

Declaration of Douglas W. Jones
Regarding the October 27, 2008 Nevada Secretary of State Interpretation 08-17-01

1. My name is Douglas W. Jones. I am Associate Professor at the University of Iowa Department of Computer Science, where I have taught since 1980. My curriculum vitae is attached.

Expertise in voting technology and election observation:

2. I served on the Iowa Board of Examiners for Voting Machines and Electronic Voting Systems from 1994 to 2004, and chaired the board for three terms. This board examines all voting systems offered for sale in the state of Iowa to determine if they meet the requirements of Iowa law.
3. I testified before the United States Commission on Civil Rights on evaluating voting technology for their January 11, 2001, hearings in Tallahassee Florida. I also testified before the House Science Committee on problems with voting systems and the applicable standards for their May 22, 2001, hearings. The following year I testified before the Federal Election Commission on voting system standards for their April 17, 2002, hearings.
4. I wrote Chapter 1 of Secure Electronic Voting, edited by Dimitris Gritzalis and published by Kluwer Academic Publishers in 2002.
5. In the summer of 2004, I consulted with Miami-Dade County to assess problems with their touch-screen electronic voting system and to assess their pre-election testing of their touch screen and optical scan voting systems.
6. My paper, Auditing Elections, was published in the Communications of the Association for Computing Machinery in October 2004.

7. I am one of the ten principal investigators in A Center for Correct, Usable, Reliable, Auditable, and Transparent Elections (ACCURATE), a multi-institutional center awarded a 5-year research grant by the National Science Foundation starting in October 2005.
8. For years I have served as an election observer, under the auspices of the Office for Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe (“OSCE/ODIHR”), in a variety of countries around the world, including last year in Kazakhstan. In 2007, I also participated in an OSCE/ODIHR expert meeting on “Election Observation and Electronic Voting.”
9. With respect to the 2008 presidential election, I have testified in a District of Columbia Council investigation into vote tallying problems in an election using a Sequoia voting system, in litigation in Maine regarding a primary election ballot dispute, and in litigation in Philadelphia, Pennsylvania regarding emergency paper ballot access during the November election in the event of voting machine failures.

**The October 27, 2008 Nevada Secretary of State Interpretation 08-17-01
Raises Election Integrity Concerns.**

10. I have reviewed a copy of the October 27, 2008 Nevada Secretary of State Interpretation 08-17-01 and considered in particular the significance of its last paragraph, which discourages public observation of the 2008 presidential election in Nevada. In light of this review, and given my expertise and research on voting technology issues and election integrity, including election observation, my professional opinion is that the Nevada Secretary of State’s Interpretation 08-17-01 is inconsistent with established norms and best practices for elections, because it opines that public observation of election operations before the polls open and after they close should not be permitted and thereby

eliminates observer personal knowledge of the chain of custody of election materials and results.

11. The final paragraph of Interpretation 08-17-01 reads in relevant part that “the Secretary of State does not support the admittance of observers prior to the opening of the polls, as well as their remaining in the location after the close of the polls during early voting. . . . If the observer requests the information contained on the protective counter or the public counter, please make available those numbers upon request. On Election Day, however, the decision to allow observation after voting has ended but prior to the tally of the vote is left to the clerk’s discretion.”
12. The Secretary of State’s attempt to preemptively bar public observers at critical stages of the electronic voting process is inconsistent with Nevada’s verified voting history. The State of Nevada, in order to instill public confidence in elections using electronic voting machines, became the first state to require voter verified paper audit trails.
13. Consistent with the principle of election transparency, past practice in Nevada is to permit public observation of the polling place set-up and shut-down. Moreover, Interpretation 08-17-01 would allow some jurisdictions within Nevada to maintain openness throughout the election while others do not. In addition, and speaking as an experienced international election observer, it is also worth noting that the Interpretation would be contrary to the Organization for Security and Co-operation in Europe Guidelines for Reviewing a Legal Framework for Elections:

XI. OBSERVERS

OBJECTIVE: The legal framework should provide for observers, including domestic and foreign, and representatives of the media, political parties and candidates, to ensure transparency of all electoral processes.

The OSCE guidelines go on to say:

The legal framework should be clear and precise concerning the rights of observers. A general provision allowing observers to “observe the carrying out of elections” is insufficient. The law should provide clear and precise provisions establishing the rights of observers to inspect documents, attend meetings, monitor election activities at all levels at all times, including counting and tabulation, and to obtain copies of protocols at all levels. The law should also establish an expedited process for observers to obtain corrective relief when an election commission/body denies the rights of an observer, including the right to be registered as a domestic observer.

14. Further, public observation is all the more important in Nevada because the state allows for mega polling places, such as in Carson City, where many polling precincts are under one roof and where the possibility of problems is greatly magnified.
15. Law and best practices provide for public observation of the election process for good reason. Without independent public observers, public confidence in the outcome of elections is undermined and the ability to govern of those determined the winner is compromised.
16. Contrary to the Secretary of State’s suggestion in the Interpretation, the election is not confined to the period between when the first and last ballots are cast, the election includes what comes before and after that. This is true whether voting occurs on a single day or over a period of days. Expelling public observers from the beginning and end of any day of voting makes essential aspects of the election secret and vulnerable to actual or apparent manipulation. Expelling public observers is a serious violation of sound election practice, which risks both compromising the reliability of the results and public confidence in them.

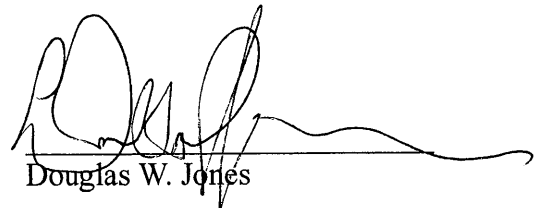
17. Access by poll observers to the polling place prior to the opening of the polls is essential to verifying that voting equipment is set up to function properly and will correctly record the first vote of the day as the first vote. Similarly, access by observers following the closing of the polls ensures that the data in the machines is collected and protected appropriately. This is especially important where the data is stored on physically small digital media. Just as it would raise suspicions if officials took a full ballot box out of public view and into a private back room to begin counting in secret, memory cards and data storage devices should not be handled without observers present to observe their handling.

18. In this regard, there is no substitute for first-hand observation of the public and protective count on each electronic voting machine, and the printing of zero and results tapes. The count before the voting begins on each machine must be zero votes and the public observers are there to corroborate that that is so. Upon poll closing, the public observers should be able to read the public and protective count on each machine and then be able to compare the totals of those counts with the number of voters who signed in at that polling place. Independent public observers also should be able to observe the printing of the results tape from each voting machine and record any and all information on these tapes to prevent accidental or intentional alteration or substitution of these tapes. This information must be captured at the precinct level. Allowing the poll workers to transcribe information from the zero or results tape or the public and protective counters for public consumption at a minimum introduces the possibility of poll worker transcription errors and calls into question the reliability of the precinct vote count upon which the election results are ultimately based. Likewise, the public has no way of

knowing that the zero or results tapes posted at a polling place apart from the voting machines were in fact produced from those voting machines absent the personal knowledge of independent public observers who watched the tapes being printed from those voting machines

19. Following problems experienced during the 2000 and 2004 Presidential election cycles as well as problems in the most recent 2006 Congressional elections, there is significant public concern about the accuracy and integrity of elections, particularly in jurisdictions using electronic voting machines. Interpretation 08-17-01 serves to increase rather than alleviate this public concern.

On this 30th day of October 2008, I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my understanding.



Douglas W. Jones