

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Sixth Session
March 10, 2011**

The Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 1:37 p.m. on Thursday, March 10, 2011, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. In addition, the meeting was videoconferenced to Stanford University, Palo Alto, California. 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/76th2011/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Marcus Conklin
Assemblyman Richard (Skip) Daly
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Richard McArthur
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Patricia Blackburn, Recording Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Jon Krosnick, Professor, Stanford University, Palo Alto, California
John Wagner, State Chairman, Independent American Party
Scott Gilles, Deputy for Elections, Office of the Secretary of State
Larry Lomax, Registrar of Voters, Clark County
Alan Glover, Clerk/Recorder, Carson City
Carol Howell, Private Citizen, Carson City, Nevada

Chair Segerblom:

[Roll was taken.] I have a Committee bill draft I would like to introduce. This bill draft relates to allowing felons to restore their right to vote.

BDR 16-687—Revises provisions governing the restoration of the right to vote for ex-felons. (Later introduced as [Assembly Bill 301](#).)

ASSEMBLYMAN OHRENSCHALL MOVED FOR COMMITTEE
INTRODUCTION OF BDR 16-687.

ASSEMBLYWOMAN FLORES SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE, OCEGUERA,
AND SMITH WERE ABSENT FOR THE VOTE.)

Since the bill we are hearing is my bill, I am going to turn the Committee over to Vice Chair Flores.

Vice Chair Flores:

We will now open the hearing on Assembly Bill 99.

Assembly Bill 99: Revises the order in which the names of candidates for an office must appear on the ballot. (BDR 24-685)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

With me, via videoconference, is Professor Jon Krosnick of Stanford University.

Assembly Bill 99 deals with randomizing the alphabet for election purposes. I do not know how many of you have voted in California or in other states, but most states do not allow the names on their ballots to appear starting with A, B, C, D, the way we do in Nevada. The reason this is important is something that is known as the "primacy effect." In any particular race, the person at the top of the ballot has a 1 to 2 percent edge statistically because of being at the top of the list of candidates. This bill randomizes the names. For instance, those of us whose last names begin with S might want to be listed first, and this bill would give us a chance to be first on the ballot.

I believe this to be an important change in our elections. The way it is designed is not very complicated. On the first of January of every year, the Nevada Secretary of State would put all the letters of the alphabet in a hat and draw them out randomly. The order the letters are drawn would be the order that candidates' names would appear on the ballot. We would have two drawings: one for the primary election and one for the general election.

I have a PowerPoint ([Exhibit C](#)) and it is also on the Nevada Electronic Legislative Information System (NELIS). Just for fun, we looked at last year's Republican senatorial primary race. The fourth picture shows how the ballot actually appeared and, remarkably enough, the person with the first name on the ballot, Sharron Angle, won that primary.

Because of the primacy effect, many observers around the country believe the way Nevada puts candidates' names on its ballots is unconstitutional. At some point there may be a lawsuit, so maybe it would be better for us to grab the bull by the horns and do this ourselves rather than having a court order us to do it.

Vice Chair Flores:

Are there any questions from the Committee? [There were none.] All right, we can proceed with Dr. Krosnick.

Jon Krosnick, Professor, Stanford University, Palo Alto, California:

Thank you so much for the invitation to spend time with you this afternoon. As you may know, I am a professor of political science, communication, and psychology at Stanford. I study processes by which citizens communicate their thoughts and preferences in the world of politics. I have been a social scientist for 35 years, and one of my recent roles has been in directing a huge project called the American National Election Studies, a National Science Foundation-funded project that has been studying elections in all the states since 1948. We collect survey data and release those data to hundreds of scholars around the world who study American elections with us in that project.

In addition, much of my own research has tried to understand how voters choose whether to vote or not and how they decide which candidate to vote for. One of the lines of research I have been involved in now for 30 years is the study of how order impacts the choices we make, not only as they are related to politics but also as they relate to things such as choosing restaurants and making choices in many other domains of life.

When we design election procedures, we hope that those elections are fair to the voters and to the candidates involved. In fact, it is my scientific belief that Nevada election procedures are not fair at the moment for the reason Mr. Segerblom has already pointed out. They advantage certain candidates systematically over others in competing for public office. That is, candidates whose last initials are in the early part of the alphabet are advantaged over candidates who happen to be born with names with last initials that appear later in the alphabet.

The way I know that is by studying more than a thousand elections in states around the country that rotate name order from precinct to precinct or from assembly district to assembly district. This includes not just in California, where I live now, but also in Ohio, North Dakota, New Hampshire, Montana, Wyoming, Idaho, Iowa, Kansas, and Kentucky. That is just a small set of the states that solved this problem.

Ohio randomizes candidate names on ballots by precinct. The first precinct sees candidate names in a random order. The next precinct on the list has the top name candidate moved to the bottom of the order. In the third precinct, that top candidate from the second precinct is moved to the bottom of the order, and so on. There is a rotation occurring across the precincts. In the end, if you and I are competing for some office, you will be listed first in about half the precincts and I will be listed first in about half the precincts. The result is what a scientist dreams of. It really is a functionally random-assignment, large-scale field experiment to find out whether name order matters. In our

studies of more than a thousand candidates who have been involved in this kind of rotation across many states, we found that in 85 percent of the races, the candidate listed first gained more votes by virtue of being in that position than candidates listed later on the ballot.

As Mr. Segerblom said, that advantage is, on average, about 2 percentage points. You might not think 2 percentage points matter, but if I tell you the effect is 2 percentage points on average, that means that for about half the races we examined, the advantage is bigger than 2 percentage points. The largest effects we have seen are actually between 6 and 7 percentage points. Think, for the moment, about you and me again competing in a race where you are listed first. You get 6 extra percentage points by virtue of that, but I lose those 6 percentage points, so I am down by 6. As a result, there is a 12 percentage point spread between you and me simply by virtue of the fact that you were listed before I was. This kind of spread has happened remarkably often in the elections we have looked at across a variety of states. We have never found a state that does not manifest this kind of difference.

To put this in context, let me tell you about some races in 2010 you might have heard of with narrow enough margins of victory that this kind of name order effect would make a difference. You might have heard about a race for U.S. Senate between Sharron Angle and Harry Reid. You might remember that the margin of victory in that race was 5 percentage points. You might remember a race for State Treasurer between Mike Hawkins and Steven Martin where the margin of victory was 4 percentage points or the race for State Controller between Barry Herr and Kim Wallin that had a 5 percentage point margin of victory. The U.S. Congress race for District 3 between Joe Heck and Dina Titus contained a 0.5 percentage point difference in votes, and in State Senate District 5, Michael Roberson and Joyce Woodhouse had a 4 percentage point difference. So there are plenty of races, including races in Nevada, where the margin of victory is small enough that this name order effect can make a significant difference. As you know, many American elections outside Nevada—very important ones—have been decided by very, very narrow margins of victory, including the presidential election races in 2000 in Florida and in 2004 in Ohio.

For clarity, this so-called primacy effect—the tendency for a few people to choose the option they see first—is not unique to elections; it is a truth about human nature. For example, in many, many studies of survey questions, if I show you a printed questionnaire on a piece of paper and ask you to answer questions, you will manifest a slight bias toward selecting the first written answers you see. Even if I bring you into a lab and ask you to taste test a set of beers or a set of ice creams, you will tend to prefer the first beer or ice cream

you taste rather than the later ones. If I ask you to cross a parking lot from one corner to another where you can go down the first aisle between cars or the second or the third, you will tend to choose the first one. This is a reality of human nature that is not specific to politics.

But why would a name order effect happen in elections? What we have learned is that there are really two reasons that are particularly important for Nevada. The first one is that people feel compelled to vote in order to be good citizens. When they find themselves in the voting booth, they are often confronted with many races and many referenda, so the burden for voting is significant. There are some races in which people realize they do not have enough information to make a thoughtful choice. In those cases, you might think they should choose not to vote at all but, in fact, many voters think they have to vote in order for their ballot to be counted in the election. As a result, people who lack information about a particular race, much as you might have tried very hard to campaign and lead them to know you well, may not know the candidates well enough to make an information-based choice. In order to keep their ballot valid, they will choose the first name they see for some races.

You will be interested to know this is particularly true with touch-screen electronic voting machines, which I gather you are using in Nevada. As you probably know, many of those touch-screen machines have flashing designs to call the voter's attention to races in which they have not yet voted. Of course, the purpose is to say, "If you mean to vote in this race, we want to let you know you haven't yet." But, of course, voters can misinterpret that as a signal saying, "You had better vote in this race if you want us to count any of the votes you care about," and that induces more of the primacy effect.

There is a second reason as well: Even very responsible, very informed, very thoughtful citizens are sometimes affected by the order of candidate names because they sometimes walk into the voting booth deeply ambivalent. They are conflicted. They know a lot about you, they know a lot about your opponent, and there are pros and cons on each side. They are hoping they will be struck with inspiration when they are in the voting booth, and yet they are not. There is a long line of voters waiting behind them, they have to get moving on to the rest of their day, and yet they do not have a clear preference. In that situation, those people often tend toward the first name they see on the ballot.

When do these effects happen? As I mentioned, they can occur with touch-screen machines that draw people into voting in races about which they do not have information. People are also especially likely to manifest this primacy effect in races where there has been relatively little publicity, so voters know relatively little about the candidates. They also occur in races where the

incumbent is not running for reelection, meaning that, again, voters have less information than they would if the incumbent was running for reelection. These name order effects are more common when the candidates' party affiliations are not listed on the ballot with their names, because party affiliations help voters who do not know the candidates choose one they prefer. And we find these effects more for major party candidates—Republicans and Democrats—than we do for minor party candidates or unaffiliated candidates.

What does all this mean? There are some who believe it is important that elections in America, especially now, are conducted in a way that is perceived as being fair by the electorate of the United States. When new democracies are created around the world, some people believe it is important that the United States be a model for fair procedures in how to conduct those elections. The research I have told you about today is not only research by my team, but it is also research by many other scholars in the social sciences who have been studying this phenomenon for more than 50 years. Our literature clearly leads to the conclusion that elections held the way they are now in Nevada do in fact afford an advantage—a measureable and notable advantage—to those candidates who happen to have last initials early on in the alphabet. This creates an opportunity for you to reconsider that procedure. If you decide to shift to something new that has a random component to it, you will have a strong scientific basis to back you up in that decision.

Vice Chair Flores:

Thank you, Dr. Krosnick. Are there any questions from the Committee?

Assemblyman Grady:

In your studies, did you do any work on the first position on a ballot versus "none of the above"?

Jon Krosnick:

"None of the above" is considered to be essentially in the last place. We have never seen the last place gain any advantage in elections. You can see how offering the "none-of-the-above" option might allow people who want to have their ballots counted indicate that they have no preference for any of the candidates, but I cannot tell you offering that option would eliminate the primacy effect we typically see.

Assemblywoman Kirkpatrick:

Dr. Krosnick, you can find studies that say a candidate listed on the bottom of a ballot will have an advantage. Have you studied whether one female candidate in a race containing five males has an advantage? Studies are not convincing to me because you can take a study and get any result you want. When you

mentioned the states that do this, California was the only Western state you mentioned. What about Utah, New Mexico, Arizona, or other Western states. Are any of them currently doing this random listing on ballots?

Jon Krosnick:

Your first point is very important. In science, when we find a particular result in a particular study, that does not mean we will always find that same result. About 15 or 20 years ago, there was a headline from the *New England Journal of Medicine* describing a study that I believe showed that drinking coffee caused pancreatic cancer. You can imagine how distressing that news was to America. As it turned out, later studies showed that was not the case. I think it is completely reasonable for you to raise the question about whether the literature on name order effects is actually consistent in this regard.

I do not take any single study to be definitive; I am interested in looking at an entire body of research, and that is what I have described for you. I would not testify here today on a particular point if we were at a place where the scientific literature is conflicted. In fact, I do not believe it is conflicted. I think the large set of studies that have been done are quite consistent in showing this first-position advantage.

You may have heard about what is sometimes called a "recency effect," which is the tendency under some circumstances for people to choose an option presented to them last. But that does not happen when people see options visually the way they do in voting booths. It only happens when the options are read aloud to you. For example, say you have a grandchild visiting and you are going to make dinner for him or her tonight. If you have a leaning about making either hot dogs or hamburgers, the order in which you offer those choices to that child will influence his or her choice. Put your preferred option last, because with the oral presentation there will be a tendency to select the last option. That does not happen with visual presentation. I hope I have answered your first question about whether there is conflicting literature.

There is a very large literature in political science about how American voters react differently to candidates when they are male versus female. I am not familiar with any findings that women are challenged in this setting in a way that men are not, but we could talk more about that if you would like.

Concerning other Western states doing this, across the United States there are many different procedures used to order candidate names. Very few states order them alphabetically the way Nevada does. I do have the procedures used in all the states organized, and I can send a very detailed document for

Mr. Segerblom to share with you. The states you asked about do use different procedures.

Assemblyman Hickey:

I think we probably have experienced what you alluded to in that, as you get further down the ballot to lesser-known candidates, people probably do follow your theory. Have your studies shown that when name order is random that people actually vote more consistently through the ballot, following the ballot all the way through, and not just vote for the first candidate in a race? Does it engage them more or make a difference down the ballot or with lesser-known candidates?

Jon Krosnick:

No, we have not seen any evidence that a random ordering or a rotation causes people to approach the voting task differently. The vast majority of voters are not aware of their state's rules for ordering names. They simply walk into a voting booth or look at a sample ballot and see a set of names in a particular order. Their approach in making a choice is going to be that approach. Unfortunately, ordering the names one way versus another does not lead people to be more thoughtful in the voting booth; however, the important thing to remember is that, even according to our results, more than 90 percent of voters in any election are not being influenced by name order. The good news is that most democratic citizens are making their decisions on substantive bases not influenced by name order, but unfortunately a sizeable enough group of people are, and elections are close enough now that the results can be influenced.

Assemblyman Horne:

I would like to point out that Assemblymen Segerblom and Stewart never seem to have problems winning their elections, and their names are pretty far down the ballot.

It seems as though this theory would be more valid in primary elections, which are more partisan—mostly Democrats and Republicans. In the general elections, people in the voting booths are frequently looking for that letter D or R. Sometimes they do not even know who that candidate is. Whether my name is at the top or the bottom, they are going to find me if I am a Democrat and they are going to vote for the Democrat. Perhaps name ordering is more valid in a primary.

Jon Krosnick:

Your instinct is exactly right. In partisan elections we have studied in Ohio, New Hampshire, and elsewhere, it is clear this name order effect does happen. You pointed to one reason, but there are actually two reasons why this

happens. One is because there is no party affiliation to help voters differentiate among the candidates. Remember, the people who vote in primaries are a much smaller group of the population than vote in general elections. Those people who vote in primaries tend to have very strong opinions, but they are always facing a challenge because in primaries, the Democrats or Republicans competing for nominations within that party group are very similar to each other in terms of the policies they typically prefer. Among those Democrats or Republicans they might think the differences are huge, but relative to the other party, the differences within a party are very small. That also makes people more likely to have a tough time making a choice and, therefore, to make a choice that is influenced by a name order. That is absolutely true, and our evidence does support that.

However, in general election races, you are absolutely right that about one-third of voters who walk into a voting booth are pretty sure they are going to vote for Republicans consistently, and about one-third of voters who walk into a voting booth know pretty consistently they are going to vote for Democrats. But about one-third of voters across the country do not look for a D or an R. They are genuinely in the middle; they are genuinely making up their minds, and, as far as you are concerned the next time you are up for election, those are the people you are interested in. They are the people in play, and those are the people who are potentially influenced by name order in a situation even where the party affiliation of the candidates is listed on the ballot.

Assemblyman Horne:

That remaining third of voters may actually be more engaged and, again, the order of the candidates is not going to be that significant.

Jon Krosnick:

That is a great hypothesis, but the results I am telling you about are based on hundreds of real elections.

Assemblyman Ohrenschall:

My question has to do with the Ohio example, where everyone gets a chance to be first on the ballot in different precincts. I do not know if the precincts are equipopulous or not, but my concern with this bill, as it compares with the Ohio scheme, is that if this bill passes, will any unfair advantage someone would have received by name placement—someone whose name starts with A or B—then be transferred to the winner of the lottery? In your opinion, would the Ohio scheme be a fairer scheme than what this bill envisions, in terms of minimizing any unfair advantage a candidate might get by virtue of the placement of his name on the ballot, whether because of the order of his name

in the alphabet or because of winning that drawing at the Secretary of State's Office?

Jon Krosnick:

You are absolutely right. By moving from your current system, which advantages people with names they are born with, to a new system in which you are randomly ordering based upon last name, you are absolutely right. The advantage that would have been conferred to some people in the prior system will now simply be moved to other people. But that advantage is afforded to them randomly, so in my opinion, that is an improvement in fairness in the process, and that is an improvement that various other states in the United States have chosen to use in order to solve this problem.

Your second point is also valid, that if you were to move to the Ohio system, which as I said is used in California and various other states, there is more effort involved in that. There is more money spent in that scheme, and it creates other challenges practically, but I would say that does create even more fairness, because no single candidate is given a particular advantage as a result of that.

Assemblyman Ohrenschall:

I do not think our precincts are equipopulous in Nevada. In Ohio and California, I would think the precincts would have to be close to equipopulous for that kind of scheme—shuffling the names around to give every candidate a chance to be first on the ballot—to be fair. Is that true in those states?

Jon Krosnick:

You are right in total, but it is not quite true at the precinct-by-precinct level. If you have enough precincts where you are randomly assigning name order, there will be equal populations that will get each name order collapsed across the statistics you will compute. So it does not matter whether some precincts have many more people in them than others; it will all come out in the random assignment wash.

There is one more way you could proceed if you wanted to. Because you are using touch-screen voting machines, rather than rotating the names from precinct to precinct, you could rotate them from ballot to ballot. That is, every time someone goes up to a touch-screen machine, the machine would present the names in rotating order. Then the equal-population issue is, of course, not relevant.

Assemblywoman Kirkpatrick:

Mr. Segerblom, I would like to understand the method that will be used to draw the letters. If we are really trying to change the process, why would we draw them out of a hat? It does not seem professional, in my opinion.

Assemblyman Segerblom:

You mean, in a state where we have randomized slot machines, we ought to be able to use one of our gaming manufacturers to pick the letters?

Assemblywoman Kirkpatrick:

When Mr. Krosnick spoke about having random names in different precincts, I think that would be very confusing. We have some neighborhoods in Clark County that are located in two different precincts: one side of the street is one precinct, and the other side of the street is a different precinct. I think people would be lost trying to figure out who is on the ballot.

Just the other day, the election clerks told us our voters turn out to vote because of the names they know they are going to vote for. I want to understand the method you are proposing.

Assemblyman Segerblom:

It will be the simplest method. As Mr. Krosnick testified, random name order by precinct would be a fairer system, but you will hear from the clerks and registrars that the cost to do it by precinct, and to print sample ballots, would be prohibitive. This is the simplest way to start the process. I am not wedded to the fact that we use something like a bingo bowl, but that would be the simplest way to draw the letters. If you want it to have a fiscal effect, and buy a computer to do it, that is fine with me.

Assemblyman Horne:

Would it be easier to say the first to file would be the first name on the ballot? Filing is time stamped and dated, so that is already done and you would not have to get a bingo bowl.

Assemblyman Segerblom:

I am open to suggestions.

Assemblywoman Kirkpatrick:

Mr. Krosnick spoke about other state's procedures, but never really said what those procedures are. Do you happen to know what the procedures are in other states?

Assemblyman Segerblom:

Some states change name order precinct by precinct; in California, I think, name order changes by assembly district. Mr. Krosnick indicated he would get that information to us, and I will follow up and get it to you.

The problem is the cost. This is the simplest way to do it without getting the registrars up in arms. I think name order has the biggest effect when we have a number of judges on the ballot. All those races are at the bottom of the ballot, and no one, including me, a practicing attorney, knows the candidates. If there is a primacy effect, which I think there is, it has to help the first candidates listed on the ballot.

Assemblyman McArthur:

I just want to make a comment. Everyone on the Committee who has been asking questions, except for Assemblyman Ohrenschall, has last names beginning in the first part of the alphabet.

Assemblyman Hardy:

If we want to do this change, it appears to me that we should go all the way and do what he said was the most fair—where the machine changes name order after each vote. Perhaps Mr. Lomax or one of the other clerks could tell us what that would cost.

Assemblyman Ohrenschall:

I agree with my colleague from Mesquite. In the old days, that probably would have been very expensive, but nowadays maybe just a few lines of code could make it happen.

Vice Chair Flores:

Are there any further questions from the Committee? [There were none.] Would those wishing to testify in support please come to the witness table.

John Wagner, State Chairman, Independent American Party:

I have a proposed amendment to this bill ([Exhibit D](#)) and I have a comment about random order. When I lived in California, I ran for the central committee there as a Republican. There were about ten people running, and six people were elected. They drew names, which I think is a better method. What do you do if you have two people named Smith running? I do not know what they do now, however.

I support the bill, but would like to add language to it reading, "Ballot designations on the ballot should be the full name of the party." In other words, no abbreviations such as "Ind" or "IAP," because it is confusing enough as it is. That was the first part of my proposed amendment.

The second part of my proposed amendment reads, "Only parties with ballot access should be listed with all other candidates listed as 'No Party Affiliation.'" We are the Independent American Party, but then there are Independents. I brought along a registration form that states: "Party Registration" and "Check only one box." I do not see a box that says "Independent." I see "Other Party" right below, and I see "nonpartisan" or "no party affiliation."

I went to Mr. Glover's office yesterday and picked up a sample ballot from the last election and talked to someone in that office. She said that under *Nevada Revised Statutes* (NRS) 293.200, certain candidates have to be listed as independents on the ballot. I looked through the statutes and I did not see where they had to be put on the ballot. I see that when they file for office they can put down "independent," but it does not say it has to be that way on the ballot.

In the U. S. Senate race last November, there were four independents listed on the ballot besides the Independent American Party's candidate. Basically, I think they should be listed on the ballot as having no political party, rather than as independents, because people get confused between members of the Independent American Party and people who are independent with no party affiliation.

Last year, I discussed both items with Secretary of State Miller, his Deputy for Elections, and someone from the Attorney General's Office. I was hoping to see language addressing this in one of the Secretary's bills, but now I do not think that is going to happen.

Vice Chair Flores:

Are there any questions? I will remind the Committee that the proposed amendment is up on NELIS.

Scott Gilles, Deputy for Elections, Office of the Secretary of State:

We do not oppose the randomization of the ballot. What I am here to talk about today are some potential clarifications or changes to the language to avoid what we see as likely legal challenges in the future with the bill as it is written now.

First, the provision that dictates how the drawing process is to take place is overly prescriptive. It requires opaque capsules of uniform size, shape, texture,

et cetera. It seems pretty basic, but there are a lot of details that an elections attorney could pick at. Ultimately, what we would prefer is language that leaves the drawing process—how we would like to execute that drawing—to our discretion. We think it makes more sense and would avoid potential legal challenges every step of the way if we did not follow the directions to a T.

Along the line of challenges, we would prefer language in the bill that the annual drawing that sets this random alphabet can be challenged only if there is a willful violation. If the ultimate purpose of this bill is a truly random ballot, if we were to make an innocent mistake or harmless error that potentially changed the alphabet around, we do not want to have to reprint a number of ballots based on a harmless mistake. If it is a willful violation where we were picking out a specific letter, obviously, that would be challengeable, but we would like some carve-out language that to challenge the actual drawing there would need to be a willful violation.

The third issue we have is a practical one. It may seem unnecessary at first, but the term "random alphabet" probably needs to be clarified. I think the intention is that the random alphabet would affect only the first letter of a candidate's last name, but it does not specifically say that. For example, if we did our annual drawing and the first letter was B, if there are two candidates whose last names start with Be and Ba, there might be a question as to which candidate should be listed first. I think it is everyone's intention that this random alphabet applies just to the first letter, but that should be clarified.

Those are the only concerns we have. Again, we do not oppose the randomization of the ballot; we just think this language needs to be cleaned up a little bit to avoid the challenges we have seen in the past and foresee in the future.

Vice Chair Flores:

Does the Committee have any questions? [There was no response.] I do not think we have anyone else here in support, so we will move on to those wishing to testify as neutral on the bill.

Larry Lomax, Registrar of Voters, Clark County:

I would like to address several statements made previously. Our voting machines do not put out a flashing signal that indicates you have not made a choice in a contest, as was mentioned by the gentleman from Stanford. I am sure some do, but ours do not.

We have gone to court four times over this issue here in Clark County, and so far the courts have ruled that the Legislature has the right to make the determination about randomization or not. We do not have a problem with which way you go.

As far as the question concerning whether the voting machines can automatically randomize on a sequential basis as voter after voter comes up, we do not know. Our technicians are investigating, and we will get that information to you as soon as we find out. I do not think it is going to be a cost issue. It is either going to be that the machines can do it or they cannot. Since we have an old product and the vendor is no longer supporting it, I am not sure they would be willing to make that kind of change in their software without charging us more money than we are willing to pay.

There are a few things to be aware of. Voters live in an alphabetical world. They are used to finding things listed in an alphabetical order, so if we are going to randomize, I do not think it is going to make much difference in a general election where there are three or four candidates. However, in the current mayor election in Las Vegas, where 18 candidates are listed on the ballot, it is going to make it harder for voters to find their candidates. I assure you we would receive complaints from the voters about that, because their concern is finding who they want to vote for and pushing that button. It also will amount to a slowing down of the voting process, which, depending on the size of the ballot, may or may not really affect an election.

You brought this up yourselves: randomized ballots do increase the likelihood of post-election litigation. Clerks invariably do make mistakes. I am not saying we are going to make any, and hopefully, we never would, but you can look around the country in every election cycle, and somewhere in some state some clerks have got things out of order and they have gone to court.

In 2001 in Compton, California, a court actually changed the loser to the winner by determining that they thought this individual would have had enough votes to win had he been properly listed on the ballot. That decision was subsequently overturned, but it does increase the opportunity to go to court.

Finally, I would like to address the suggested amendment previously made. Printing out the full party name by every one of their candidates' names is a serious space issue for a party such as the Independent American Party. If that is to be discussed, I would surely like to have an opportunity to comment on it.

Other than that, we are neutral. We will do whatever we are told to do; however, this precinct-by-precinct rotation would really be challenging, but we will support whatever we have to do.

Vice Chair Flores:

Are there any questions from the Committee? Seeing none, we will take testimony from those in Carson City.

Alan Glover, Clerk/Recorder, Carson City:

I want to go on record as agreeing with the Deputy for Elections from the Secretary of State's Office concerning the language regarding how the drawing is to be conducted. I would think you would want to look at language that leaves it up to the Secretary of State to randomly select the letters. We no longer put names of people in a box and pull out potential juror names that way—a computer does it for us.

I think addition of the willful violation provision to the bill is quite important, because mistakes are made. The order in which the letters are drawn needs to be clarified. If you pull out a B, and there are two candidates with the same name, which one would you choose? For filing purposes, if two last names are the same, you look then to the first name, and we have always done that, but I think it would help to have clear language concerning exactly how we would choose who to place first. I think it should be a simple change. We do not want to be fighting in court about whether "Aaron Brown" or "Zachary Brown" goes first. Other than that, I have no further information for you and agree with Mr. Lomax's comments.

Assemblyman Hardy:

To Mr. Lomax's point regarding a lengthy ballot and elderly voters, is that a factor? Does it complicate things for those voters?

Alan Glover:

That question is probably best left to the professor from Stanford. My experience is the same as Mr. Lomax's. We live in an alpha world. People look for names in alphabetical order. I think there are probably good arguments against that, and that is one of the reasons we do not like rotation within precincts or, as was suggested, on the voting machine itself. The sample ballots are printed. People tend to mark their sample ballots and go in to vote just the way it is on their sample ballots.

Assemblyman Hardy:

How much do people use their sample ballots? I know I have used them for years; it is what I do, but is there a percentage of voters who use that sample ballot?

Alan Glover:

We have never done a scientific study. I can tell you that we consider early voters to be very good voters, and almost all of them bring their sample ballots with them. The people who do not are the people who come in between 5 p.m. and 7 p.m. on Election Day. They are the ones who have not made up their minds yet, I guess, but feel it is their duty to vote. The least prepared voters are those who come later in the day. We really, really encourage people to bring their sample ballots with them because it makes the process go so much faster when they do.

Vice Chair Flores:

Are there any more questions? [There were none.] Please, proceed.

Carol Howell, Private Citizen, Carson City, Nevada:

You just covered my point. Citizens of Carson City use those sample ballots they have already marked, and to have them get to a machine and have a different order presented to them would be disastrous.

I managed one of the party headquarters. We had dozens of people coming in every day during the last week of voting asking about differences among ballots and whether we could help them complete their sample ballots to take to the polls. I would not advise having something different on the voting machines.

Vice Chair Flores:

Are you opposing the bill?

Carol Howell:

I am concerned about it. I am not opposing the random drawing, but I would oppose a random ballot on the voting machine. I am just saying you need to be careful with that.

Vice Chair Flores:

We will move to those who are in opposition to A.B. 99. Seeing none, I will close the hearing on A.B. 99.

Chair Segerblom:

Is there any public comment? Seeing none, this meeting is adjourned [at 2:34 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: March 10, 2011

Time of Meeting: 1:37 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
A.B. 99	C	Assemblyman Segerblom	PowerPoint
A.B. 99	D	John Wagner	Proposed amendment