGAUSKE:

The Committee could walk over for one of our meetings and spend time there.

MR. ZISER:

Nevada Concerned Citizens supports S.B. 79. We need to make sure the people who run elections are credible and trustworthy.

CHAIR CEGAUSKE:

Do Washoe County and Clark County program their own voting machines?

MR. GLOVER:

Yes, they do. Rural county voting machines are programmed by the vendors. Carson City sends the vendor a list of statewide and local candidates and they build the database. They then return the program and we proof it to make sure everything is correct.

CHAIR CEGAUSKE:

So you work with the vendor to create the program?

MR. GLOVER:

Yes, we work with them. I was originally opposed to the vendor programming the system, but favor it today because it saves me and my chief deputy time.

MR. GRIFFIN:

Mr. Glover is correct with regard to the relationship with the vendor. The relationship with the vendor in rural counties is centralized through the Secretary of State's Office.

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CHAIR CEGAVSKE:

I will now adjourn the Senate Committee on Legislative Operations and Elections  
at 4:11 p.m.

RESPECTFULLY SUBMITTED:

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Brian Campolieti,  
Committee Secretary

APPROVED BY:

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Senator Barbara K. Cegavske, Chair

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