



**DENVER**  
THE MILE HIGH CITY  
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## **CITY AND COUNTY OF DENVER**

### **CLERK and RECORDER ELECTIONS DIVISION**

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The following is Denver Clerk and Recorder Stephanie O'Malley's testimony to the Colorado Senate State, Veterans and Military Committee regarding SB-189, which would establish paper balloting for the 2008 election cycle.

Good Afternoon Chairman Tapia and Vice Chairman Romer and fellow members of the committee. Thank you for allowing me to share Denver's position with regard to Senate Bill 189. Recognizing need to move expeditiously, I will make my comments as brief as possible.

As each of you is aware, after garnering input from a variety of stakeholders who have significant interest in elections-related matters in Denver, the City and County of Denver recently endorsed a model to conduct the 2008 primary and general elections in its county by having its eligible voting population vote on paper ballots, in polling places that will house more than one precinct. The model includes considerations for complying with the federal Help America Vote Act, in that each polling place will have a Direct Recording Electronic (DRE) voting machine available for use. Our ballots will be counted at a central location with the use of high-speed optical ballot scanners.

To the extent that Senate Bill 189 supports holding a paper ballot election in the City and County of Denver, its provisions are consistent with Denver's plan and thus I am in favor of provisions of the bill that speak to conducting a paper ballot election at polling locations throughout the city. In taking this position, it is important for members of the committee to hear and understand why we in Denver support the use of this model.

- Without question, our number one consideration in the Denver Elections Division is our voting public.
- For a variety of reasons, the trust and confidence of Denver's voting population has been challenged over the past few election cycles.
- It is our intent to ensure that elections in our county are fair, accurate, accessible, secure, transparent, and efficient.
- We believe that the decision to implement paper ballots at polling locations gives us the best opportunity to accomplish the aforementioned goals.
- In a presidential election that is predicted to be perhaps the most contentious and close race in American history, Denver is confident that paper ballots will be available for audit purposes should inquiries or scrutiny arise with regard to the outcome of the election.
- From our perspective, this model is flexible in that it provides opportunity for members of the voting public to exercise their right to vote in a manner with which they are most comfortable.
- The voter can visit a polling location and vote.
- The voter can vote by mail, if he or she so chooses.
- While I am on the subject of mail-in ballots, Denver supports provisions of the bill that require the county to pay the cost of returning mail-in ballots, particularly if the opportunity exist for voters to cast their votes at polling places.
- If the costs are not absorbed by the counties, arguably, one segment of the voting population is being subject to remit actual payment associated with a vote while others who choose to vote at the polls do not make this same expenditure. To have the counties pay the cost of returning ballots eliminates potential arguments of equal protection and poll tax.
- Though the postage costs are not unsubstantial, I believe such expenditures are necessary to conduct fair elections with accuracy and integrity.
- The voter can take advantage of early voting at one of no less than 12 early voting sites that Denver intends to offer.
- The plan was developed with a budget to support the 2008 election cycles. Denver will suffer no extraordinary fiscal impact as a result of implementing a paper ballot election.

- The plan minimizes the use of technology. As you are aware, technology disasters led to the catastrophic election that was held in our county in November 2006. Denver in no shape or form has desire to re-visit these technology disasters, but instead will rely upon use of paper poll books to verify voter eligibility. The use of a paper poll book will create opportunity to get voters to voting booths in a more efficient manner, thereby minimizing opportunity for the unreasonable long lines that were created during 2006 as a result of mass e-poll book technology failures. The proposed legislation supports the principle of using paper poll books.
- In Denver, our plan includes the use of no fewer than eight central-count optical scanners to count ballots. By counting ballots at a central location, we believe that we minimize the opportunity for increased points of failure that exist with the use of precinct scanners in every precinct location. In a year with so much change, Denver too wants to avoid additional training that will be necessary to use precinct scanners. By using central-count scanners we, too, reduce costs that are associated with providing a scanner at every polling place location. The proposed legislation supports the initiative of central-count scanning of ballots and additionally supports the ability to begin to count the ballots as soon as they are received rather than having to wait until 10 days prior to the election.
- While election results will be reported later than when Denver voted on electronic machines, by counting mail-in ballots and early-voting ballots as soon as possible after arrival, and by counting Election Day ballots throughout Election Day using the early pick-up of polling place ballots, we anticipate opportunity to maintain a steady count of ballots.

It is imperative to note for this committee that Denver voting history during the last presidential race in 2004 suggests that when given a choice to vote at a polling site or by some other means, such as absentee ballot, 73% of the active voting population made the decision to visit a polling place to cast votes. I would like to continue to recognize this preference in Denver and the proposed legislation will give Denver this latitude.

With regard to the mandatory nature of the bill, my position thru all of these discussions, even when my clerk colleagues disagreed with me, is that every county is different and that we

should each be able to run elections that are most appropriate for our respective counties. The outstanding question that remains unanswered is whether mandating that every county conduct elections in the same manner eliminates the potential issue of equal protection. I do not know the answer to this question. If a legal conclusion is such that equal-protection considerations will be violated, then perhaps we have to conduct our elections in the same way. However, if the conclusion is to the contrary, then perhaps we will not.

In closing, I want to touch upon a couple of other provisions of the bill that I do in fact take issue with. As proposed, the bill provides great latitude to the Secretary of State to reimburse a county for any necessary additional costs incurred by the county AS DETERMINED BY THE SECRETARY OF STATE, for conducting the primary and general elections in 2008. As proposed, the language is permissive rather than mandating an obligation on the part of the SOS to provide these re-imbursments. We as county clerks have no motivation whatsoever to create, unnecessarily expend, or dream up unnecessary costs related to conducting our elections.

Additionally, to have this decisionmaking power rest solely with the SOS is a cause for alarm. I suggest that the proposed language of the bill be amended to make the noted reimbursements mandatory rather than permissive and that the decisionmaking authority with regard to these reimbursements include review and decision by more than just the SOS.

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Thank you Mr. Chairman and Mr. Vice Chairman for allowing me to share my thoughts today with regard to the proposed legislation. I am happy to take any questions members of the committee may have.

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