

February 18, 2022

Washoe County Commission  
1001 E, 9<sup>th</sup> Street  
Reno, NV 89512



Dear Chair Hartung and Commissioners:

The ACLU of Nevada (ACLUNV) unequivocally opposes Election Resolution No. R22-50. This resolution is wholly unnecessary. It is costly, burdensome, and would roll back and impede the strides made by the state of Nevada to expand access to voting. The suggestions made exceed the authority of the Board of County Commissioners (Commission) and are in direct violation of the United States Constitution, the Nevada Constitution, the Nevada Revised Statutes, and multiple federal laws.

The ACLUNV is a proud member of the Let Nevadans Vote Coalition. Each election cycle, we provide legal support and train poll monitors to assist with non-partisan election monitoring. The coalition helps hundreds of Nevadans – Republicans, Democrats, non-partisans, and more—access the polls. We have disagreed and challenged many county clerks and registrars, including the Washoe County Registrar, but we can confidently say we have some of the best, most dedicated election officials in the country who uphold and value the law.

We thank the Washoe County District Attorney's office for their reasoned analysis and largely agree with their conclusions regarding the applicability of "Dillon's Rule." However, our application of the rule and applicability of other state and federal laws leads us to a slightly different result. To avoid confusion, we address the relevant sections below and conclude that the Commission, with little exception, lacks the authority to pass this resolution and should reject it in its entirety as a matter of public policy.

**1 and 17: Immediately [correct] the current voter registration list in verification with the USCIS SAVE program, National Change of Address (NCOA), and Washoe County Assessor and Vital Records and Ensure all voter registration forms are verified against [the listed databases] before they are entered into the voter registration system.**

Items 1 and 17 seek to change requirements and procedures currently in place under state and federal law. State law permits the voter registrar to utilize any reliable means to verify a voter's residence and eligibility to vote.<sup>1</sup> The Washoe County Registrar testified on numerous occasions regarding the systems in place for voter registration verification and made it abundantly clear that her department is operating well within the confines of the law.

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<sup>1</sup> Nev. Rev. Stat. 293.530.

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Furthermore, if passed, the provision requiring the use of the USCIS SAVE program would likely violate the National Voter Registration Act (NVRA). The NVRA provides that "[e]ach State shall accept and use the Federal Form for the registration of voters in elections for Federal office."<sup>2</sup> The NVRA precludes states from requiring an applicant to submit information beyond that required by the form itself. These additional verifications go beyond what is required under the NVRA. This will lead to denial of voter registration for federal registrants based on procedures not outlined in federal law.<sup>3</sup>

## **2. Ensure the strict use of Washoe County Residents as Poll Workers**

Item 2 is unnecessary as state law places strict restrictions on who can serve as a paid poll worker. NRS 293.217 requires that: 1) poll workers be registered voters; 2) poll workers at any polling place not be all of the same party; and 3) poll workers not be candidates or close family members of candidates.

## **3. Providing equitable and fair opportunities for observation**

Item 3 is also unnecessary and redundant as the Nevada Administrative Code and Nevada Revised Statutes articulate and provide ample opportunity for *any person* to observe at a polling location.<sup>4</sup> Restrictions on poll monitors include prohibitions against talking to voters within the polling place, using a mobile device, advocating for or against a candidate, interfering with polling location procedures, etc. Through our election protection efforts, the ACLUNV has witnessed the Washoe County Voter Registrar's commitment to providing ample opportunity to monitor polling sites.

## **5. Enacting any other measure that ensures the accuracy, security, and purity of elections**

This item is vague, overly broad, and unnecessary. Through our election monitoring efforts, there is nothing to suggest that election administration in Washoe County is anything less than accurate and secure. What is apparent is that this proposal, as a whole, would taint elections in this county by disenfranchising thousands of voters.

## **6. Quarterly Reporting by the Registrar of Voters of all measures, and improvements thereto, used to ensure accuracy, reporting and purity of elections**

Item 6 is also unnecessary as the registrar provides written and verbal updates to the Commission and the public multiple times a year.

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<sup>2</sup> 52 U.S.C. §20505.

<sup>3</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013).

<sup>4</sup> Nev. Admin. Code 293.245; Nev. Rev. Stat. 293B.353.



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## **7. Utilizing stealth paper ballots as primary method of voting, with provision of one electronic voting kiosk for ADA qualified voters**

Item 7 presents several practical and legal issues. First, the resolution fails to define "stealth paper ballot." We agree with the Washoe County District Attorney's conclusion that carbon copy paper ballots would violate prohibitions against photographing ballots and removing ballots from a polling location.<sup>5</sup> If "stealth paper ballot" refers to a watermark or other unique marker, it may constitute a change to the form of the ballot and the "matter to be printed on the ballot," which must be prescribed by the Secretary of State.<sup>6</sup>

Second, the Help America Vote Act (HAVA) requires *at least* one direct recording electronic voting system or other voting system equipped for persons with disabilities.<sup>7</sup> If the resolution suggests only one electronic kiosk for the entire county, it violates HAVA. On the other hand, if it requires at least one HAVA compliant kiosk at all polling locations, it likely meets HAVA requirements, but it should be rejected as a matter of public policy. According to the U.S. Census Bureau, Washoe County is home to over 41,000 disabled residents.<sup>8</sup> Nearly a third of those individuals are visually impaired, and thousands of others among that group may have a disability requiring access to voting machines.<sup>9</sup> Only providing one voting machine at each polling location when the county can offer more would present a barrier for Washoe County's disabled population to exercise their right to vote.

Relatedly, the Nevada Constitution and state law provide that every voter has the right to "equal access to the elections system without discrimination."<sup>10</sup> If, for example, erecting only one HAVA compliant voting machine at each polling location is an insufficient number to serve the disabled community and ultimately deters people from voting, the Commission will, in effect, create unequal access to the elections system in violation of the Nevada Constitution.

## **8. Ensure mail ballots are sent certified receipt so only the intended voter takes possession of it**

Item 8 violates Nevada law which delineates how mail ballots must be delivered.<sup>11</sup> The Commission has no authority to require changes to the delivery of mail ballots.

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<sup>5</sup> See Memo from Nathan J. Edwards, Assit. Dist. Atty., to Washoe County Manager's Office, (March 16, 2022) at 8. available at [file:///C:/Users/welbo/Downloads/3-22-22\\_Legal%20Memo%20and%20Analysis%20of%20Proposed%20Election%20Integrity%20Resolution%202022%20Memo.pdf](file:///C:/Users/welbo/Downloads/3-22-22_Legal%20Memo%20and%20Analysis%20of%20Proposed%20Election%20Integrity%20Resolution%202022%20Memo.pdf).

<sup>6</sup> Nev. Rev. Stat. 293.250.

<sup>7</sup> 52 U.S.C.A. § 21081.

<sup>8</sup> <https://www.census.gov/quickfacts/washoecountynevada>.

<sup>9</sup> <https://www.nevadatomorrow.org/indicators/index/view?indicatorId=6551&localeId=1813>.

<sup>10</sup> Nev. Const. art. 2, § 1A.

<sup>11</sup> Nev. Rev. Stat. 293.8847.

We agree with the District Attorney's analysis that the statute indicates mail ballots shall be delivered by "first-class mail..." and that requiring certified receipt is a barrier to accessing a mail-in ballot and contravenes the intent of AB321.

**9. Ensure ballot envelopes are scanned as "received" at intake stations connected in real time to voter database before being deposited into ballot boxes**

Item 9 also violates state law as the authority to collect and process ballots are delegated to the Ballot Processing and Packaging Board.<sup>12</sup> The Commission has no power over administering the receipt of mail-in ballots.

**10 and 11. Ensure bipartisan teams, who are not married, are utilized throughout election processes, including but not limited to verification of registration applications, intake stations/ballot boxes, ballot pickup teams, sorting sealed envelopes into precincts, delivering sealed envelopes to precinct tables, opening envelopes, verifying signatures, counting ballots, tallying results, etc.; Ensure bipartisan teams are approved by respective Central Committees of primary parties**

All provisions in items 10 and 11 are preempted by state law. Nevada law proscribes the processes and qualifications for election workers and delegates the authority to verify voter registration applications to county clerks and registrars.<sup>13</sup>

**13. Ensure there is a Nevada National Guard presence at each polling/ballot box location, as well as the central counting center**

Item 13 is patently absurd and offensive. First, a county commission has no authority to deploy the National Guard. This power is reserved for the Governor.<sup>14</sup> Second, it is a federal offense to post any branch of the armed forces at a polling location.<sup>15</sup> Third, this proposal is a blatant violation of the Voting Rights Act, which states:

*No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempt to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce any person for urging or aiding any person to vote or attempt to vote...*

Likewise, Nevada voters have a Constitutional right "to vote without being intimidated, threatened or coerced."<sup>16</sup>



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<sup>12</sup> Nev. Rev. Stat. 293B.380

<sup>13</sup> See e.g. Nev. Rev. Stat 293.217 and Nev. Rev. Stat. 293B.335.

<sup>14</sup> Nev. Const. art. 5 se 5.; 32 USC 328.

<sup>15</sup> 18 U.S.C 592.

<sup>16</sup> 52 U.S.C § 10101 (b); Supra at ft. note 14.



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Military presence at polling locations and counting centers is threatening, coercive, and objectively intimidating.<sup>17</sup> Military or widespread police presence at polling locations, even without forceful conduct, may cause a voter to fear for their safety and deter them from exercising their right to vote.

The ACLUNV also opposes posting law enforcement at voting sites. Although the registrar has the statutory authority to request the presence of a deputy sheriff at each polling location, their presence may also be objectively intimidating and deter citizens from voting. The registrar may only call on law enforcement to "preserve order during hours of voting and attend closing of the polls."<sup>18</sup> The proponents of this measure made clear their intent for the military or police to enforce election laws. If this item is successful, one can only conclude it is to force deputy sheriffs to monitor voters, which is most certainly voter intimidation.

#### **14. Ensure the counting procedure is public and continues without adjournment until completed**

Again, this is redundant. These procedures are proscribed by law, and the registrar follows all procedures.<sup>19</sup>

#### **15. Ensure ballots are counted by hand in order to be counted by hand in a recount**

Nevada voters have a constitutional right to a "uniform, statewide standard for counting and recounting" ballots. If every county has a different process for counting ballots, it disrupts the uniform system in violation of the Voters' Bill of Rights.<sup>20</sup>

#### **16. Ensure same-day registrations are issued a paper provisional ballot of a different color than the paper ballots**

The Commission may direct the registrar to do this, but it simply doesn't matter. The record should indicate that same-day registration was wildly popular among all voters, but new Republican voters benefited the most.<sup>21</sup> Programs like same-day voter registration and other laws expand access for everyone.

#### **18 and 19. Ensure registrations in voter registration system expire 5 years after registration/renewal; Ensure renewal notifications are mailed in January to "active" electors whose registrations expire that year**

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<sup>17</sup>Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173 (2015).

<sup>18</sup> Nev. Rev. Stat. 293.217.

<sup>19</sup> Nev. Rev. Stat. 293.363.

<sup>20</sup> Supra at ft. note 14.

<sup>21</sup> <https://www.nvsos.gov/sos/home/showdocument?id=9076>.



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Item 18 violates the NVRA, which outlines the circumstances under which an individual must be removed from the voter registration system. An election official may only remove a voter if: 1) the voter requests to be removed; 2) the state prohibits registration based on a criminal conviction or mental capacity (Nevada does not); 3) the voter dies; or 4) there is a change in the voter's residential address. Neither the Commission nor the legislature has the authority to override the NVRA.<sup>22</sup>

## **20. Ensure forensic material of elections is maintained for a period of 10 years**

State law currently requires election officials to “retain and preserve” all voting records for a *minimum* of 22 months and to destroy documents after this period. Federal law requires election officials to “retain and preserve” all records relating to any “act requisite to voting” for twenty-two months after the conduct of “any general, special, or primary election” at which citizens vote for “President, Vice President, presidential elector, Member of the Senate, [or] Member of the House of Representatives.” We understand why the District Attorney would conclude that the Commission has the authority to extend this deadline by relying on state law alone. However, read together with the federal law, unless the elections materials only contain information on state and local candidates, the registrar's duty to “retain and preserve” expires after 22 months.<sup>23</sup>

This resolution is a distraction and pushes a dangerous rhetoric aimed at confusing voters and attacking hard working election officials. The proposed measures are either redundant, unnecessary, or categorically illegal.

**The ACLU of Nevada will not tolerate attacks on the fundamental right to vote and will litigate the matter should the board adopt these regressive policies.**

Sincerely,

/s/Holly Welborn  
Policy Director

/s/Sadmira Ramic  
Voting Rights Attorney

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<sup>22</sup> 52 U.S.C.A. § 20507.

<sup>23</sup> 2 U.S.C. § 20701; NRS 293B.400.