

REPORT OF THE SPECIAL COMMITTEE ON VOTER CONFIDENCE

DECEMBER 22, 2022

- I. Introduction.** New Hampshire Secretary of State David M. Scanlan announced the appointment of a Special Committee on Voter Conference by press conference and press release dated April 26, 2022. In it, he stated the mission of the committee: “The Special Committee on Voter Confidence will work to identify root causes of voter confidence decline and make recommendations to reverse the trend.”

Secretary Scanlan continued, “New Hampshire is one of the easiest places for voters to register and cast their ballots, but concerns about declining voter confidence have been voiced in the state, as well as nationally.

“Through open and continuous dialogue with the voting public and elected officials, the Committee will work tirelessly in the lead-up to mid-term elections to reverse this trend and strengthen the public’s trust in New Hampshire’s time-tested election process.

“All of the Committee’s meetings and speaking engagements will be open to the public, with advance notice, culminating in a publicly available report on its activities.”

Named to the Committee as Co-Chairs were New Hampshire Ballot Law Commission Chairman, Attorney Bradford E. Cook, of Manchester, a Republican and former Congressman and Ambassador Richard N. Swett, of Bow, a Democrat. Other members named were Ken Eyring, of Windham, Co-founder of the Government Integrity Project, a registered Republican; Andrew Georgevits, of Concord, Chairman of the Concord Republican City Committee; Amanda Merrill, of Durham, former Democratic State Senator and State Representative; James Splaine, of Portsmouth, former Democratic State Senator and State Representative, and city official; Douglass Teschner, of Haverhill, former State Representative and former New Hampshire Assistant Secretary of State, a Republican; and Olivia Zink, of Franklin, city councilor and former interim mayor, a Democrat.

The Committee held public meetings at various locations across New Hampshire and received testimony from invited witnesses, and from the general public, beginning on May 2, 2022, and ending September 6, 2022, and received written and electronically submitted comments from the public continuously during that time. The hearings and invited presenters were as follows:

- May 2 (State Archives, Concord): Secretary of State Scanlan and Legal Counsel Orville Fitch.
- May 13 (State Archives, Concord): Counsel Orville Fitch Presentation on Election Laws and Procedure Manual followed by Public Comment.

- May 24 (Derry Town Hall): Local Election Officials followed by Public Comment.
- June 7 (Portsmouth City Hall): Local Election Officials continued followed by Public Comment.
- July 12 (State Archives, Concord): LHS Associates & Secretary of State Staff Demonstration of Ballot Counting Devices and Ballot Law Commission presentation on Standards for Selecting Devices followed by Public Comment.
- July 26 (Laconia Public Library): UNH Pollster Professor Andrew Smith followed by Public Comment.
- August 15 (Nashua City Hall): Democratic State Chair Raymond Buckley and Republican Counsel William O'Brien followed by Public Comment.
- August 23 (Berlin City Hall): Associate Attorney General Anne Edwards and Assistant Attorney General Myles Matteson followed by Public Comment.
- September 6 (Keene Public Library): MIT Professor Charles Stewart III, Dartmouth Professors Michael Herron and Brendan Nyhan followed by Public Comment.

The Committee also had publicly announced working sessions on September 20, September 28, October 5, October 11, November 1, November 16, December 1, December 13, and December 22, 2022, to plan, write, and review its report.

Minutes and videos of all hearings totaling 37 hours are posted on the Secretary of State's website, <https://www.sos.nh.gov/special-committee-voter-confidence-meetings-2022>.

One hundred and eleven members of the public testified in person at public hearings, and three hundred forty-six people submitted written testimony either by mail or electronically.

During its hearings, and in written submissions, the Committee heard many comments about the conduct of elections in states other than New Hampshire. This report, and the recommendations in it, focus on the present New Hampshire system, why citizens should have confidence in it, and how it might be improved to increase confidence. We do not comment on systems in other states. This focus is consistent with the charge the Committee received from the Secretary of State to “strengthen the public’s trust in *New Hampshire’s time-tested election process*.”

The committee heard testimony from a number of witnesses who raised issues of specific violations of laws or procedures. The Committee has no capacity or authority to conduct investigations of such assertions, and therefore has urged those who raised them to bring them to the Attorney General’s office for investigation, or, in a number of instances, referred them directly to that office. The Committee makes no findings on them in this report.

This report includes a summary of public testimony, findings, and recommendations.

II. Summary of Testimony to the Committee. The committee received oral, written and email testimony from 457 individuals regarding the election process in New Hampshire.

We heard from election officials and volunteers, the New Hampshire Attorney General's office, political science professors, multiple organizations focused on election processes, and many members of the public.

We believe that it is important to summarize public testimony so that the reader can get a good sense of public concerns, and we strove to accurately represent the testimony of those who contributed to this important effort.

A more comprehensive listing of all the testimony we received from the first meeting held on May 2, 2022, to the last meeting on September 6, 2022, can be requested from the Secretary of State's Office via email at voterconfidence@sos.nh.gov.

Reporting what the Committee heard does not mean that the Committee agrees with any particular item of testimony or gives it credence. Our findings and recommendations can be found in the following sections of the report.

The summaries of 14 topics provided below reflect the comments submitted by the public and can be found in Exhibit A.

- A. Confidence in Elections**
- B. Lack of Confidence in Elections**
- C. Voting Machine Concerns / Hand Count Preference in Specific Municipalities**
- D. Voting Machine Support**
- E. Election Officials Training**
- F. Election Audits / Risk Limiting Audits**
- G. Citizen "Audit"**
- H. Voter Rolls and Registration**
- I. Absentee Ballots**
- J. Voter Education / Website Improvements**
- K. Modernization of Election Process**
- L. Election Law**
- M. Voter Confidence Analysis**
- N. Statements Regarding Trustworthiness of Our Electoral Process and Criticism of Voter Fraud Claims**

III. Findings of the Committee. Based on all the testimony received, and with the limitations set forth above guiding the scope of the Committee work, the Committee finds the following, which are supported by the references in each finding:

A. Voting Is Accessible in New Hampshire

As stated by Secretary of State David Scanlan, and his long-serving predecessor William Gardner, New Hampshire is one of the easiest places to vote in the country. It should be noted that while some national studies have reported otherwise, their ratings are based on a number of factors, some of which are irrelevant to the New Hampshire election systems. According to New Hampshire polling data, New Hampshire voters of all political persuasions continuously find it to be easy to vote

here by overwhelming majorities. This has been demonstrated repeatedly by New Hampshire voter turnout (including 2022 elections) which in the last four presidential elections was the third highest in the nation.

B. Most New Hampshire Voters Have Confidence in Our Elections

New Hampshire voters should have confidence in our elections because:

- each voter has a paper ballot,
- elections are administered on the local level according to state guidelines
- votes are counted promptly at the polling place, and
- other safeguards are in place to find and remedy mistakes.

C. New Hampshire Elections Are Accurate

Elections need to confirm that the candidates who get the most votes win the elections. Testimony from the Attorney General’s Office and others supports this finding; although there are anomalies in the process, the outcomes have not been changed by them. Elections are human endeavors, and therefore, not perfect.

D. Attorney General Oversight Is Necessary

Oversight by the Attorney General when there are failures, including removal of officials when necessary, and appointment of monitors in appropriate cases, is necessary. The election security unit at the Attorney General’s Office handles complaints about election law infractions and needs to be transparent.

E. New Hampshire Is Well Served by Local Election Officials

New Hampshire elections are administered on the local level by members of the community. New Hampshire is well-served by having locally elected and appointed election officials who are known in their communities. Many attested to the faith they have in our local officials because they are our neighbors.

F. No Evidence of Widespread Fraud

There is no evidence of widespread election fraud in New Hampshire. There were allegations which were turned over to the Attorney General’s Office.

G. Harassment of Election Officials and Voters Should be Prevented

These types of activities in our state could undermine recruitment and retention of poll workers and participation of voters.

H. Checks and Balances

New Hampshire elections are governed by complex and extensive laws and procedures designed to create checks and balances. That is why it is important for election officials to study and understand their responsibilities as required in the Elections Procedure Manual to avoid making mistakes. Some citizens want the ability to easily perform their own investigations to independently validate election results.

I. Confidence in Elections Is Lower Than in the Past, but Still High

As a result of misinformation and other factors regarding the safety and accuracy of our electoral process, there has been an erosion of confidence in elections here and nationally recently. Polls show the percentage of those expressing confidence, while still a clear majority, is lower than in the past.

J. Attacks on Election Results Amplified on Social Media Undermine Confidence

Evidence presented to the Committee suggested a primary reason for the erosion of confidence is the attack on the results of elections. Repeating of these assertions and magnifying them on social media has continued to erode confidence.

K. Paper Ballots Reinforce Confidence

Elections are more secure when each voter has a paper ballot. New Hampshire's insistence on a paper ballot for each voter reinforces confidence in elections, as there is a paper ballot for each voter in the event of a close election or recount, or subsequent audit.

L. Ballot Counting Devices Are Reliable

Studies of counts, evidence from recounts, and academic research all support the fact that ballot counting devices are more reliable than hand counts when used correctly. Improper folding of absentee ballots presents the potential for inaccurate results. In addition, many believe the ability to vote via absentee ballot is being abused, and want restrictions based on need, not convenience.

M. Updating Checklists Is Important

There are assertions of issues about registered voters voting after moving and other claims of irregularities in New Hampshire elections and of inaccurate maintenance of checklists. Such reports highlight issues that have been referred to the Attorney General. Voter checklists should be updated continuously which will strengthen voter confidence.

N. Election Day Registration Facilitates Voting

Same day registration facilitates ease of voting. It needs to be administered carefully to avoid abuse.

O. Training of Local Election Officials Could Increase Confidence

Local officials largely do a good job, but their training is voluntary and varies. Testimony indicated that extensive training is available to those administering New Hampshire elections but not all election workers take advantage of the opportunity to attend the training. Procedures should be implemented to improve access to Secretary of State election officials training and encourage training attendance by election officials. In addition, mandatory Secretary of State training should be considered.

P. Election Audits Increase Confidence

Extensive testimony was received stating post-election audits would increase voter confidence.

Q. Partisan Process for Drawing Election Districts Has Undermined Confidence

Some witnesses stated that the present partisan process for the legislature to draw election districts every ten years has undermined voter confidence.

R. Ongoing Efforts Are Needed to Serve all Voters

State and local officials should make continuous efforts, so all voters feel respected and included in the voting process including people with disabilities, foreign language speaking voters and members of marginalized communities.

IV. Recommendations. Based upon the testimony which the Committee heard, and upon the findings which it has reported, it makes the following recommendations to improve the present election system:

A. Expand and Document Training of Locally Elected Election Officials

Training of local officials and volunteers should be expanded, and there should be consideration of mandatory training of all elected election officials. Public listing of locally elected election positions should indicate who has completed the Secretary of State training and who has not. The Secretary of State should propose to the legislature action regarding those officials who fail to receive training. Training should emphasize strict adherence to requirements for proper filing of forms, transparency, access, and other voter confidence-building requirements. Training for all officials and volunteers should be consistent with their particular duties.

B. Election Official Recruitment

An ongoing election worker recruitment effort should be established at the state and local levels, and a review of compensation should take place.

C. Protection of Election Officials and Voters

Laws which provide local election officials and voters with support and legal protection against harassment and intimidation need to be publicized, enforced, and strengthened if needed.

D. Appreciation of Local Election Officials

There should be increased messaging from state officials stressing the high regard in which our local election officials are held, how important their work is, and how much we appreciate them, as well as why local administration of elections is important.

E. Expand Voter Education Efforts

Expanded election education needs to take place on all levels so voters understand how and why the system works, and how they can easily register and vote securely. This should include:

1. A statewide marketing campaign regarding the voting process, including on social media, to reach all segments of voters, covering all aspects of elections;

2. Clear and user-friendly websites maintained by the Secretary of State and Attorney General;
3. Local municipalities should use a common website template for election information recommended by the Secretary of State's office; and
4. Election education as part of Civics Education in primary and secondary schools can prepare young people to become active participants, familiar with the processes when they qualify to vote.

F. Election Law Review

The legislature should review the body of election laws to make them less complex and be sure they are consistent. The Secretary of State's Election Procedure Manual should reflect any changes. Materials should be available in a timely manner so that election officials can become familiar with the materials, including changes made since prior elections.

G. New Ballot Counting Machine Requirements

New Hampshire's ballot counting devices are reaching the end of their useful life and will need to be replaced soon. New ballot counting devices should comply with the current guidelines of one paper ballot per voter, have no ability of devices to network, and segregate over-votes and write-in ballots according to standards set by the Ballot Law Commission. Purchase new ballot counting devices that are safe and secure as verified by independent technology experts, preferably using open-source software so voters can see how their votes are processed and provide voters with an ability to verify the machine results are accurate.

H. Expand Election Audits

There should be an increase in the use of random, non-partisan post-election audits. Speakers on all sides of issues agreed that this step is necessary and increases confidence in elections.

I. Absentee Ballot Improvements

1. Absentee ballot instructions and forms should be clearer to avoid voter error, decrease confusion and increase ease of processing.
2. Absentee ballot preparation and distribution instructions should make clear the requirements for folding or eliminate the need for folding.
3. Consideration should be given to allowing hand-counting of absentee ballots on election night.
4. Consideration should be given by the legislature to allow for the pre-processing of absentee ballots by opening the outer envelopes, as was allowed in 2020, for all elections. Testimony stated that it worked well, aided local officials in completing their jobs, and did not affect accuracy or security.
5. Consideration should be given by the legislature to strengthening the chain of custody and other security measures for the absentee ballots.
6. All voters who request Absentee Ballots should be identified on the Election Day checklist prior to the poll opening.

7. Controls need to be in place insuring that only one absentee ballot is provided to each voter.

J. Expand Public Ability to Observe the Election Process

There must be required public notice and public access to meaningfully observe each step of elections.

K. Increase Public Information on Process to File Citizen Complaints

The process for citizens to file election-related complaints to the Secretary of State and Attorney General should be publicized and strengthened. Each complaint must be published upon receipt and receive attention and a timely public substantive response. Notice of the penalties related to the filing of false complaints should be included, as well.

L. Updating Voter Checklists

We need to have updated checklist verification and provide a uniform and secure checklist updating system statewide that accounts for move ins, move outs, and deaths. New Hampshire should consider methods to determine if New Hampshire citizens have voted in other states.

M. Provide Funding for Needed Reforms

It is important that sufficient funds are provided, from state and federal sources, to implement the suggestions in this report and enable local communities to have the resources to conduct elections.

N. Citizen Access to Voter Information

Legislation should be considered to make it easier for citizens to obtain appropriate voter information.

V. Conclusion. In conclusion, the findings of the Committee support the proposition that New Hampshire’s system of elections works as is intended and deserves the support and confidence of voters and all citizens. As in any human enterprise, it is not perfect and mistakes occur, but as administered by our fellow citizens on the local level, it is well-run, consistently produces the results elections are designed to produce – election of those receiving the most votes or passage of those measures favored by the majority of voters.

There are only rare and isolated instances of fraud. Checks and balances are in place to deter and prevent such occurrences, and processes exist to investigate and correct errors when they occur.

Voters, election officials, volunteers, and the legislature which passes election laws, need to guard against errors or violations. Our election system needs to be adjusted as new issues arise or new methods become available if they are consistent with our time-tested tradition of voting. Leaders are strongly encouraged to operate in good faith to reinforce public confidence in the New Hampshire election system.

The Committee would like to thank those many members of the public, civic groups and local and state officials who attended our meetings, in public or online, who provided valuable testimony and information, and who are so committed to secure, reliable and transparent elections in New Hampshire. They are the key to continued confidence in our election system, which in turn is fundamental to the proper functioning of a democratic system.

Finally, we thank Secretary of State David Scanlan for providing us the opportunity to serve the state in this important effort, and his fine staff, all of whom provided support while performing their other duties, without whom we could not have done this work.

Respectfully submitted,

Bradford E. Cook, Co-Chair
Richard N. Swett, Co-Chair
Andrew Georgevits
Amanda Merrill
James Splaine
Douglass Teschner
Olivia Zink
(Voted to adopt the report)

Ken Eyring
(Did not vote to adopt the report)

Concord, New Hampshire December 22, 2022

EXHIBIT A

SUMMARY OF TESTIMONY GIVEN TO THE COMMITTEE

These summaries of 14 topics provided below reflect the comments submitted by the public. They are included to give the Secretary of State information on various opinions held in the public, whether or not all of them are based on fact, so that that office will be able to deal with such opinions in the future. **Reporting what the Committee heard does not mean that the Committee agrees with any particular item of testimony or gives it credence.**

A. Confidence in Elections

Many of the people who testified that they have confidence in New Hampshire elections. They believe New Hampshire's election systems are accurate, fair, and extremely safe, saying that voters can trust and have confidence in the election process, especially because elections are run at the local level by our neighbors. Many also expressed confidence and full support in the AccuVote voting machines.

B. Lack of Confidence in Elections

Many of the people who testified expressed concerns, many of which focused on voting machines. Others cited the findings of citizen "audits"¹ that claimed potentially serious concerns; out-of-state people, including college students voting in New Hampshire elections; election officials needing more training; voter rolls needing to be cleaned; vote tabulations taking place un-monitored in the back of polling places; and concerns the Office of the Attorney General does not answer questions when asked.

C. Modernization of Election Process

There were calls to use federal funding to: modernize the election administration system; enhance security and replace outdated equipment; implement automatic or online voter registration; modernize voting machines; print ballots with security features. Some people favored drop boxes, others don't. The Electronic Registration Information Center system was supported by many, while others were against it - citing security issues and states that have withdrawn from using it. Some election officials would like to allow voters to change party affiliation on Election Day.

Public Suggestions:

- Use ballots that have embedded security like printed money,
- Utilize funds to enhance security and replace outdated equipment,
- Modernize NH election administration system
- Use ERIC to enhance investigative policies.

D. Voting Machine Concerns / Hand Count Preference in Specific Municipalities

There were a wide range of concerns expressed that are related to the use of voting machines in New Hampshire elections: the[machines] are a "black box"; old technology; they have vulnerabilities; New Hampshire uses one machine vendor to program and service the machines; trust with no ability to verify the accuracy of

¹ Informal investigations

programming; machines in New Hampshire have produced unexplained anomalies; paper tapes are printed with wrong dates; memory cards not stored for 22 months as per federal law; the Cybersecurity and Information Software Agency issued a security advisory outlining 9 specific vulnerabilities present in certain voting machines which New Hampshire may consider using in the future; folded ballots can cause problems; and machines are not accurate. Some believe the use of voting machines is illegal and unconstitutional, but the Attorney General's office testified that it is constitutional.

Public Suggestions:

- Provide a live stream when testing voting machines prior to each election.
- Hand count all ballots
- Re-certify machines after each modification

E. Voting Machine Support

Many people expressed confidence in the accuracy of the AccuVote machines, saying they are effective, safe, and secure from hacking and outside interference when properly tested. Some who trust machines over hand-counting ballots cited concerns that poll workers are tired at the end of the long election day and that could lead to human error if they were required to stay late to count votes. In addition, concerns were raised that it may be difficult to find enough volunteers to count the votes in a timely manner.

Public Suggestions:

- Tabulators need to be compatible with disabled voting.
- Improve oneforall system for voters with disabilities.

F. Election Officials Training

We heard a request for increased training to assist voters with disabilities. Currently, training is provided by the Secretary of State, (but attendance is not required), some by the New Hampshire Municipal Association, and some at the local level by election officials.

Public Suggestions:

- The state should help fund town election workers.
- Annual training by the Secretary of State for elected election workers should be mandatory, especially for moderators.
- Publicly posting the names of those who receive training would increase confidence.

G. Election Audits / Risk Limiting Audits (A post-election audit checks the ballots, equipment used and process of a particular polling place under the direction of an election official). There was strong support for a robust audit process. Some individuals want automatic Risk Limiting Audits, (RLAs). Others were satisfied with a random selection. Post-election audits should be conducted transparently with easy access for all observers.

Public Suggestion:

- There should be a signature line for those who assist others with voting. This would allow for verification.

H. Citizen “Audit”

Citizens did their own investigations, submitted New Hampshire right to know law requests, researched and identified concerns related to votes cast in the names of people voting from the previous address after moving; machine results that violated the “law of large numbers”; and chain of custody records for machines, memory cards and ballots. They identified differences in how checklists are marked, and other potential infractions that have been referred to the Attorney General’s office.

Public Suggestions:

- Define ballots as public documents so individuals can perform their own citizen “audits” to validate the results of any election,
- Allow Poll challengers to do their jobs. They should be able to float around and observe elections behind the rail.

I. Voter Rolls and Registration

Concerns were expressed regarding New Hampshire's voter rolls and the registration processes that define who is permitted to vote in New Hampshire elections. Many who testified want to mandate voter ID; end same day registration while others want to keep same day registration; require proof of residency and citizenship; prevent voting by residents from other states (including out of state students). Others felt the New Hampshire law is good and needs no changes. Many want the voter rolls cleaned immediately after elections and to keep them updated, and suggestions were made to use some of the techniques that were developed by those who performed citizen “audits”.

Public Suggestions:

- Provide standardized form used during real estate transfers that will request seller's names be removed from the voter rolls, and the buyer names be added,
- Clean the Checklists,
- Online Registration should be available,
- NH needs better processing of identification. Other countries in world would not allow voters like they do in NH,
- Repeal SB418,
- Make it easier to get a replacement Photo ID after losing license.

J. Absentee Ballots

Many who testified said that the use of absentee ballots should be based on need, not convenience. Concerns were raised regarding the current chain of custody processes with absentee ballots. Some people complained they received unrequested absentee ballots or ballot applications. Others would like to return to the 2020 rules or implement no-fault absentee voting. There is a desire from election officials to preprocess absentee ballots by taking them out of their outer envelopes prior to Election Day so that they are ready to be counted on Election Day.

Public Suggestions:

- Consider no-fold absentee ballots
- Absentee ballots should be pre-folded before sending to towns.

K. Voter Education / Website Improvements

Suggestions were made to improve and increase communications with the voting public via Public Service Announcements and social media posts by the Secretary of State regarding elections. It was suggested the Secretary of State develop templates for towns to use in order to provide consistency regarding webpage designs as well as the types of information displayed, e.g., up-to-date election information; when and where to register and vote; voter education on filling out ballots and changing party affiliation; and information that addresses voter frustrations on Election Day.

Public Suggestion:

- Make max use of HAVA funds to explain voting process to voters.

L. Election Law

Some people believe no changes to New Hampshire election laws are necessary. Others believe that out of state students should not be allowed to vote in New Hampshire. Several others want violations of election laws to be prosecuted to the fullest extent of the law. There were calls to ensure the safety of election officials, an independent redistricting commission, and a desire for less legislation that increases voter suppression. Representatives from the Attorney General's office provided an overview of election related complaints that have been handled by their office. Assistant Attorney General Myles Matteson spoke about an investigation into the Laconia Ward 6 2020 Primary and General Elections, where ballots were not counted, and only discovered at a subsequent election. That moderator was asked to and did resign.

Public Suggestions:

- Laws need to be passed to stop voting procedures from being as porous as they are.
- If we fix the process of same day voter registration we will fix 90% of the issues,
- Close the LLC loophole. Owners of multiple LLCs can contribute via each LLC,
- Simplify voting laws/rules,
- Reverse effects of dark money,
- NH should adopt an independent redistricting commission.

M. Voter Confidence Analysis

Many people emphasized that New Hampshire elections are run by local citizens, and that tends to build trust at the local level. UNH Professor Andrew Smith said New Hampshire's turnout rate is about 20% higher than the country as a whole, and that trust in New Hampshire elections is actually quite high. However, there have been significant drops within both parties regarding voter confidence, according to the polls. People have more confidence when their candidates win. Dartmouth College professor Michael Herron agreed that voter confidence plummeted after the 2020 election following claims the election was "stolen", and another survey estimated that roughly 35% of those polled seem concerned about fraud/malfeasance. Dip in voter confidence caused by repetition of false narrative.

N. Statements Regarding Trustworthiness of Our Electoral Process and Criticism of Voter Fraud Claims

Some of the concerns that were presented to the committee were viewed by others as gaslighting and reflecting conspiracy theories. Others stated that if proof of fraud is shown, then it should be investigated - and if not, then officials should say so. People also said that the creation of this committee was viewed by some as reinforcing election fraud and conspiracy theories.

Public Suggestion:

- There needs to be accountability with election officials.