March 6, 2025

Assembly Committee on Legislative Operations and Elections
401 S. Carson Street
Carson City, NV 89701

ACLU Nevada

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North Las Vegas, NV 89032
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Re: Testimony in Support for Assembly Bill 287

Dear Chair Mosca and Members of the Committee:

American Civil Liberties Union of Nevada supports AB287. AB287 implements an objective recount procedure with one set of criteria that applies to all candidates, regardless of their access to funding. This piece of legislation levels the playing field for candidates, specifically regarding their ability to pay the costs of a recount. We thank Assemblymembers Gonzalez and Monroe-Moreno for bringing this bill forward.

We urge the committee to support AB287.

Best,

/s/ Athar Haseebullah, Esq.
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Assembly Committee: Legislative Operations and Elections
Exhibit: H Page 1 of 7 Date: 03/06/2025
Submitted by: Various Individuals

March 4, 2025

Campaign Legal Center Testimony Before the

Assembly Legislative Operations and Elections

In Support of AB 287

Dear Chair Mosca, Vice-Chair Gonzáles, and the Members of the Assembly Legislative Operations and Elections Committee,

Campaign Legal Center ("CLC") respectfully submits this testimony to the Committee in support of Assembly Bill 287, which provides significant and essential updates to the recount process in Nevada. This legislation provides much needed clarity to the current statute governing recounts and ensures that the recount process is both available to confirm the accuracy of Nevada's election results and also protected from potential misuse by candidates seeking to undermine post-election processes. We respectfully urge this committee to take action on AB 287 to adopt an efficient and statistically sound automatic recount process that would benefit all candidates, regardless of political affiliation.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Our work promotes every American's right to participate in the democratic process. As such, CLC works to advance transparent, accessible, and responsible procedures for election processes in the states. AB 287 is critical to ensure that Nevada's recount procedures are appropriately strengthened for future elections.

The Recount Process

The purpose of a recount and the process for completing one are both frequently misunderstood. A recount is a highly specific process by which all votes are retabulated for the purposes of ensuring that all ballots cast were counted accurately, particularly in very close races where the

victory is held by a slim margin.[1] Importantly, recounts are not the same as audits (which are meant to ensure that election procedures are followed correctly and that equipment is working properly), nor are they an opportunity to conduct an investigation surrounding issues like alleged fraud in the election system or disenfranchisement of voters. While different states conduct recounts differently, Nevada law directs that a recount must include a "count and inspection" of all ballots, during which time all ballots are reviewed to ensure they are "marked as required by law."[2] The ballots are then recounted "in the same manner in which [they] were originally tabulated." Importantly, this means that ballots that were originally counted via tabulator cannot be hand counted.[3]

Recounts are most valuable when used for their intended purpose – to ensure that the candidate with the highest number of votes was correctly declared the winner when the margin of victory is incredibly close. Unfortunately, recounts are ripe for misuse and overuse by candidates trailing by a wide margin hoping to uncover an alternate path to victory that does not exist given the precision and efficiency of our modern-day election system, where machines and tabulators are typically equipped to accurately count and calculate thousands of ballots swiftly and without error. Recent research shows that between 2000 and 2023, there were 6,929 general elections resulting in just 36 statewide recounts nationwide. Of those, there were only three instances in which a recount revealed that the initially reported outcome was incorrect, and in all three of those cases, the original margin of votes between the two leading candidates was under 0.06% of the total votes cast.[4] This provides a perspective on the rarity of recounts changing the initially-tabulated outcome in a statewide race with thousands of votes. For a recount to potentially change the outcome of an election, the margin of loss must be incredibly narrow.

Similarly, research shows that the majority of statewide recounts actually *widen* the gap between the top two candidates, rather than shrink the winner's margin of victory as recount requesters typically believe.[5] This is typically due to specific recount processes where humans can determine voter intent on ballots that were illegible to tabulators or machines. As a result of those processes, recounts are a useful tool for confirming the accuracy of election results and promoting public confidence that all ballots were tabulated correctly—especially in close races. But not every race justifies the time and expense associated with conducting a full recount, and without appropriate limitations on when recounts can occur, well-resourced candidates can abuse the system to prolong their defeat, sowing confusion among voters and draining the limited resources of election officials.

Updating the Recount Request Process to Prevent Frivolous Recounts

AB 287 will make important changes to the current recount process to help prevent potential abuses of the system and to ensure that recounts are conducted only in situations where discrepancies could potentially change the outcome of an election. While current law allows any

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[1] U.S. Election Assistance Commission, *Election Management Guidelines Chapter 15: Conducting a Recount* at 147 (2010), https://www.eac.gov/sites/default/files/document_library/files/EMG_chapt_15_august_26_2010_1.pdf.
[2] N.R.S. § 293.404 (3)
[3] Id.
[4] Deb Otis and Bryan Huang, *An Analysis of Statewide Election Recounts, 2000-2023,* FairVote (October 2024), https://fairvote.org/report/election-recounts-2024/.
[5] Id.

candidate to request a recount regardless of the likelihood of the recount changing the results of the election, this bill empowers candidates to request a self-funded recount but only in cases where the difference in votes between the winning and defeated candidates is five percent or less.

The recount process should be reserved for good faith requests. Placing sensible boundaries on the process prevents recounts from being requested by individuals who have no chance of winning, but who nevertheless may seek to undermine or stall the post-election process to delay timely and legitimate certification of election results. When frivolous recount requests are filed, it not only erodes public trust in election results, but it also results in more burdens on already fatigued election officials who should be prioritizing the next steps in the post-election process (including conducting audits, which help to ensure the accuracy of the vote casting and counting system).

Unfortunately, there is precedent for frivolous recount requests in the state of Nevada. During the 2022 Republican gubernatorial primary, Joey Gilbert's campaign paid nearly $200,000 for election officials to spend two days recounting every vote statewide despite his 11-percentage point loss to Joe Lombardo.[6] At the time, Gilbert claimed that the ballots were "fixed and cooked," and that election tabulators were not functioning as intended.[7] The recount changed the result of only seven votes – with Gilbert's total dropping by six votes and Lombardo's by one – a far cry from the discrepancies that would have been necessary for Gilbert to overcome the approximately 26,000 vote gap between the two candidates.[8] Scenarios like this perfectly exemplify why a five percent cap on candidate requested recounts is not just reasonable but also essential to keep the post-election process running smoothly and efficiently.

Ensuring Better Equity in the Recount System by Instituting Automatic Recounts

The current Nevada recount system for candidates is not financially equitable. The system prioritizes candidates privileged enough to provide or quickly raise funds required to request a recount (which can amount to tens of thousands of dollars, if not more, especially for statewide recounts). AB 287 would provide an automatic recount for races where there is a margin equivalent to or less than 0.25%, ensuring that the results of the closest contests are tabulated accurately, regardless of the losing candidates' fundraising capability or personal wealth.

Automatic recounts are extremely popular nationwide; Nevada would join a long list of other states with leaders and legislatures across the political spectrum who have adopted similar policies. Currently, 24 states including Alabama, Arizona, Colorado, Florida, Michigan, New Mexico, Ohio, and Pennsylvania, as well as the District of Columbia, provide for some form of automatic or mandatory recount.[9]

The automatic recount process in this bill will offer both fairness and transparency to all candidates in the aftermath of an election. Automatic recounts can also instill greater voter trust in the election system because they ensure that all close races will be retabulated, not just those where the

[6] Colton Lochhead, *Little change after Nevada GOP governor recount,* Las Vegas Review-Journal (July 6, 2022), https://www.reviewjournal.com/news/politics-and-government/nevada/little-change-after-nevada-gop-governor-recount-2603623/.
[7] Id.
[8] Id.
[9] *Election Recounts,* National Conference of State Legislators (November 2024), https://www.ncsl.org/elections-and-campaigns/election-recounts.

candidate can provide the necessary funding. Overall, this legislation will help assure both candidates and voters that Nevada has confirmed the winning candidate in close contests.

Conclusion

Clear and sensible recount procedures are essential to ensuring public confidence in the legitimacy and transparency of elections. Passing AB 287 will update current recount procedures to offer much-needed modernization to ensure that the process is used for its intended purpose – to confirm that the canvass and counting of results was accurate, especially in exceedingly close races. This legislation would impart more equity into the recount process, ensuring all candidates in close races have access to the recount system, regardless of their financial status. Lastly, AB 287 will protect the recount process from being used for partisan purposes to hamper the certification of legitimate election results and is therefore critical to protecting the integrity of Nevada's electoral system. Campaign Legal Center respectfully requests your support for this legislation.

CHICANOS POR LA CAUSA

March 6, 2025

The Honorable Erica Mosca
Chair
Legislative Operations
and Elections Committee
Nevada State Assembly
Carson City, Nevada

The Honorable Cecelia Gonzalez
Vice-Chair
Legislative Operations
and Elections Committee
Nevada State Assembly
Carson City, Nevada

Dear Members of the Assembly Committee on Legislative Operations and Elections,

I am writing to express Chicanos Por La Causa Nevada strong support for Assembly Bill 287.

AB 287 proposes significant and necessary changes to the election recount procedures in Nevada, which will enhance the transparency, fairness, and efficiency of our electoral process.
The key provisions of this bill include:

1. **Recount Demand by Defeated Candidates**: The bill allows a defeated candidate to demand a recount if the vote difference is 5% or less. This provision ensures that candidates have a fair opportunity to verify election results in closely contested races.
2. **Automatic Recounts**: The bill mandates automatic recounts at no cost if the vote difference is 0.25% or less. This measure will help maintain public confidence in the electoral process by ensuring that extremely close results are double-checked without imposing financial burdens on candidates or voters.
3. **Recount Procedures for Ballot Questions**: The bill eliminates the authority of voters to demand recounts for ballot questions and instead provides for automatic recounts under the same 0.25% threshold. This change simplifies the recount process and ensures consistency in how close results are handled.
4. **Composition and Operation of Recount Boards**: The bill outlines clear guidelines for the composition and operation of recount boards, ensuring impartiality and transparency. Candidates and voters may observe the recount process but cannot serve on the recount board, which helps prevent conflicts of interest.
5. **Financial Responsibilities**: The bill clarifies the financial responsibilities for recount costs, ensuring that candidates who do not prevail are liable for any deficiencies, while those who prevail have their costs covered by the

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respective county or city. This provision ensures that the financial burden of recounts is distributed.

6. **Timelines and Technology Updates**: The bill establishes specific timelines for filing statements of contest and requires county or city clerks to ensure that mechanical recording devices provide printed records of each ballot voted. These changes will improve the efficiency and accuracy of the recount process.

AB 287 represents a thoughtful and balanced approach to improving our election recount procedures. By implementing these changes, Nevada will strengthen the integrity of its electoral process and ensure that all votes are accurately counted and verified.

I urge the committee to support AB 287 and recommend its passage. Thank you for your consideration of this important legislation.

Sincerely,

Rudy Zamora
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CC:
Speaker Steve Yager
Senator Nicole J. Cannizzaro, Senate Majority Leader