

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

**Seventy-Fifth Session  
February 3, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:50 p.m. on Tuesday, February 3, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen Koivisto, Chair  
Assemblyman Harry Mortenson, Vice Chair  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Heidi S. Gansert  
Assemblyman John Hambrick  
Assemblyman William C. Horne  
Assemblyman Ruben J. Kihuen  
Assemblyman Harvey J. Munford  
Assemblyman James Ohrenschall  
Assemblyman James A. Settelmeyer  
Assemblywoman Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Tick Segerblom (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Patrick Guinan, Committee Policy Analyst  
Jackie Valley, Committee Manager  
Judie Fisher, Committee Manager  
Terry Horgan, Committee Secretary  
Cheryl McClellan, Committee Assistant

**OTHERS PRESENT:**

Ross Miller, Secretary of State  
Matt Griffin, Deputy Secretary for Elections, Office of the Secretary of State  
Larry Lomax, Registrar of Voters, Clark County  
Dan Burk, Registrar of Voters, Washoe County  
Alan Glover, Clerk-Recorder, Carson City  
Kim Carrubba, HAVA Program Officer, Office of the Secretary of State

**Chair Koivisto:**

[Roll called.] We have one new Committee member, Mr. Hambrick. Welcome to our Committee. Introducing Committee staff, we have Jackie Valley and Judie Fisher who are our Committee Managers; Terry Horgan is our Committee Secretary; and Cheryl McClellan is our Committee Assistant.

Today we are going to hear from the Secretary of State's Office.

**Ross Miller, Secretary of State:**

I would like to introduce my staff who will be over here on a regular basis. To my right is Matt Griffin, my Deputy for Elections, and also with us is my Chief Deputy Secretary of State, Nicole Lamboley.

I provided members of the Committee with copies of a report that was compiled pursuant to *Nevada Revised Statutes* (NRS) 293.4695, which has also been posted on our website ([Exhibit C](#)); as well as a copy of this PowerPoint presentation ([Exhibit D](#)); and copies of the Title 24 elections statutes that have the accompanying regulations ([Exhibit E](#)).

The Secretary of State's Office is the third highest-ranking constitutional office in the state and also the third-highest revenue generating agency in the state. We have four deputy positions, a chief deputy position, and about 118 staff members. Our main office is in the Capitol Building and we also have offices in Las Vegas and Reno. We oversee the commercial recordings in the state; the

notaries; and the state Securities Division. I serve on the State Board of Examiners, the State Board of Prison Commissioners, am Chairman of the State Records Committee, and serve on the Tahoe Regional Planning Agency Governing Board.

The public most commonly associates my office with the duties of the chief elections officer. In that capacity, we are responsible for administration and enforcement of Title 24, which is the state's election laws, and ensuring that we remain in compliance with the Help America Vote Act (HAVA) of 2002. We certify all the candidates; register and file contributions and expense reports; certify state ballot initiatives; and coordinate with local election officials in the administration of elections.

As everyone is aware, the 2008 election was historical in its significance to the state as both an early caucus state and what was identified as the number two battleground state for the presidential contest. We saw unprecedented numbers of resources and attention focused on Nevada and how we conducted our election. It became the focus of a lot of national attention and was held up as the model for how to run elections in this country. Much of that attention, including an article in the *New York Times*, was focused on our early voting program. In addition, CNN, Fox News, and many national news outfits came to Nevada. In the midst of profile stories across the country about how voters in other states were waiting in extraordinarily long lines, by and large that was not a problem we faced here in Nevada. That is due in large part to our strong early voting system in place.

It may seem unusual to some—and that was the focus of most of the stories—that we were able to vote in places such as libraries, community centers, and grocery stores. We may be the only state in the country where you are likely to hear a call for a mop-up at voting booth number 8, but it works pretty well for us and is something we can be awfully proud of.

As a result of working with the counties and registrars throughout the state, I think we met the challenge and demonstrated our preparedness for an unprecedented election. The needs of the record number of voters we saw at the polls were met. It is worth pointing out that we worked to ensure that not only did Nevadans have an opportunity to vote conveniently but to do so in an informed manner.

Although the turnout was not the largest by percentage the state has seen, certainly by the number of voters it was. We had over 1.4 million people register to vote in Nevada, which is a 35.1 percent increase from the last

presidential cycle. We saw a 45.4 percent increase in the number of Democrats registered to vote and an 18.3 percent increase in Republicans. Again, early voting was a big reason we were able to manage those large numbers of people turning out at the polls. Fifty-seven percent turned out to vote early before we ever got to November 4, so we were able to process a significant number of people. For Nevada, that resolved a number of the problems other states saw on Election Day as they tried to deal with record turnouts.

The reason we saw so many new voters coming to the polls, in my estimation, is due to the fact we had, for the first time in Nevada's history, both the Democratic and Republican Parties conducting early caucuses. That gave us the benefit of having the presidential contenders come to Nevada and talk about western and Nevada-based issues and campaign on our soil. Looking forward to the next presidential cycle, I think that is something our state leaders need to give a lot of time and attention to—how we are going to preserve that status. As I interact with other secretaries of state across the country, they all covet the opportunity to have an early position in the presidential election calendar and to have those presidential nominees come to their states and campaign. In states like New Hampshire, that is the primary issue of importance to their citizens. They have community groups and fundraisers all focused on preserving New Hampshire's first-in-the-country presidential primary. I do not think anyone would dispute that early caucuses had an overwhelmingly positive impact on Nevada, and we should look forward to preserving our status.

We tried to do a number of things in anticipation of just how significant this election would be and the focus we knew would be placed on Nevada. We tried to coordinate our activities with the county clerks and local election officials; part of that was establishing a statewide command center which centralized a lot of the election process within the Office of the Secretary of State. It improved communications with county officials and involved law enforcement. As part of the command center, we established the Nevada Election Integrity Task Force, a multi-jurisdictional task force coordinating activities with the United States Attorney's Office, the FBI, the Nevada Attorney General's Office, and investigators from our office as well as local election officials. They were able to respond to allegations of voter fraud, criminal election activity, and polling place disturbances and did it very, very well.

As part of the command center, we put in place a computerized system called "Track It" which we developed in-house. It is a web-based system of correspondence between election officials that allowed for automated communications for information exchange and provided a centralized resource

for local election officials. We were able to track whether any complaints were coming in concerning any polling location across the state, whether or not there was law enforcement response needed, or if there was a malfunction of the voting machine. We were also able to track any problem the Secretary of State's Office needed to be involved with, or any request from county clerks concerning issues we needed to coordinate with. It is a system we are still trying to refine, but the feedback was overwhelmingly positive given the fact that it was the first time we implemented it.

Also, as a part of the command center, we dispatched 20 Secretary of State employees to the counties. We were trying to increase communication between the counties and the Secretary of State's Office, so these people would act as liaisons should issues arise while we were running the election.

Notably, this election cycle we saw some significant litigation prior to the election. That is an area that is overlooked as a responsibility of the Secretary of State. At any given time, our office is involved in approximately 40 pending litigation matters, and this cycle was no different. That is important because many of the bills that could be proposed this Legislative Session tend to alter dates when things take place. We respectfully encourage you to engage in a dialogue with the county clerks or our office as to what type of impact that could have from an administration standpoint. With the number of lawsuits we had prior to this election, the Supreme Court took the unprecedented stance of trying to hold what they called a "triage session." They tried to take all the cases pending that dealt with election issues and had all the interested parties come into the Supreme Court to provide a calendar so they could prioritize which lawsuits needed to be heard and when. Our office and the county clerks filed affidavits to demonstrate the timeline in preparing for any election and the things that needed to take place: the ballots need to be printed, and litigation can interfere with that if who needs to appear on those ballots has not been firmed-up. Ballots must be mailed overseas, and there are federal and state guidelines that dictate when those mail ballots must be mailed out and the timing can potentially become a violation of law if rules are not complied with. It can also be very expensive: the longer you wait in the election calendar the more expensive it becomes to print those ballots because it forces the printer to rush the job. That was significant this cycle and I think it will continue to be significant.

We had a number of significant lawsuits this cycle. As all of you are probably aware, the Supreme Court upheld term limits, a constitutional provision passed by the voters in this State, and there were a number of findings associated with that Court holding. There was also significant litigation with regard to our

initiative petitions. In the *LVCVA v. Secretary of State*, 124 Nev. Adv. Op. No. 62 (2008) case, the Court, for the first time, really defined what level of scrutiny is required as you review those signatures and whether or not they comply with the statutory requirements that the Legislature put in place. According to the Court's definition, the standard of review is one of substantial compliance and in reviewing the initiative petition that was submitted, the Court held that those signatures did not substantially comply with the requirements that the Legislature had put in place and therefore invalidated them.

There was a statute last year that dealt with ballot advocacy groups and imposed certain requirements on those ballot advocacy groups that they register with our office and provide certain information. There were a number of questions submitted to our office based on the language that ultimately came out of the Legislature that presented some potential problems in terms of interpreting them. We asked the Attorney General's Office to opine, and they gave us an Attorney General Opinion as to how broad the scope of that statute is, who needs to file those documents, and what information needs to be provided. If there are members of the Committee who are interested in seeing that, we have copies on our website or we can provide them to you.

Significantly, with respect to our responsibilities in the office, we are also charged with ensuring compliance with HAVA which was passed in 2002 at the federal level. The Act tried to put in place consistent application of administration of election procedures throughout the states. Towards that task, they gave the state \$21 million in federal funding. To date, we have about \$6.2 million remaining of those funds.

Voter outreach was a significant task we undertook the last couple of years. As part of that, in 2003 the Legislature formed the State Advisory Committee on Participatory Democracy. There are a number of members appointed to that Committee who seek to increase voter turnout. Given the numbers, they did a pretty effective job this election cycle getting people involved. We had quite a number of partner organizations we worked with to try to sell the message to the public about the importance of getting involved and ultimately casting ballots. I suggest all those combined efforts are good reasons we saw the turnout we did.

We took a little over \$108,000 out of the HAVA funds and gave them to various non-profit community organizations to help implement those goals. We did that in conjunction with the State Advisory Committee on Participatory Democracy that made recommendations as to who should receive that money. As part of our voter outreach, and something I think is worth bringing to your

attention because the public response has been so overwhelmingly favorable, is the fact that this cycle we purchased three mobile voting trailers for Clark County. This was an idea generated by Larry Lomax in Clark County. Prior to this presidential cycle, I believe he had one mobile voting trailer. The trailers were used very effectively during this past election. One of the benefits is that they are completely Americans with Disabilities Act (ADA) compliant, so disabled voters are able to cast ballots easily, conveniently, and with dignity. They are fully functional polling locations so they can be taken to developed areas with high residential densities that may not have a permanent location that would meet our needs. Significantly, they can be used to create emergency backup polling locations. As we discussed contingency plans for what would happen if we had significant voter turnout and a possible emergency at one of our polling locations, we always pointed to the fact that in Clark County we had these trailers available that could be pulled to any location should we have a catastrophic failure at one of our polling locations. That argument was fairly effective primarily because, to my knowledge, no other area in the country utilizes a system such as this that has portable trailers.

As many of you are probably aware, we had hundreds, if not thousands, of election protection attorneys come to Nevada during the last 60 days of the election. They wanted to review the state and local plan, pick it apart, and tell us it was not sufficient and that we were going to have a catastrophic failure in our election system. Most of those people left the day after the election so we did not get a chance to say, "I told you so." I think we can be very proud of the election we ran here.

We also worked closely with the Disability Law Center in outreach to disabled voters, not only attending a lot of outreach meetings, but ultimately providing transportation for persons with disabilities in rural Nevada throughout early voting and on Election Day.

A significant component of our voter outreach was the use of technology. We developed a couple of programs in-house that are worth mentioning. The first is "My Voter File" which allowed people to log on to our website, the web address at the time was SilverState08.com, and input some basic information about their identities. The website would tell them their voting histories, whether or not they were registered to vote, and their polling locations. It also gave them the ability to subscribe to the "please do not call list" which would minimize the number of "robocalls" they might receive at their residences. We received a significant amount of traffic on our website from people utilizing this tool. We put it in place just prior to the caucus and had caucus-location lookups in it, too. Just short of a third of caucus participants used the "My Voter File" tool to find

out where the caucus locations were. We also utilized the web to create an election night reporting website that allowed for faster posting of numbers and greater coordination with county officials in terms of posting results on election night. That is also a tool we developed in-house that was overwhelmingly favorably received.

That concludes my presentation. We look forward to working with you over the next 119 days and I will be happy to answer any questions that you have.

**Chair Koivisto:**

The "do not call" just refers to election-type calls, right?

**Ross Miller:**

Right. The Secretary of State's Office, under the Help America Vote Act, was charged with creating a statewide voter registration database. As part of the maintenance of that database we created a function on the website where you could voluntarily indicate that you prefer not to receive political calls. The campaigns are free to use that if they want to. Some of the parties did use that in providing the lists, and so it did not, in my estimation, help minimize the number of robocalls for those people who did not want to receive them. Quite a number of people signed up for it. Alternatively, there is another route that is codified in the statutes where you can go down to the county clerk's office and request that your information be private. You fill out an affidavit to do so. "Do not call" is a more convenient, although candidly less effective, means of getting your phone number removed from the public file.

**Chair Koivisto:**

Even a few less calls would be good.

**Assemblyman Settlemeyer:**

They did a wonderful job. In one day, we had 387 emails saying that Nevada was on notice that we did not have enough polling locations and we were all going to get sued. I thought that was absurd, because every one of those emails came from someone from out-of-state. They have no idea how easy we make it to vote. One thing this Committee did last session was to make it a felony for individuals who tried to thwart our election process.

We had the Dallas Cowboys register to vote in southern Nevada. Who went to jail for that? If no one went to jail, why not, and what is being done?



**Ross Miller:**

The issue with the Dallas Cowboys was a criminal investigation that we initiated prompted in part by information that had been turned over to us by the county clerk down there, Larry Lomax. He indicated that a significant number of registration forms that were being turned in by one group, the Association of Community Organizations for Reform Now (ACORN), had fraudulent information on them. They were just making up names or addresses. The safeguards we currently have in place were able to detect that these were not, in fact, legitimate registered voters, and they never made it onto the voter rolls. All the registration forms are coded, so we knew where these forms were originating, and in response to that initiated a criminal investigation that eventually led to a search warrant being executed. The investigation is still on-going so I really cannot speak to why no one has gone to jail for it as of yet. We have not filed criminal charges but the investigation is still on-going.

**Assemblyman Hambrick:**

I noticed that the Attorney General gave an opinion that said groups that were either formally or informally organized are ballot advocacy groups. Are there any groups that do not fall into those categories?

**Ross Miller:**

I will forward you the interpretation that came from the Attorney General's Office, but part of the concerns that were raised to our office was whether or not the statute that was in place was overly broad and could act as prior restraint of political speech, which would infringe on the *Constitution*. We asked the Attorney General to give us guidance as to who it needed to apply to and what information they needed to provide. In their legal analysis, that we will be happy to forward to you, they gave us an opinion as to whom it applies.

**Assemblyman Cobb:**

In terms of the community organizations that received funding through your office, what groups received funding? What were their qualifications; what kind of grant presentations did they need to make to your office to qualify; and were groups like ACORN part of the group of organizations that received funding from your office?

**Ross Miller:**

ACORN did not receive any funding. The grants were dispensed in accordance with HAVA guidelines, which meant that the projects needed to educate voters or groups of people who meet state voting requirements, on voting procedures, voting rights, and voting technology. All of the grantees had to fill out grant proposal forms which we submitted to the Advisory Committee on Participatory

Democracy. They then made recommendations to our office as to whether or not they should receive grants, and made general recommendations as to the amount. I cannot tell you offhand the specific groups we gave money to, but we would be happy to provide that information to you.

**Assemblyman Cobb:**

What would they do with that money? I have never been privy to an organization that teaches you how to vote. Is it that simple? Do they just show you how a voting booth works or is it a little bit more in-depth?

**Ross Miller:**

I will give you a couple of examples. First, we gave some money to the Disability Law Center so they would be able to set up outreach mechanisms to the disabled community to make them aware that, if they wanted to vote at a polling location, transportation could be provided. We also gave a grant to National Public Radio to promote our website and the various tools there to try to take some stress off county election officials so there would not be so many people calling in asking where their polling location was. The *Review Journal* also had a media campaign publicizing dates when voting would take place and printed the different polling locations we have.

**Matt Griffin, Deputy Secretary for Elections, Office of the Secretary of State:**

The College of Southern Nevada received money to target college-aged voters. It was more of an informational campaign to make people aware—particularly of Nevada's early voting process. Under federal law, we are required to use some of the money provided to target groups of voters who, traditionally, have lower turnout rates or rates that are not the same as a state's average. We are required to find those pockets of population and target them.

With respect to the grants that were awarded, a proposal is submitted to our office. It is then reviewed, as the Secretary was mentioning, to see if the submission comports with the requirements of HAVA. If it does not comport, and we had two or three that did not, the proposal is sent back to the group petitioning our office. An amendment can be sent back to us. Should that group be awarded a grant, there is a follow-up process at our office. Two employees from our office continually follow-up with grantees; they report on how the money is spent. At the conclusion of the election, they also send a final report about how the money was spent.

**Assemblywoman Gansert:**

Can we get a list of those organizations and how much money was provided to them? You said someone was calling and checking; is there any report showing what happened with that money?

**Matt Griffin:**

There is a report but it is not complete yet because some of the money allotted and/or spent or committed to be expended, at first glance, does not appear to be consistent with the provisions of HAVA. We are in the process of having some of that money that was not expended during this election returned to our office. I suspect that within the month we will have a final report prepared, and I will be sure to forward that to you as soon as we get it. Through the Advisory Committee, the grant total awarded was around \$109,000.

**Chair Koivisto:**

We are now going to hear from the county clerks representing Clark County, Washoe County, and Carson City.

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

We were asked to give you a review of how the election process went in 2008 and also identify some of the issues we see that need to be addressed in this Legislative Session.

Things in Clark County are going great. The state of elections in Clark County is as good as it could be. In the November Election, we had over 650,000 people vote without any significant problems. We have a very aggressive early voting program; nearly 400,000—60 percent of everyone who voted—voted at one of our early voting sites. We continue to be looked at throughout the country as a leader in integrating technology into the voting process.

Early voting is really catching on around the nation; in fact, there is federal legislation proposing that it be mandated throughout the country. I am getting a lot of calls from other states who want to come out and see how we do it and have a lot of questions about how it is working.

Our voting equipment is working well. Everyone in the state uses electronic voting with paper-trail printers. The machines work reliably; they hold up to the very large turnouts we have been having, and they allow us to process a lot of voters very quickly and accurately. Despite what some people may indicate, I firmly believe electronic voting is far and away the most accurate way to vote. It walks the voter through the process; does not allow them to over-vote; and tells them if they are under-voting or not voting for everyone they want to. We

have the paper-trail printer to review it. It is an excellent system and you are getting elections that accurately reflect the voters' wishes.

Early voting continues to grow in popularity; we are up to 60 percent now voting early. We are in the malls, grocery stores, and places we have normally been. As the Secretary of State pointed out, this time we used four additional trailers; over 60,000 people voted in those trailers in the General Election. They have their own generators; they work wireless so we can park them anywhere and start voting. That allows us to get to places that otherwise we might not be able to and that has worked out very well.

We continue to attract all sorts of news coverage whenever we conduct a presidential election. We had news teams from Europe, South Korea, Japan, China, Australia, the Ukraine, and Bulgaria. One CNN report showed a CNN reporter walking through our site at the Boulevard Mall where he was stating that "voting in Nevada is easier than in any place in the country," so we are looked at favorably throughout not only the country but throughout the World.

Our biggest challenge on election days continues to be out-of-state observers who pour into Nevada. Our neighboring state, California, figures we cannot do it on our own. They know how their elections are coming out, so they come over here to help us. I am being very conservative when I say we had 2,000 to 3,000 out-of-state attorneys in Clark County alone. At every early voting location throughout the entire two weeks, there were at least two people. On this past Election Day at the 340 polling places, it was common to have ten or more observers. Most observers were fine. They did what they were told: they observed. If they saw something wrong they followed procedures on how to address the issue; but when you have that large a number of observers, you also have some very aggressive people who really do not know exactly what our laws are. Some of them are just pushy and will not stay where they are supposed to stay and really do interfere with the voting process. I am not optimistic that we are ever going to solve this problem; it only occurs during presidential elections; but it ties up almost all my time on election day just trying to put these fires out. They all have direct phone communication with their bosses; they call me. I have direct communication with my team leaders and they are calling me, so I am in the middle trying to negotiate all these problems. Basically, the problem is either they do not understand our laws or they are exaggerating the situation because they represent one party and do not like what they see the other party doing. However, we are dealing with the situation, the election went well, and there is probably nothing we can do about it.

Other issues include petition litigation as the Secretary of State mentioned. We tried to address this in the last Legislative Session by moving back the due dates for petitions, but we moved them too far and that violated the *Constitution*. That put us back into court and was one of the cases being heard right towards the end of the petition process. This is the sixth legislative session I have testified at, and every year that follows we are back in court testifying on these deadlines and how much it is going to cost us in additional printing expenses. The only thing I can see at this point in time is a constitutional amendment to move the due dates for petitions up so they can be turned in sooner. Then the litigation can be completed, which will allow us to get our ballots printed in an orderly manner without always being tied up in court.

Presidential elections bring in ACORN and other out-of-state groups that pay people to register people to vote. Money is the source of all evil in this situation, and as long as we allow people to pay people to register people to vote we are going to have these problems. I am not confident this can ever be addressed, but it is an ongoing problem. I do not believe fraudulent registrations translate into voting. These are people just ripping off their bosses, but in a state and in a country that is hurting for dollars everywhere right now, dealing with these fraudulent forms ties up thousands and thousands of hours of my people's time. It is a huge waste of money. If there were a way to get a handle on it, it would help all of us.

In a past legislative session, we changed the law as to when you are registered and we did it to address petition-gatherers' concerns. They would gather petitions on weekends. The voter would sign a voter registration form at the same time they signed the petition, but the form would not get to us until Monday. At that time, you were registered on the date we got the form, so their signature on the petition would not count. The current law reads that "if the application is received within three working days of the date you signed the application, or the application is postmarked within three working days of the date you signed the application, then you are registered as of the date you signed the form. Otherwise, it is on the date it was postmarked or the date it was received." Try to put that information on a billboard at the end of the registration period so that the voters understand it.

For instance if, during the last week of voter registration, you got yourself a voter registration form and filled it out on Monday but forgot to mail it to us and then put it in the mail on Saturday, the last day to register, and it was postmarked Saturday, you would not be registered. However, if someone else just fills out a form on Saturday and puts it in the mail on Saturday, the second

person will be registered because it is within three working days of the date on the form but the first person will not be registered. The first person signed the form more than three working days before he sent it. On the other hand, you could sign it on Saturday and not mail it until the Wednesday after the close of registration, and you would be registered because it was postmarked within the registration period. Needless to say, this is very, very confusing. This did disenfranchise probably several hundred voters in Clark County who either could not understand it, and that is no surprise, or who were among the names submitted by groups registering voters throughout a week but waiting until the following Monday to turn the forms in. Some signatures were within three working days and some were not. We would receive large piles of registration forms and had to go through those piles pulling out the forms that counted and the ones that did not.

Possibly we could leave the three-day rule in place throughout the year when people are out gathering petitions, but when registration for an election is closed we need to come up with some clean, crisp way that everyone understands. I would also like to point out that only about two-thirds of the registration forms we receive through the mail even have postmarks, legible or otherwise, on them. When you tell voters "if a registration is postmarked on Saturday it is good on Saturday," about a third will have no legible postmark, so we have to treat them as of the day they are received. I realize I am presenting you with problems, but maybe there is some way we can address this one.

I know there will be bills you will be considering this session, and my advice is to repeat the old platitude: "If it ain't broke, don't fix it." Right now, elections in Nevada are not broken; they are going very well. If you are going to change things, I ask that you allow the counties flexibility. What works in Clark County may or may not work in White Pine County, and vice versa. Also, all the clerks are committed to the integrity of the election process and want things to work and be better, so if we are going to consider any revolutionary changes, please include us in the process to help you shape your bills so that we end up with something that will work for all of us and not make our lives much harder or have unintended consequences.

I received a letter from a California attorney who was watching our process. She closed the letter with, "This is the way elections should be conducted everywhere."

**Assemblyman Cobb:**

You mentioned the fraudulent documents you received and how it was an incredible nuisance and waste of taxpayer money to review them. Do you

believe that the current level of enforcement as well as the current penalties on the books are appropriate, or are greater measures or enforcement needed to prevent that waste of taxpayer money?

**Larry Lomax:**

I cannot address whether the penalties are at an adequate level to deter it because I do not know enough about that. I am not the guy who enforces the laws; I just turn the information over to the Secretary of State's Office. It is extremely difficult to identify the specific individual who is committing the fraud. For instance, we were meeting weekly with ACORN and every time we would hand them registrations that looked fraudulent to us, they would say, "Oh, we fired that guy. He's gone; she's gone; they're gone." We still are receiving these piles of fraudulent forms that we have to go through. We met with the attorney from ACORN; he flew in from Massachusetts. His attitude is, "This is the way it goes; this is who we are after. To get the people we want to register we have to hire people who are going to mix with them, talk with them, and they are going to do some of this stuff. That is what you have to accept." That was his attitude, and I think that is their attitude. They went out and registered a heck of a lot of people legitimately, but there is all this fraudulent stuff mixed in with it and it is very, very difficult. When we receive the forms we do not know a lot of them are fraudulent. We find out that a lot of them are fraudulent because of phone calls and letters and returned mail. People will call us and say: "This person doesn't live here; why did you send me this form" or "Why did you change my address?" The only solution I can see is to somehow get a handle on not paying these people. They will always figure a way to game it, I am afraid.

**Chair Koivisto:**

Larry, do you have statistics on what the turnout was for newly-registered voters?

**Larry Lomax:**

We do track by serial number the forms we turned over to ACORN to register voters. I could go back and check the forms I gave them and see how many of those people voted who had one of those form numbers. We could also track how many people actually registered with one of those form numbers. I could also track anyone who registered in 2008 for the first time.

**Chair Koivisto:**

I think that would be a good idea. If we could have that information before the date for final bill introduction, it might give us a starting point or idea about what we could do.

**Larry Lomax:**

I will get that information to you.

**Assemblywoman Gansert:**

If someone does not call you, if you do not get mail back, how do you preclude someone from voting if it is a false registration and it is a mail-in ballot versus showing up in person with an ID?

**Larry Lomax:**

The decision factor on whether or not you ask for ID for a first-time registrant is based upon the number they provide to us. They must give us their Nevada driver's license number, if they have one. If they do not have one, they give us the last four digits of their social security number. Each day we data enter a bunch of people. At night, all of that information is sent to the Secretary of State. The Secretary of State takes all the registration forms he received that day and runs that information against the Department of Motor Vehicles (DMV) database or the Social Security Administration database. The next morning, we get back a report of everyone who did not match. If they matched, they do not have to show ID. We will use their signatures to verify them. If they did not match, we send them a letter and ask them to try to resolve what the mismatch was. Lots of times it is a totally legitimate mismatch. A typo on either end can cause it because it has to be an exact match. The letter we send informs the individual that, if the mismatch is not resolved, "you will be required to present identification when you show up to vote." If the numbers do not match, we will ask for ID; if they did match, the signature must match.

**Assemblywoman Gansert:**

What if they are not going to vote in person and use an absentee ballot?

**Larry Lomax:**

They are going to have to present identification with their ballot that has their address and picture and a signature.

**Assemblywoman Gansert:**

No one ever sees them in person, though. They could photocopy someone else's ID. I also saw some registrations come through with out-of-state addresses.

**Larry Lomax:**

That does happen but it could be totally legitimate. I understand your concern.



**Assemblywoman Gansert:**

I spoke with the Secretary of State at one time and discovered that there is no cross-database. You could literally be registered in more than one state because there is not a national database for registration, is that not correct?

**Larry Lomax:**

That is correct.

**Assemblyman Ohrenschall:**

I had a situation during the election with a lady in my district, a senior citizen, who had a lot of health problems. She was under the belief that she would always get her mail ballot. When she did not get it she called me and we called your office. We tried to see if she qualified for emergency voting, but she did not qualify. Is there any way that seniors with health problems could get on a list to always get a mail ballot, or would that take a statutory change?

**Larry Lomax:**

That would take a statutory change. Nevada does not have permanent absentee ballots; you have to put in a new request every year. What we do as a courtesy is, if you voted by mail in 2008, then for the next election, we will send you a postcard asking if you want to request a mail ballot again for the following year.

**Assemblyman Ohrenschall:**

Are emergency voting provisions also set by statute, or is that something each county clerk determines?

**Larry Lomax:**

That is set by statute. You and I could talk later about this particular instance, because as soon as the last date to request a mail ballot has passed, you are into the emergency time. Without knowing the circumstance, I cannot add more. It seems to me she should have been able to work something out.

**Dan Burk, Registrar of Voters, Washoe County:**

To clarify, Washoe County did not have problems with the ACORN registrations. We went through the registrations very diligently as a result of what was happening in Clark County. In 2004, we and Clark County did have problems with some organizations. The National Voter Registration Act (NVRA) of 1993 restricts the right of any state to adopt a guideline that would otherwise restrict the right of some organization to conduct a registration drive if they want to. A long time ago in this state, we had something called the "real registrar" system which was a highly accountable system. You had to go through extensive training; you had to be sworn in; and you had to account for what you did.

Once the NVRA went through, that changed and any organization could come to Nevada and mount any registration drive they wanted to without any training whatsoever.

It appears we cannot move in a "hard" way and say, "If you do not go through our training, you cannot do a registration." What we could do is more public relations. We could have a program conducted, possibly by the Secretary of State's Office, that would train people and those people could possibly wear a button or some other form of identification. There could be a public relations campaign in association with the training: "Register with the person wearing this button," or "Be sure the person registering you wears this button." The whole idea is to encourage people to register with people who have been willing to go through some kind of training process. It does not have to be as rigorous as the process we have for field registrars but it does have to be something where they understand the process we are trying to establish: how it works; what is important about what is filled out on the form; and what we need to have as registration officials.

Washoe County increased its voter registration by over 13,000 just after the day of the Democratic caucus on January 19, 2008, which was challenging. We found out that many of the people going through the registration process really had no idea what they were doing. They just wanted to participate in the election process. If something could be worked out we could either train caucus workers to register voters, or the registration offices could perhaps provide registration at the caucuses but do nothing more associated with the caucuses whatsoever because those are party functions. It would help to clean the registration process up; we spent week after week trying to send letters to people and follow up on problems involving things that were not done correctly. That is something we would be very interested in participating in. If not that, perhaps a program could be run by the Secretary of State's Office that would help encourage people to register only with a person wearing a certain button, or something like that.

There is another item my staff and I are very concerned about. The State of Nevada received approximately \$21 million in HAVA funds. Of that money, close to 70 percent has already been spent. I am not sure if you are aware of the fact, but just the licensing and maintenance that needs to be done on the systems in the State of Nevada, not including Clark County, costs \$2.1 million for each election cycle. The cost of the system is absolutely astounding. As an example, Washoe County spent \$113,000 last year just to house the Edge units and the systems we have. We spent \$56,000 shipping them out to the polling places and bringing them back. Because they have to be replaced every

election cycle, we spent over \$12,000 just on batteries to run the system. The system is very expensive; but the local jurisdictions and the smaller jurisdictions are not feeling the effect of that because almost everything they do, including the design of their ballots, is covered under the maintenance and licensing contract. That money is going to run out in the next two or three election cycles, and by 2014, people are going to be wondering where they are going to get the money to afford to continue licensing and maintaining this very costly system. The maintenance cost keeps growing and growing and growing.

It is a wonderful system for conducting early voting. It is the best system for conducting early voting that has been devised in the United States, and Nevada has the best system in the United States. It is also really the only system that is effective for helping our citizens who have disabilities and allowing them to vote at every polling place, which is not only required by HAVA but also a wonderful step forward.

As for election day voting, it is not necessary to ship all 1,300 of these units out and spend \$11,000 on extra staffing to be able to staff them. My entire technology services department in the County is involved in supporting them and troubleshooting on Election Day, and that is not even part of the costs I have been talking about. We need to begin to look at alternatives. I am not trying to dictate for a large county like Clark, nor for White Pine, Esmeralda, or anyone else. In Washoe County though, we need to consider whether or not a paper-based system at the precinct level on election day would not be a more appropriate system. We would be trading off 13 units out of the 1,300 we have, or 1 per polling place, and it would be paper-based where the ballot would be marked and dropped into the system to be read. Small jurisdictions already have these units, called Insight 2 units, so it would not be an additional purchase for them. Clark County could continue to operate as they have been. I am concerned about the huge costs of the system, the on-going maintenance, the on-going utilization costs and repair expenses, and the degradation of the equipment. Washoe County is not the same as Clark County. Even though we have fewer than one-third the number of voters as Clark County, they have six professionals in-house who maintain their system. We have one-half a staff person to keep our system going, and we have over 1,327 units.

I do not want to mislead you and tell you that everything is great with this. It is a wonderful system to utilize and it does a lot of good things, but we are running out of the money to keep it going. The local clerks and the Registrar in Washoe County are going to be back here with you in about two cycles asking

where are we going to get \$2.1 million just for the contract and maintenance, much less repair and upgrades.

I also want to express to you what wonderful support we had from the Secretary of State's Office in 2008. We really appreciate that very much.

**Chair Koivisto:**

I have been told that these machines have to periodically be plugged in and turned on. Is that correct?

**Dan Burk:**

Yes, that is correct.

**Chair Koivisto:**

That means you need to have a person who does this as part of their job.

**Dan Burk:**

We do and we spent almost \$13,000 last year on electricity just charging them in Washoe County. Thinking we had charged them every month as prescribed by the people at Sequoia, we were really surprised when we got to the end of the cycle to discover that we had to spend another \$12,000 replacing all the batteries, for whatever reason.

**Chair Koivisto:**

You have to charge them once a month; but still, before you take them out to use them, you have to put in new batteries?

**Dan Burk:**

We did and we are not exactly sure why. This year, Washoe County will spend approximately \$113,000 to house and charge these units.

**Chair Koivisto:**

That is something we ought to look at in terms of saving money.

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

Carson City is very lucky. We keep the machines at the court house in our back room and have them on the electric circuit with the court house. The computer automatically turns them on for us once a month for 24 hours. I do not know what Mr. Lomax does in Clark County, because they are probably the most sophisticated in the country, but for rural counties, it was one of the best things we ever did. Of course, we are in a fairly new court house, too and have that

ability. They come on automatically and we just check once a month to make sure they are charging.

**Chair Koivisto:**

Even though you are doing that, do you still have to replace your batteries before the election?

**Alan Glover:**

We were surprised that they came in and replaced all the batteries. You might want to ask the Secretary of State's Office, because I think they told Sequoia Voting Systems the batteries needed to be replaced. We did not have any problems, but they did change all the batteries when they serviced the units. Hopefully, we will not have to do that again for a very long time because that could be quite expensive.

**Chair Koivisto:**

That is something we need to look into.

**Alan Glover:**

Overall, the primary and general elections went very well for Carson City. We had a 91.39 percent turnout for the general election; that was 23,745 people voting. That compares to an 87.92 percent turnout in 2004, the last presidential election. Early voting, as in the other counties, continues to be very popular. In 2008, 56.23 percent of the voters voted during early voting. In 2006, there was a 33.63 percent turnout for early voting; in 2004 it was 41.59 percent. The popularity of early voting, I think, is due to the convenience it offers the voters. For us as election officials, it gives us an opportunity to solve problems for voters that might not be able to be solved on Election Day. Overseas voting also went very well for us mainly due to the fact that we had more time between the primary and general elections to get ballots ready to be mailed.

We have used high school students to help during our general elections for a number of years. This continues to be very positive; it is a great learning experience for students and also gives voters an opportunity to interact with younger people. An unintended consequence that has been very positive is that it gave us a great bilingual pool to draw from. We have had trouble finding election workers who were bilingual, but all of a sudden we had all these high school students who came to help us. It was great and it really worked well. I cannot say enough about having students help out during an election because they are just the best.

One of the problem areas is petitions. The Legislature moved the date when a petition is filed to the third Tuesday in May from the third Tuesday in June. The courts found this to be unconstitutional. You may want to consider a constitutional amendment to move the date back to May. Getting petition issues settled early would go a long way toward improving the process.

Likewise, petitions for initiatives to statutes have to be filed no later than the second Tuesday in November. This falls right during the election period. We cannot stop the election process to deal with these initiatives. If the date to turn those petitions in could be moved to later in November that would certainly be a benefit to us.

In conclusion, Nevada has good election law. Since both the state and the counties are in desperate financial conditions, I would like to ask, before you consider any legislation affecting elections, that you consider the cost versus the benefit.

**Assemblywoman Smith:**

When a person files for office, do you check their eligibility as far as when they changed party, when they registered to vote, and those sorts of things?

**Alan Glover:**

Our office checks their party affiliation, when they last changed it, whether they live in their district, and those sorts of things. We have slipped up in years past; however, we are only administrative, so if they insist on filing for office and are willing to pay the \$100, we have to take it. They do not get the money back, either.

**Assemblywoman Smith:**

If they changed their party in the whole time frame do you still have to accept their filing?

**Alan Glover:**

If they insist. We try and inform them. We tell them, "We do not believe you qualify under the statute because last week you were in another party and this week you are attempting to file for the state Assembly," and that does not meet the qualifications. It is easier for me than for Dan or Larry because locally in Carson City we are nonpartisan, so it would only be in the Assembly races where we attempt to keep track of that. We have informed the Secretary of State's Office on occasion and left it up to them.

**Assemblywoman Smith:**

Dan, you and I have had this discussion, and I can also check with Mr. Lomax; does the Secretary of State's Office check that criterion when someone files in that Office?

**Kim Carrubba, HAVA Program Officer, Office of the Secretary of State:**

I do not know the answer but I can get that information for you. I do believe they do go through all of the state offices we file and check to make sure they are, in fact, qualified.

**Assemblyman Ohrenschall:**

Are there any uniform provisions for a power outage? If the power goes out and you have a long line of voters and are not able to use the Sequoia machines, is it standard that there be a paper backup? What are your policies?

**Alan Glover:**

That issue came up. We were told the batteries on the Sequoia machines were going to last a couple of hours; however, when they added the paper trail to the machines that length of time was cut down. We did have an outage during early voting, but the voting machines worked perfectly. They kept right on operating. I made arrangements in our polling places to have backup generators available and set that up through emergency management. I just made a call to the fire department and to the building department. They knew exactly what to do and said the generators could be set up within a half hour. In an agreement with the Secretary of State's Office, we had extra absentee ballots available that we could have used.

**Dan Burk:**

In Washoe County we divided the county into eight geographical areas. Every polling place in that geographical area gets exactly the same version of the Edge voting machine. In other words, we are set up for any possible person to vote no matter what would happen in an area. Consequently, if some place burnt down or completely lost its power for the entire day, all we would have to do is send people to the next polling place.

We have enough backup batteries to operate up to 16 voting units in any given polling place for an entire eight hours. We wondered what we would do if there were a fire or vandalism, and we decided we would just send voters to the closest polling place. We have their names, signatures, and everything on a computer at every polling place. We would be able to check signatures against signatures they would provide to us and go ahead and let them vote at the other polling place.

**Assemblyman Ohrenschall:**

In Washoe County, is it standard procedure to have paper ballots at every polling place?

**Dan Burk:**

They are not paper; they are electronic. We have electronic versions of the ballots set up at every polling place. We were asked whether we had paper backup in 2008. Approximately 30,000 people voted absentee, but we actually ordered 104,000 absentee ballots in case everything went down and we still needed to be able to conduct the vote. We would have had a ballot for about half the voters in the County while we were working to get everything up and operating again.

**Chair Koivisto:**

Are there any other questions from the Committee? [No answer.] Is there anyone from the public who would like to comment? [No answer.] All right, we are adjourned [at 5:08 p.m.].

RESPECTFULLY SUBMITTED:

---

Terry Horgan  
Committee Secretary

APPROVED BY:

---

Assemblywoman Ellen Koivisto, Chair

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



**EXHIBITS**

**Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments**

**Date: February 3, 2009**

**Time of Meeting: 3:50 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Guest List
	C	Ross Miller, Secretary of State	Report on the election processes for the 2008 Election cycle
	D	Ross Miller	PowerPoint presentation entitled "2008 General Election"
	E	Ross Miller	Copy of Title 24 elections statutes and accompanying regulations