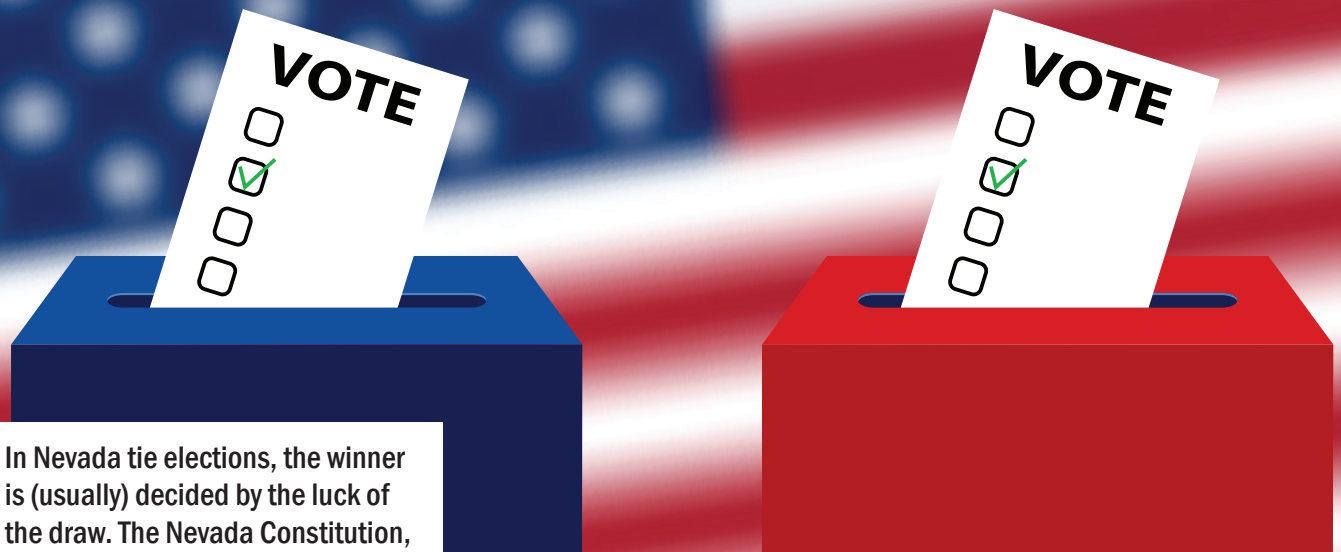


IN TIE ELECTIONS, IT IS BETTER TO BE LUCKY THAN RICH

BY PATRICIA D. CAFFERATA, ESQ.



In Nevada tie elections, the winner is (usually) decided by the luck of the draw. The Nevada Constitution, Art. 5, §4 provides that in races for the U.S. Senate, Congress and for district and state officers – if two or more candidates receive an equal and the highest number of votes for the same office, the Legislature, by joint vote of both houses, elects the candidates to fill the office. Since statehood in 1864, the Legislature has never decided such an election.

However, this law was rejected for selecting a district winner in the April 5, 1966, election for the Truckee-Carson Irrigation District – a district that included Lyon, Churchill and Storey counties. Governor Grant Sawyer balked at calling a special session of the Legislature to decide the election. Finally, the representatives from Churchill County, Assemblyman Virgil Getto and Senator Carl Dodge, asked Secretary of State John Koontz to hold a drawing to decide the

matter. On April 6, 1967, Koontz put the contestants' names in separate envelopes, mixed the envelopes up, put them in a box and drew out the envelope with George Pomeroy Jr.'s name; Ray Couch lost the election.

Since then the law changed, and the Nevada Revised Statutes (NRS) 293.400 sets forth the updated process for tie votes for certain offices. Among other provisions, this statute provides that in a primary election for U.S. Senate, Congress, a state officer elected statewide or by district, or a district judge, or a district officer whose district includes more than one county, when a tie occurs, the secretary of state instructs the tied candidates to appear together to determine the nominee. Except for the one race in 1966, the secretary of state has not determined such a nomination.

Tie elections in smaller jurisdictions with only a few voters are

much more common. In recent years, Nevada has had tie elections in six primaries and seven general elections. With a few exceptions, in a tie election for a county or local office, the county clerk requests the tied candidates to appear together to determine the winner by lot.

The winner can be decided by the luck of the draw, the roll of a die, the flip of a coin or by drawing straws. No candidates in the past selected straws to decide an election.

While not an exhaustive list, here are some of the more interesting tie elections in Nevada.

One of the earliest tie elections was in 1912, between the Democratic nominees for the last of five Esmeralda County assembly seats, when two candidates each garnered 519 votes. District Court Judge Mark Averill flipped

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a coin and declared P.E. Adams the winner over B.F. Walderon. Adams also won the general election.

In 1972, there were several ties. In the Democratic primary for Mineral County commissioner, Richard "Dick" Horne of Mina and Bill Williams of Hawthorne each received 408 votes. They drew cards, and Williams won the nomination and went on to win in the general election. And, in Mineral County, Furman Monk and Robert Rupracht tied for the Hawthorne justice of the peace seat in the general. They cut cards, and Rupracht won.

That same year, incumbent Dorothy Wilson and Billy Weyer both garnered 146 votes for Gabbs justice of the peace. Nye County Clerk Rena Bailey requested the candidates appear together at the courthouse in Tonopah to settle who won. She flipped an 1881 Carson City

silver dollar up in the air, and Wilson successfully called "heads" to be re-elected in the general.

In 1978 in Storey County, Marshall Bouvier, Sam Bull, Dave Horton, Leonard Howard and Pete Sferrazza campaigned in the Democratic primary for district attorney. On primary election day, Bouvier beat Howard by two votes. Howard demanded a recount that resulted in Bouvier winning the nomination by five votes, but Howard appealed to district court.

District Court Judge Mike Fondi threw out suspicious-looking ballots cast for Bouvier in the River District, the location of Joe Conforte's Mustang Ranch brothel. The court decision tied the race, and the candidates agreed to roll a die. Howard won by rolling a six to Bouvier's five. Even though Howard won the Democratic primary nomination, he lost the general election to Republican Jack Christensen.

In 1982, there was another tie in the Democratic primary for Eureka County clerk. Charlotte Crutchley collected 109 votes to Dorothy Moyle's 108. After a recount, the candidates were tied because the recount board saw a chad that had not dropped out of one of Moyle's ballots. The contenders decided to cut cards to resolve who won. On the first draw, both candidates turned over an eight. Apparently, they were not familiar with the ranking of suits with spades being the highest, followed by hearts, then diamonds and clubs being the lowest. They cut cards again, and Moyle drew a seven of hearts to Crutchley's ace of spades. Crutchley became the Democratic nominee, but she lost in the general election to Republican incumbent Joan Shangle.

In the 2002 general election, the Esmeralda County Commission race

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for the Goldfield seat ended in a tie. Republican Dee Huneycutt received 107 votes and Democrat R.J. Gillum received 105; a recount was demanded. The election board saw that the optical counting machine failed to read one of the ballots marked in blue ink and another one faintly marked in pencil. These two votes tied the election. The contestants met in the courthouse and cut cards, and Gillum won the commission seat by pulling a jack of spades outranking Honeycutt's jack of diamonds.

Two years later, in the general election, White Pine County commissioner candidates Democrat Robert Swetch and Republican Raymond Urrizaga each received 1,847 votes. The men agreed to cut cards. Urrizaga drew the queen of clubs, while Swetch pulled the seven of diamonds. He promptly congratulated the winner.

For a seat on the Verdi TV District Board in the 2008 general election, two incumbents were tied for the second seat on the board with 1,839 votes each. Chris Sewell and Kim Toulouse cut cards. Sewell turned over a seven and Toulouse a three. Then, the election officials discovered a precinct with 47 voters who had not cast ballots. These voters were mailed absentee ballots, but only eight ballots were returned. Each candidate received two more votes and another candidate received four votes, so the election remained tied. The men cut cards again, and Toulouse finally won the seat by pulling an ace of clubs to Sewell's 10 of spades.

In the 2010 Nye County Commission Republican primary, the incumbent Andrew "Butch" Borasky and Carl Moore Sr. tied with 381 votes each. The ballots were recounted twice, but the result did not change. The candidates met at the courthouse in Pahrump. Borasky drew the queen of clubs, and Moore drew a 10 of clubs. Borasky also won the general election.

That same year, two other tie elections occurred. In Eureka County, the candidates tied for county clerk in the

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general election. Incumbent Jackie Berg (Independent American Party (IAP)) garnered 376 votes to 373 for Republican Carrie Wright. During the count, some concerns arose over the handling of the absentee ballots and the alleged use of Liquid Paper to alter ballots. Wright demanded a recount. During the recount, two of Berg's faxed-in ballots were discounted, and Wright picked up a vote, so the candidates were tied with 374 votes each. Berg won re-election by drawing the eight of hearts to Wright's three of hearts.

And, in the 2010 general election, in the Kingsbury General Improvement District, Robert McDowell and Natalie Yanish tied with 373 votes each in an 11-way race for the third and final seat on the board. Yanish won by pulling the ace of clubs to McDowell's eight of diamonds.

In April 2011, in the North Las Vegas City Council, Ward 2 primary race, Tanya Flanagan and Linda Meisenheimer tied for the second place with 328 votes each. Meisenheimer won the nomination by drawing the king of diamonds to Flanagan's five of diamonds. In the general election, Meisenheimer lost to Pamela Goynes-Brown, the first-place winner of the primary.

The most recent tie election occurred in White Pine County in the 2015 general election for a seat on the Ely City Council. Jolene Gardner and Michael O'Brien each received 448 votes. Gardner demanded a recount. She received one more vote, and O'Brien one less vote, so she won the seat by two votes.

While Lady Luck plays a role in determining the winners in Nevada casinos and slot operations, a few political fortunes have also been decided by chance. When politicians were given the option of cutting cards, rolling a die, flipping a coin and drawing straws, the candidates usually preferred cutting cards to determine the winner of the nomination or the elected position by the luck of the draw.

PATRICIA D. CAFFERATA was

elected to the Nevada Assembly (1980-1981), as State Treasurer (1983-1987), and District Attorney of Lander County (1995-1996). She never had a tie election result, but she won the Republican primary election to the assembly by one vote.

