

Report on the 2016 Presidential Recount in Clark County, Nevada

Criminal Investigation Warranted

Recount Now

www.recountnow.org

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Part 1: Overview

On November 30, 2016 American Delta Party/Reform Party presidential candidate Roque “Rocky” De La Fuente filed for a partial recount in Nevada. He requested a recount in specified precincts in four counties (Douglas, Mineral, Nye, Clark), and Carson City. He paid the \$14,000 fee required for the effort. De La Fuente was entitled under state law to select a sample of 5% of Nevada's precincts to be recounted.

There were a total of 92 precincts recounted. Two were in Carson City with two in each of Douglas, Mineral, and Nye counties. Clark County, by far the most populous county in Nevada, had 84 precincts recounted. This report pertains solely to Clark County.

The recount started on December 5th with numerous irregularities. Ballot boxes were unsecured with their seals broken. The observers were not able to observe the ballots. They were unable to listen to conversations between election officials/workers and they were unable to read writing on ballot boxes. Communications were filtered through Joe Gloria, Clark county's Registrar of Voters who misled the observers on what time the recount would start. During a meeting on 12/6/2016, Joe Gloria admitted that the ballots had been counted three times: once on election night, once before the public recount, and once during the official recount.

Joe Gloria admitted that a recount was performed as ‘practice’ before the public recount. The De La Fuente campaign was not notified, nor were there any independent observers during this private recount. We can never know what the County found and hid during the recount. The results of the first recount were not disclosed. Observers only witnessed the reenactment of the true recount.

In 2004, election workers in Cuyahoga County, Ohio did the same thing during the recount of that year's presidential election. They pre-sorted and pre-counted the ballots ahead of the “official” recount to make sure it went well. This was a clear violation of not just ethics, but also election law. Two people were sentenced to prison for this activity.

This is a serious breach of not only the De La Fuente campaign's good faith payment for an accurate recount, but also a breach of the public trust of Clark County's ability to hold accurate elections. It also means that the official outcome of the observed recount is meaningless.

We believe that a criminal investigation should occur, as well as legal action by the candidate.

Partial recounts and the existence of paper ballots are lauded as two methods of ensuring the honesty, accuracy, and fidelity of our elections. Yet neither one fulfills this function unless used properly. Our future as a democracy is dependent on significant changes to our election systems. Without fair, public, and observable vote counting, recounting, and audit systems, we cannot and do not have confidence in the outcomes of our elections.

Part 2 of this report details the observations made by recount observers, along with their conclusion and recommendation. Part 3 is a section on Nevada law. Part 4 lays out RecountNow's conclusion calling for a criminal investigation and legal action.

Part 2: Observers' Report

Background

On November 30, 2016 American Delta Party/Reform Party presidential candidate Roque "Rocky" De La Fuente filed for a partial recount in Nevada. He requested a recount in Douglas, Mineral, Nye, and Clark counties as well as in Carson City. Mr. De La Fuente paid the \$14,000 fee required for the effort. De La Fuente was entitled under state law to select a sample of 5% of Nevada's precincts to be recounted, totaling 93 precincts, but he selected only 92 due to one duplicate precinct being listed. If the results from the sample revealed a discrepancy of 1% or more in favor of either De La Fuente or Hillary Clinton, who won the state on election day, a full statewide recount could be launched at the discretion of the Secretary of State of Nevada. The total de la Fuente vote was a little over 200, so 1% would be 3 votes. The total for Clinton would be 500 votes.

In filing for the recount, De la Fuente stated, "[M]y only interest is to create a nationwide awareness of the vulnerability of our election system and to do everything possible to assure that your vote counts for the candidate for whom it is cast."

Introduction

This report covers observations of the Clark County Nevada recount held at on December 5th, and December 6th. The recount was held at 965 Trade Drive, Suite A, North Las Vegas. The Registrar of Voters, Joe Gloria, presided over the recount.

This report combines the observations of the following people:

Derrick Lee, Credentialed Observer, Roque De La Fuente
Michelle Gabriel, Credentialed Observer, RecountNow.org
Darlene Little, Observer, RecountNow.org
Megan Marie Ortiz, Observer, RecountNow.org

Also present were two observers from the Clinton campaign, first names Ashley and Michelle.

RecountNow.org is a group of election integrity advocates with many years of experience following, studying, and investigating elections. It is the group's position that it is the U.S. government's obligation to conduct elections in a manner that is accurate, transparent, and verifiable, and that those who violate election law and the public's trust must be held accountable.

The equipment used to vote during the election was the Dominion Voting Systems Edge 2 Direct Recording Electronic voting machines, also known as DREs or “touchscreen machines.” The absentee ballots were paper ballots, voted by pen or pencil marks. The machines used to count the absentee votes were six Dominion ImageCastCentral (ICC) Optical Scanners. The recount took place in a building that contained offices and the warehouse for the equipment. Tables and chairs for observers were set up in front of a glass viewing window into a room with scanners and monitors (referred to as the counting room in this report). Access was denied to this area and conversations and activity within the recount area were not audible to observers except as noted below. We were told counting took place in other areas, including an area called the Vault Room, to which observer access was denied.

The Registrar of Voters, Joe Gloria, stated the recount was performed using exactly the methods that were used on Election Day. He implied that this was the only way it could be done per the code, but this was not explicitly discussed. The implication was no hand counting of the mail-in paper ballots.

Information About The Election

Taken from December 6th meeting with Joe Gloria. The following information pertains to the November 8 election. (Note: this has not been confirmed for accuracy.)

Early Voting

Ballots were cast at multiple polling locations in Clark County via direct-recording electronic voting machines (DRE) also known as touchscreens. Early voting was not precinct-specific thus Clark County voters could go to any location and cast their vote.

There were problems with 19 DREs during the early voting period, with most related to hard-drive failures. These systems were taken offline as soon as they were identified and replaced by properly functioning DREs.

The CPUs within the malfunctioning DREs recorded votes to a voter-verified paper audit trail (VVPAT) to allow voters to verify that their votes were cast correctly. The results from these units were tallied from the VVPATs associated with them.

Early Voting ballots were not separated into precincts.

Vote By Mail

These votes were cast via paper ballot which was mailed to the Election Department. The ballots were folded, placed in an envelope, and mailed via US Postage to an Election Department's location. After receipt, the envelopes were opened on Election Night and fed into a scanner. If there were stray marks, multiple votes for a particular office, or a vote was cast and then marked off in a variety of ways, that ballot was placed in an “electronic basket” which was to be reviewed by two authorized personnel to determine the “will and intent” of the voter before the vote would be recorded for the candidate or ballot measure in question. There were 1300 of these ballots set aside.

Mail-in ballots were counted in stacks of 100, placed in an envelope with clasps and then boxed, 6 envelopes to a box, equaling 600 ballots per box.

The boxes were labeled according to the scanner and computer that it was run through. The box was then numbered.

The mail-in ballots were not separated by precincts when the envelopes were opened.

Election Day Voting

Election Day Voting was precinct-specific and votes were cast on DREs which are supposed to record the votes, and later tally the votes and report the results. Again, as in early voting, the machine recorded the vote electronically and with a VVPAT. There were problems with 3 DRE machines, which were replaced. No information was given about how long voters had to wait for the replacement machines.

On Election Day there was a Center set up to answer any questions that the poll workers might have in regards to the machines or voters. I was told there were over 100 stations in the center. There were also technicians available to go out and fix any problems the machines might have.

The CPUs within the malfunctioning DREs recorded any votes cast to a voter-verified paper audit trail (VVPAT) to allow voters to verify that their votes were cast correctly. The results from these units were tallied from the VVPATs associated with them.

Provisional Ballots

Votes were cast on election day at one's precinct. When a person went to the wrong precinct, they were given a provisional ballot and told that they could vote for only the federal races. They were also told their vote would not be counted unless they went to their voting precinct unless the incorrect precinct happened to be in the same Congressional district as their appropriate precinct. A mere 1100 ballots were counted, while 4300 provisional ballots were discarded and NOT counted. Other reasons a voter was given a provisional ballot include if they had requested an absentee ballot, they moved without notifying the Registrar of Voters, or their names did not appear in the voter registry.

There are four Provisional Precincts; one for each congressional district (9901, 9902, 9903 and 9904). They are effectively a holding pen for the 5,400 that were cast in the wrong precinct (accepted as provisional ballots). They were only counted if the wrong precinct happened to be in the same congressional district in which the voter's correct precinct was located. As a result, only 1,100 ballots were actually counted. None of these were designated for the recount so they were not recounted.

Computer Failures

Originally Joe Gloria stated that the CPU had failed in 3 of the DRE machines so the results had to be hand entered. He explained that for each DRE there were 3 redundant systems – the CPU, the cartridge, and the VVPAT. When the CPU failed, the cartridge storage was not completed and an attempt to retrieve the count from the failed cartridges failed so the results had to be hand entered.

Follow up discussion clarified some points. The VVPAT has a bar code. The bar code was run with a scanner and a report produced. There is currently no automated tool to take the bar code results and

update the computer system. Thus, the results were hand entered into the computer from the report, working in groups of two and checks were made, presumably to confirm proper entry.

Mr. Gloria said there were a total of 19 CPU failures and that the number of failures is increasing as the equipment ages. They will be getting new equipment. It was not entirely clear, but we think that there were a total of 19 failures and that 3 were in the precincts indicated for the recount.

Equipment:

Ballots can be put in backwards, upside-down, etc. and still read correctly. This is tested during the logic and accuracy testing prior to the election. For the recount the ballots were put in the machine with the smoothest edge forward – which sometimes meant the ballot was put in backwards. One reason for a rough edge is that absentee ballots have a voter receipt stub which is torn off so that there are usually rough edges on each ballot.

Roster and Signature Verifications:

For early voting and mail-in voting, there are electronic rosters that are hooked directly into a database. On Election Day there are printed paper rosters at the precincts. There are errors sometimes if there is more than one precinct in a polling place. This election reported 300 errors out of 480,000 votes. They have checklists and methods to confirm and fix discrepancies if possible. For the next election there will be electronic poll books at the precincts. If a signature fails during early voting or mail-in, a letter is sent notifying that the signature did not match and the voter should re-sign for the roster before the next election.

Adjudication:

The only paper ballots were the 44,000 absentee ballots. The ballots are scanned and the images are saved. Images with problems such as stray marks and overvotes are flagged and “adjudicated” where the voter intention is determined. 1000 needed to be adjudicated. This was done by pairs of people looking at the ballot image.

Election Day issue reporting:

There was a hotline for different types of problems. Logs were kept of issues in a system built by their IT department. After the election these are reviewed by management. Ideally, recount observers would have access to these logs.

Recount Chronological Observations

December 5th

The counting room layout on December 5th:

The recount room was set up with 6 pairs of computers for adjudicating mail-in ballots that had problems going through the scanners. Behind this row of computers were 6 more computers set up with

scanners. There was a small portable table next to each desk on which boxes of ballots were placed. The computers were set up so that the back of the monitors faced the observers. At no point were observers able to see the computer screens.

There were 3 more pairs of computers in an area in which “portable drives” were held which Joe Gloria said held the early voting and Election Day counted ballots.

There were 6 Computer Scanner Desks, each holding a computer labeled 1 through 6.

Station 1 and 2 were behind 3 sets of adjudication computers and one window. There appeared to be no scanner problems and no supervisors were called over to help the two workers who worked there.

Station 5 was behind Station 3 which was behind Station 1.

Station 6 was behind Station 4 which was behind Station 2.

To the left of the Stations was a door to the Vault which is where the ballots and drives are reportedly held.

Adjudication Area

I was not allowed to see the computer screen in the adjudication area. As a result, I was blocked from observing the actual process by which any of the 1300 mail-in ballots were counted. I was not allowed to hear what was being said between the two workers and/or any dialogue between them and their supervisors as they tried to determine the “will and intent” of each voter. It appeared from body language (such as one worker leaning towards the other worker and pointing/touching the screen while talking) that they were trying to figure out what to do. This behavior was constant at each of the 6 pairs of stations the entire time I watched.

12/5/16 Observations reported by Derrick Lee

TIME	OBSERVATION
8:05 AM	<p>Arrived at the main entrance. Found the actual entrance at the end of the building which was not near the main entrance. Met with Joe Gloria, Clark County’s Registrar of Voters, who briefed me and described the day’s activities.</p> <p>I was then directed to a location that was designated as the “observation area” which was behind a wall with observation windows.</p> <p>I could not see the details on the ballots nor the computer screens and could not hear anything that was being said between the workers, or between the workers and their supervisors. I asked Joe Gloria if I could go into the room where the recount was being held so I could more effectively observe the process. Essentially the answer was no and that I was to remain behind the wall. He told me “if I had any questions to ask him or his assistant.”</p>

	<p>The votes being recounted consisted of the “Vote By Mail” paper ballots, the early voting which happened at polling locations, and the votes cast on Election Day at polling locations. (See details below this table.)</p> <p>Approximately 25 people could be seen working in the office behind the glass. Joe Gloria told me that everything was being done “in the same exact manner as it was done on Election Night.”</p> <p>Behind 3 pairs of computers was an area with the “portable drives” which held the Early Voting and Election Day counted ballots. Joe later explained that it took about 20 seconds to run through each of the drives and have the ballots “electronically” recounted.</p>
9:30-10:00 AM	<p>Press arrived, took pictures, video and interviewed Joe Gloria.</p> <p>During the morning, boxes were carried out which contained the ballots. The BOXES were not sealed: they had no tape, no clasps, no hanging tape that had been cut. They were simply closed with a lid attached to the box itself.</p>
12:54 PM	<p>Station 6 6 ballots were hand counted from the top of a grouping of 100 that had been scanned and rescanned. While generally I could not hear conversations within the room, I did hear a Supervisor wearing blue telling another supervisor that he was concerned about something missing as the scanner stopped counting and he rattled off a series of numbers: 3414, 3211, 3017, 3114 and possibly more. The entire batch was scanned twice and then 6 of those ballots were hand counted separately.</p>
1:00 PM	<p>Station 5 A supervisor was called over to see something. In the Adjudication Area two of the ladies at a station called a supervisor over to help with something that they were pointing at.</p>
1:01 PM	<p>Station 6 Had an issue with its scanner which was opened up by a supervisor who looked to be resetting the scanner</p>
1:04 PM	<p>Station 5 Had a scanner issue that was looked at by a Supervisor</p>
1:07 PM	<p>Station 3 Had a scanner issue that was looked at by a Supervisor</p>
1:11 PM	<p>Station 3 Box 63 -- the worker there was turning ballots back around after scanning them</p>
1:20 PM	<p>Station 5 Scanner issues, the Supervisor had to lift the lid of the scanner as it looked like it jammed</p>
1:25 PM	<p>Station 6 Had to turn ballots around and rerun the ballots just like Station 3 did</p>
1:30 PM	<p>Adjudication Area supervisor was called over to review something that was on the screen</p>
1:50 PM	<p>Station 6</p>

	The workers were rotated which caused the new worker to rotate the ballots to be in a new order, the new worker looked very confused as to how the ballots were to be facing as they were run through the scanner
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TIME	OBSERVATION
1:54 PM	Station 6 A worker appeared to be organizing ballots in lap and counted down 6 again and reran ballots through the scanner, a supervisor was called over who then pulled the ballots and reran them again.
2:10 PM	Station 6 Had scanner issues and had to be opened up to ostensibly reset the scanner.
2:14 PM	Problems with Stations 4,5,6. Two supervisors stood between me and the adjudication monitors to block my view.
2:17 PM	I noticed that the boxes were turned around so I could not see the writing describing their contents (i.e. their numbers and other identifying marks were obstructed from my view) It appeared that the workers had noticed that every time I stood up I wrote something down, I sat down and watched stations 1 and 2. I noticed no apparent issues other than the adjudication workers looking confused as they determined what to count as a vote.
3:37 PM	Station 6, –A stack of ballots from an envelope from Box 94 was scanned. 6 were pulled off the top and rescanned This same action occurred again at 3:38, 3:40, 3:41, 3:44. The action was 6 being pulled from the top and rescanned. It was never more or less. It was exactly six (6). 3:44 the Supervisor pulled the ballots from the scanner, put them in the envelope and put the box away. Whatever she was trying to do she smiled like she had accomplished her goal.
3:55, 3:56, 3:58, and 3:59 PM	Station 6 on the following envelope was run. Six were pulled from the top and rerun 4 times through the scanner.
3:59 PM	At this point only station 1 was left operating. I was told by Joe Gloria that Station 1 was the only station that would have activity through the rest of the night.
5:30 PM	There were only 3 adjudication teams left working and I was told that this was the only activity that was to go on until 7:00 p.m.

	<p>Joe Gloria told me that they were going to manually count votes cast in the 19 malfunctioning DRE machines [see below]. They would start Tuesday and that IF we were lucky the recount would be done by Thursday night. I was told that this would be done in the observation room and that I would be able to watch and listen as long as I stayed out of the way.</p>
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December 6th

The counting room layout on December 6:

The back of 6 pairs of computer monitors were directly in front of the observer viewing window. These computers are where most people were working. There was a table behind them with someone who was looking at papers off and on. Behind them were a number of machines draped with red cloths. Derrick identified these as the scanners he has seen the day before. Visible on a table on the right side of the room was a bar code scanner and wooden spools.

In the warehouse area where the observers were sitting, there was a small table behind us with a computer and a printer.

12/6/16 Observers report -

Report by Derrick Lee, Michelle Gabriel, Darlene Little, Megan Marie Ortiz

TIME	OBSERVATION
8:15 AM	<p>Arrived approximately 8:15 and the recounting had started at 7AM instead of 8:00am as we had been told. The Clinton observer, Ashley, was already present. Joe Gloria gave us a brief overview and status of the recount. He stated they had worked until 7:30pm on Monday and completed the count of votes from the dysfunctioning machines. What we were observing was the adjudication of the absentee ballots with stray marks.</p> <p>Joe Gloria described various activities that were part of the recount including processing the cartridges from early voting, and from election day, scanning in barcodes from the VVPAT because of failed cartridges, people at terminals manually entering votes from the VVPAT, scanning in the mail-in absentee ballots, adjudication (human assessment of the issue) of absentee ballots scans that had issues, stray mark on ballot or double vote. We were told that what we were observing was the adjudication of the ballots – we could not actually see any monitors to confirm that. This appeared to be the only work going on.</p> <p>(Clarification from Darlene Little: “There has been discussion about what the VVPAT bar code issue. My understanding was that the barcodes were possibly used to substantiate the manually entered data. The VVPAT ballots were used only because there was a CPU failure. My understanding was that the people entering were transcribing / copying / tallying what was observed on the VVPAT tape ballots. This is a lengthy process and Mr Gloria was concerned that during the recount, one or more CPU’s might fail causing many more of the VVPAT ballots to be manually entered into the computer tabulators.</p>

	<p>(NOTE this is different from what is in the report) I do not think they were entering the numbers from the VVPAT report.”</p> <p>(Michelle Gabrielle comments: “I think, but I didn't see, that the VVPAT had a barcode on it recording each vote and that they were reading the barcode on the role, for each vote. We never saw an actual VVPAT.”</p>
8:15 – 9:30 AM	<p>Nine people, some working in pairs, were looking at monitors that were facing away from us. Some people would occasionally look at papers from a desk behind the monitors. Including the registrar, there were a total of 10 people working. We could not hear anything or see what was on the monitors.</p>
8:45 AM	<p>Requested to meet with Joe Gloria at 9:30 and ask questions.</p>
9:30 - 10:30 AM	<p>At our request, we met at a table in the front room, away from the observation area. We invited the Clinton observers to join us. One did and spent most of the time on her phone.</p> <p>Joe Gloria stated that they would probably be done on Wednesday.</p> <p>He said that the recount was of the 85 precincts (in Clark County) that the de la Fuente campaign had chosen- actually 84 since one was a duplicate.</p> <p>Later he stated that he had recounted the whole county as it was difficult to separate out the precincts. (see Appendix for quote)</p> <p>The counting of the VVPATs was discussed. Gloria said that this had gone on in multiple places including the office we were observing, at a desk behind the observer viewing chairs, and in the vault. He stated that Derrick must have seen it as it was going on right behind him and in the counting room. Derrick stated however that he had asked if he could observe the vault and was not allowed, that nothing was happening at the desk in the observer area, that the desk which had a printer on it looked untouched from when he left, and that he saw nothing like this happening in the office area we were observing.</p> <p>Towards the end of the discussion, Joe Gloria stated that he had counted all the votes 3 times (see quote in Appendix)– the first time for the election, the second time before the recount, and the third time for the recount. We asked him why he had recounted the votes before the recount. He stated that the TV cameras would be there and he wanted to make sure everything went smoothly.</p> <p>See the Appendix for further information received during the meeting</p>
10:45 – 12:30 PM	<p>We left the observation area.</p>
12:30 – 12:45 PM	<p>Darlene and Megan went back to continue observing. There were no personnel, no observers, and the 2 security guards told her that the recount was over and the results had been sent in by the Registrar of Voters to the Secretary of State.</p>

Analysis

The lack of transparency in four areas cause concern for the veracity of the results. These are discussed below.

The incorrect information about timing leads to the first two concerns. The following table is a chronology of the information we were told on timing.

Date and Time	What we were told	Actual
Monday, 12/5/16 8:00 AM	Counting will go on all week	Counting ended late Tuesday morning, 12/6/16
Monday, 12/6/16, 5:30 PM	Counting will go on until 7PM. VVPAT counting will happen on Tuesday	Informed that counting went to 7:30PM and that all VVPAT counting had been completed on Monday
Monday 12/6/16 5:30 PM	Counting will start at 8:00AM on Tuesday,12/7/16	Counting started at 7:00AM on Tuesday and we were not informed.
Tuesday 12/6/16 8:30 AM	Counting will continue into Thursday, 12/8/16	Counting ended late Tuesday morning, 12/6/16
Tuesday 12/6/16 10:30 AM	Counting will finish on Wednesday, 12/7/16	Counting ended late Tuesday morning, 12/6/16
Tuesday 12/6/16 12:45 PM	Counting is finished 12/6/16 and results sent in	Counting ended late Tuesday morning, 12/6/16

First, incorrect information about timing of recount prevented us from being present during the recount. The counting of the VVPATs was not observed.

Second, the inconsistent and misleading information on the start and stop dates and the time necessary to complete the recount leads these observers to believe conscious efforts were made to prevent observation and to keep observers off balance. Despite having “pre-run” the recount, Joe Gloria was either unable to correctly estimate how long it would take to complete the recount or more likely, was purposely misleading us. Even within 2 hours of completing the recount Mr. Gloria either did not know or was not telling us when the recount was going to be over. Thus he was either incompetent or willfully misleading. Given the level of knowledge, expertise and experience he demonstrated during our visit, we feel it was the latter.

Third, even when we were present we were not permitted meaningful observation. We were unable to get close enough to see a real ballot for the entire observation.

Fourth, learning about the “rehearsal” recount, held in private, without observation was a shock. This means that any problems that they had during the precount could have been covered up before observers were brought in. The ballot boxes should have been re-sealed after the pre-count to prevent any changes to ballots. So we saw a lack of security protocols that led us to question what else happened. We felt the recount we saw was a show put on for our benefit since the results were already known. **They would not disclose what the results had been of the first recount.**

Lingering Questions

1. Why were the Clinton observers present prior to us? Did they have advanced notification that the counting would start earlier than 8:00 AM?
2. What was Roque de la Fuente charged for? Did he pay for one recount or two recounts? If it was the pre-recount and the recount, why should he pay for both? If it was the recount only, then the taxpayers of Nevada paid for the pre-recount. Is this the best use of taxpayer money and was it authorized? If it was the recount, since it wasn't legitimate, should not his money be refunded?

Observer Conclusion

The recount we observed was the 3rd time the votes had been counted – the first was directly after (polls closed) the election, the second was in preparation for the recount, and the 3rd was what we were watching.

Due to the lack of transparency of the recount work and the nature of electronic voting, we are unable to say if the recount results or the results of the original election are accurate.

Observer Recommendations

The following is a list of suggested improvements for Recount procedures in Clark County. It is by no means an exhaustive list meant to address all Recount procedures. These recommendations all point to improving the transparency of the recount process to allow for a meaningful observation of the counting.

A lack of transparency causes a distrust of the accuracy and veracity of the count.

1. Observation: A full recount was done without observation

Recommendation: After the canvas is complete, leave ballots sealed in proper containers and stored securely, and do not recount without proper public notification.

2. Observation: Inaccurate representation of when certain activities would happen and when they would be completed.

Recommendation: Provide accurate information.

3. Observation: Changing start and stop times

Recommendation: Create a schedule that is publicly available and do not deviate from it except in extreme circumstances

4. Observation: Observers were not allowed to be in all of the areas where counting was performed

Recommendation: Allow Observers in all areas where counting is being performed or provide cameras and monitors close enough for a meaningful observation by sight and sound

5. Observation: Could not get close enough to see the ballots entered into the scanner

Recommendation: Observers be allowed close enough to watch. Cameras and monitors set up so that monitors can see the ballots.

6. Observation: Could not see the monitors

Recommendation: Turn desks so observers can see the monitors.

7. Observation: Could not hear what was going on in the counting room

Recommendation: Allow audio during observation

8. Observation: Ballot box seals were broken

Recommendation: This appeared to be a breach in the security protocols. However, when we were later told that that a full recount had been performed before the official recount, it made sense that the seals were broken.

9. Observation: Main entrance did not give directions to recount area entrance

Recommendation: Signage

Part 3: Legal Background

Nevada law lays out clear procedures for a recount. Under the NRS 293.404, “[e]ach candidate for the office affected by the recount ... may be present in person or by an authorized representative” during the recount procedure. Presumably, this provision is intended to ensure the transparency and integrity of the recount process. Nevada law further provides, at NRS 293.480, that ballots may be inspected before the timeframe for contesting an election, and then only “in cases of recount of election contest.” Thus, the Nevada code creates a clear procedure for conducting a recount with observers present, and

prohibits any inspection of the ballots that does not comply with such procedures. A public officer who willfully neglects his or her responsibilities related to elections -- including responsibilities for ensuring recounts are conducted according to law -- is guilty of a felony under NRS 293.800.

We believe the activities of the Registrar of Voters, and possibly other officials, must be investigated to determine whether a felony occurred in conducting the unobserved "precourt" of ballots. The relevant provisions of Nevada law are set out below.

NRS 293.404 Employment and duties of recount board; persons present; count of ballots; recounts affecting more than one county; regulations. (Underlining added.)

1. Where a recount is demanded pursuant to the provisions of [NRS 293.403](#), the:

(a) County clerk of each county affected by the recount shall employ a recount board to conduct the recount in the county, and shall act as chair of the recount board unless the recount is for the office of county clerk, in which case the registrar of voters of the county, if a registrar of voters has been appointed for the county, shall act as chair of the recount board. If a registrar of voters has not been appointed for the county, the chair of the board of county commissioners, if the chair is not a candidate on the ballot, shall act as chair of the recount board. If the recount is for the office of county clerk, a registrar of voters has not been appointed for the county and the chair of the board of county commissioners is a candidate on the ballot, the chair of the board of county commissioners shall appoint another member of the board of county commissioners who is not a candidate on the ballot to act as chair of the recount board. A member of the board of county commissioners who is a candidate on the ballot may not serve as a member of the recount board.

(b) City clerk shall employ a recount board to conduct the recount in the city, and shall act as chair of the recount board unless the recount is for the office of city clerk, in which case the mayor of the city, if the mayor is not a candidate on the ballot, shall act as chair of the recount board. If the recount is for the office of city clerk and the mayor of the city is a candidate on the ballot, the mayor of the city shall appoint another member of the city council who is not a candidate on the ballot to act as chair of the recount board. A member of the city council who is a candidate on the ballot may not serve as a member of the recount board.

2. Each candidate for the office affected by the recount and the voter who demanded the recount, if any, may be present in person or by an authorized representative, but may not be a member of the recount board.

3. Except in counties or cities using a mechanical voting system, the recount must include a count and inspection of all ballots, including rejected ballots, and must determine whether those ballots are marked as required by law.

4. If a recount is demanded in a county or city using a mechanical voting system, the person who demanded the recount shall select the ballots for the office or ballot question affected from 5 percent of the total number of precincts for that particular office or ballot question, but in no case fewer than three precincts, after notification to each candidate for the office or the candidate's authorized representative.

5. The recount board shall examine the selected ballots, including any duplicate or rejected ballots, shall determine whether the ballots have been voted in accordance with this title and shall recount the valid ballots in the same manner in which the ballots were originally tabulated. If the recount of the selected ballots for all 5 percent of the precincts selected shows a total combined discrepancy of all precincts selected equal to or greater than 1 percent or five votes, whichever is greater, for the candidate demanding the recount or the candidate who won the election according to the original canvass of the returns, or in favor of or against a ballot question, according to the original canvass of the returns, the county or city clerk, as applicable, shall determine whether the person who demanded the recount is entitled to a recount and, if so, shall order a recount of all the ballots for that office or ballot question.

6. The county or city clerk shall unseal and give to the recount board all ballots to be counted.

7. In the case of a demand for a recount affecting more than one county, including, without limitation, a statewide office or a ballot question, the demand must be made to the Secretary of State. The person who demanded the recount shall select the ballots for the statewide office or ballot question affected from 5 percent of the total number of precincts for that particular office or ballot question after notification to each candidate for the office or the candidate's representative. The Secretary of State shall notify the county clerks of the 5 percent of statewide precincts selected by the person who demanded the recount to examine the ballots in accordance with the provisions of this section and to notify the Secretary of State of the results of the recount in their respective precincts. If the separate examinations, when combined, show a total discrepancy equal to or greater than 1 percent for the candidate demanding the recount or the candidate who won the election, according to the original canvass of the returns, or in favor of or against a ballot question, according to the original canvass of the returns, the Secretary of State shall determine whether the person who demanded the recount is entitled to a recount and, if so, shall order the county or city clerk, as applicable, to recount all the ballots for that office or ballot question.

8. The Secretary of State may adopt regulations to carry out the provisions of this section.

NRS 293.480 Limitation on inspection of ballots after return to county or city clerk. Until the time for contest of election has expired, the ballots returned to the county or city clerk may not be inspected by any person, except in cases of recount or election contest, and then only by the judge, special master, board or legislative body before whom the election is being contested or who is conducting the recount.

NRS 293.800 Acts concerning registration of voters; violations of laws governing elections; crimes by public officers.

1. A person who, for himself, herself or another person, willfully gives a false answer or answers to questions propounded to the person by the registrar or field registrar of voters relating to the information called for by the application to register to vote, or who willfully falsifies the application in any particular, or who violates any of the provisions of the election laws of this State or knowingly encourages another person to violate those laws is guilty of a

category E felony and shall be punished as provided in NRS 193.130.

2. A public officer or other person, upon whom any duty is imposed by this title, who willfully neglects his or her duty or willfully performs it in such a way as to hinder the objects and purposes of the election laws of this State, except where another penalty is provided, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. If the person is a public officer, his or her office is forfeited upon conviction of any offense provided for in subsection 2.

Part 4: Conclusion

We are calling for a criminal investigation into Joe Gloria and this fraudulent “recount.” Opening the ballot boxes in private without observation means that the chain of custody of this election was compromised. We will never know the tampering that may have taken place. Given the lack of transparency from the staged recount that our observers witnessed, we believe that this was not incompetence, but planned.

We also believe that legal action by the De La Fuente campaign is warranted. His good faith request and payment for a recount was rejected and replaced with a mockery of one.

Finally, instead of verifying the accuracy of our elections, this recount, with its lack of transparency and clear violation of election law, throws into question not just this race, but also all races in this election as well. In fact, this lack of transparency by this administration calls into question the results of all recent elections. Without real and meaningful changes in the election system and the administration, voters have no basis for confidence in the accuracy of results of the 2016 presidential election or future elections in Clark County.

The future Clark County Registrar of Voters and election administration will need to make several changes to prove that the elections are accurate and restore the public’s trust. While hand-counted paper ballots are ideal, an argument can be made that this trust could be restored with machine-counted voter-marked paper ballots, publicly-displayed images of ballots made by the optical scan vote-counting machines, strictly executed risk-limiting audits, a secure chain of custody policy and practice, and observable hand-counted recounts when needed.

The accuracy and transparency of our elections are essential for democracy. Our observations in Clark County make clear that a complete overhaul of the election system is necessary; the removal of its figurehead is not enough to restore democracy to Clark county.

Appendix: Excerpts From December 6th Meeting With the Registrar of Voters, Joe Gloria.

Quote on not separating out the precincts for the recount:

Joe: "No. Let me make sure that you're getting it accurate. We're reading them all in. Because it would take more work and create the possibility for error if I asked my staff to go through all 90 boxes, all 44,000 [mail-in] ballots and just pull out the precincts that you've asked for. So rather than pull out the 84 precincts, we read all 1,118 in. Because we want to make sure that we're accurate. The system that we currently have in use -- compared to the old system -- [...] we'd still be reading ballots in if we had the old system. After we read in all 84 precincts and found that we were off by one, we'd have to go through them again and find the one we missed. What's the sense in that? We read them all. &With early voting we don't have a choice. We have to read them all. Because with early voting all of the ballot styles and all of the precincts are loaded onto the machines. Election Day is the only day that we get to narrow it down to what you requested."

Quote on running the recount twice:

"So can I verify the three times you did it?"

Joe: "We did it for the official election."

"So those results were posted. and then you're saying you went and recounted before we came because you knew there was going to be a recount?"

Joe: "Yes. You just declared on Tuesday that we have five days to prepare."

"and the preparing was to go through and recount before we came here to recount?"

Joe: "To run through. Yes."

"So you've actually done the recount twice?"

Joe: "This would be the second time, yes ma'am."

"What was the reason for doing it before we got here?"

Joe: "Ma'am you don't want -- well, you weren't here yesterday. There were six television

stations here. I have observers here from De La Fuente, I have observers from Clinton. We were under a lot of strain getting all of that information into the system. You've better make sure that you've got your act together if you're gonna be on camera."

Quote on counting ballots the 3rd time:

"So, I know you've probably already answered this before. But the adjudication. That's the second time it's being done?"

Joe: "The third time. Because we practiced it before you came in. The law requires that we recount the ballots exactly the way that we did to get them into the system the first time. You would never want to come into a recount without running it through."

"So is there a way to check that the recounts got the same results every time?"

Joe: "You're asking what my results were when we practiced? I can't tell you that."