



# WE'RE COUNTING THE VOTES

*An Election Preparedness Kit for...*

New Hampshire Citizens,  
Candidates, and  
Campaigns

*and for...*

All the Good and Honest  
Election Officials,  
Election Workers,  
and Poll Workers  
of New Hampshire

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**DEMOCRACY FOR NEW HAMPSHIRE**

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The ***We're Counting the Votes*** Kit contains a lot of information. But don't be overwhelmed! Use the information that is of interest to you, and then keep the Kit as a reference and resource for future use.

If you would like to receive an editable Word document, so you can edit for your locale and needs, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).

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# FOREWORD

August 2006

Democracy for New Hampshire's Fair Elections Committee (DFNH-FEC) is releasing the *We're Counting the Votes Kit* for every New Hampshire citizen participating in the Fall 2006 elections. The Kit, which includes information on everything from State election laws to strategies for securing election integrity, calls on all patriotic New Hampshire citizens to insist—and to help to ensure—that every vote is accurately, securely, and observably counted before any race is called, before any candidate concedes, and before any election is certified.

In March 2006, the New Hampshire Ballot Law Commission approved the use of Diebold Accuvote Optical Scanners—Firmware Version 1.94W for use in New Hampshire's elections. We have been told that these machines are the only machines that can read our newly designed ballots, and the fear of not being able to use any voting machines in our elections (relying instead on 100% hand counting) was a significant factor in the Commission's decision.

This kit is for **every New Hampshire citizen** participating in the Fall 2006 elections.

It includes information on **state election laws**, and strategies for **securing election integrity**.

It calls on all patriotic New Hampshire citizens to **insist that every vote is accurately, securely, and observably counted**.

However, this particular election equipment has failed critical security and software reliability tests in numerous documented independent testing situations. So New Hampshire's 2006 elections will see 55 percent of New Hampshire's polling places—accounting for between 75 and 80 percent of New Hampshire ballots—using election equipment with proven security risks and software defects, putting our elections at risk for both election tampering and machine failure.

This situation raises two important questions for all Granite Staters—election officials, election workers, political candidates, and voters alike:

1. With these voting machines in use in New Hampshire, how do we secure our elections?
2. With these voting machines in use in New Hampshire, how do we secure voter confidence in our election results?

We need many strategies to resolve these questions to our collective benefit. We must have an election system with trusted checks and balances, we must be able to freely cast our votes, and we must be able to accurately, securely, and observably count the votes that have been cast. It is up to all of us to make sure this happens, for the good of New Hampshire and for the good of the country.

*Candidates appropriately questioning the integrity of election results are often intimidated by political operatives shouting, "The election's over, get over it!" But election integrity is a patriotic and not a partisan issue. Patriotic Americans of every political stripe must be willing to stand up and answer those who would have us fearfully retreat from our patriotic values. The simple response is:*

Most of New Hampshire ballots in 2006 will be counted on equipment with **proven security risks and software defects**, putting us at risk for both tampering and machine failure. For the good of New Hampshire and for the good of the country, it **is up to all of us to secure our elections**.

**We're counting the votes--and you can too.**

## **About Democracy for New Hampshire and the Fair Elections Committee**

Democracy for New Hampshire is a nonpartisan big-tent organization that promotes grassroots community involvement in the democratic process in New Hampshire. DFNH works to protect the foundations of our democracy and the integrity of our political process and supports fiscally responsible, socially progressive candidates who speak honestly about policy choices.

*For more information, contact us at [info@DemocracyForNewHampshire.com](mailto:info@DemocracyForNewHampshire.com)*

The Fair Elections Committee of Democracy for New Hampshire is dedicated to protecting, preserving, and enhancing those aspects of the NH election system that are unique, transparent, secure, and exemplar. The FEC aims for open and accessible election processes, while implementing processes to prevent, pursue and prosecute proven instances of election fraud.

*For more information, contact us at [fec@DemocracyForNewHampshire.com](mailto:fec@DemocracyForNewHampshire.com)*

## **Acknowledgments**

We acknowledge and honor the steady and wise leadership, openness, accessibility, and integrity of the office of our New Hampshire Secretary of State, as well as the dedicated and hard working election officials, workers, and community volunteers in the Granite State.

We also acknowledge the never-ending supply of courage, information and guidance from BlackBoxVoting.org ([www.BlackBoxVoting.org](http://www.BlackBoxVoting.org)) and its founder, Bev Harris. We encourage readers to contribute to BlackBoxVoting.org to help them continue their work.

We are pleased and grateful for permission to include in this kit invaluable guidance and content from the National Election Data Archive (<http://uscountvotes.org/>), and we encourage readers to contribute to NEDA to help them continue their work.

DFNH-FEC is making this kit available as a template for other locales through our website ([www.democracyfornewhampshire.com](http://www.democracyfornewhampshire.com)), the Election Defense Alliance website ([www.electiondefensealliance.org](http://www.electiondefensealliance.org)), and the BlackBoxVoting website ([www.BlackBoxVoting.org](http://www.BlackBoxVoting.org)).

## **Learn More and See Hand Counting in Action**

Please contact us to receive a CD that shows the two typical ballot counting methods used for hand counting, as filmed in Election 2004 in the New Hampshire towns of Lyndeborough, Walpole, and Wilton, as well as a statewide manual recount conducted in Concord by the New Hampshire Secretary of State.

To download these videos, go to the Democracy for New Hampshire website at: <http://www.democracyfornewhampshire.com/node/view/2648>

Or order the DVD online at [www.democracyfornewhampshire.com](http://www.democracyfornewhampshire.com).

## **Legal Disclaimer**

The information provided by Democracy for New Hampshire is not intended to be legal advice, but to merely convey general information related to legal issues of interest to our community. Although we have sought to ensure that the information is correct, complete, and current, we make no warranty about the accuracy or reliability of the information in our documentation or on our website. The laws described herein are current as of July 2006.

## SECTION 1 | New Hampshire Voting Systems

### **New Hampshire Constitution Guarantees Voting Rights**

The New Hampshire Bill of Rights in our State Constitution has guaranteed the right to vote since 1784. (Amendments to the U.S. Constitution and the Voting Rights Act guarantee the right to the voting franchise, as well as *observable vote counting*.)

[Art.] 11. [Elections and Elective Franchises.] All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile. No person shall have the right to vote under the constitution of this state who has been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States; but the supreme court may, on notice to the attorney general, restore the privilege to vote to any person who may have forfeited it by conviction of such offenses. The general court shall provide by law for voting by qualified voters who at the time of the biennial or state elections, or of the primary elections therefor, or of city elections, or of town elections by official ballot, are absent from the city or town of which they are inhabitants, or who by reason of physical disability are unable to vote in person, in the choice of any officer or officers to be elected or upon any question submitted at such election. Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election. The right to vote shall not be denied to any person because of the non-payment of any tax. Every inhabitant of the state, having the proper qualifications, has equal right to be elected into office.<sup>1</sup>

### **New Hampshire Polls and Ballot Counting Choices**

New Hampshire elections are held, and our votes are counted, at the town and city level. Cities and towns decide their polling places, and may, if they choose, create new polling places to reduce the number of voters and ballots in any given polling place (to facilitate election administration). The NH Secretary of State has implemented a standard that no voter should be made to wait longer than ten minutes before being able to cast their vote, and our polling places should be configured to conform to this standard.

Each city and town has the legal right to decide which State-approved voting system it will use. Currently, other than the statewide disability solution mandated by the Help America Vote Act, the two approved voting systems available to New Hampshire cities and towns are the **paper ballot hand count** system and the **paper ballot optical scan** system. In 2006, owing to a statutory ballot redesign, those cities and towns choosing to use optical scanning machines may use only the Diebold Accuvote Optical Scan (firmware version 1.94W).

All of our elections are paper-based because New Hampshire law has long held that no machine may be used in the State unless it reads the voter's choice on a paper ballot. (See our laws below.)

For a variety of reasons, roughly 55 percent of our polling places have decided to use vote counting machines, leaving around 45 percent of our polling places counting their ballots by hand. The hand count polling places account for between 20 and 25 percent of our ballots.

## SECTION 2 | Verification for Election Integrity

### **Hand Count Verification for Every Machine Count Polling Place**

Every city and town using the Diebold Accuvote voting machines is vulnerable to machine breakdowns and computerized election tampering, and so every election official in machine count polling places should know how to conduct hand counts as a necessary back up, check, balance, and audit for their machine count system.

Study after study on the Diebold Accuvote optical scanner has shown that computerized election results can be tampered with in ways that may never be discovered by the logic and accuracy testing conducted on the machines. (For more information on this, please see the section in this kit entitled, "Why Be Concerned about New Hampshire's Voting Machines?")

***The only real test and verification against computerized election tampering and machine failure is to conduct a hand count of the paper ballots and compare results against the machine count.***

As the true guardians of our democracy, our New Hampshire election officials in those jurisdictions using the Diebold Accuvote machines can, in a relatively easy and painless manner, take precautions to maintain a check and balance on their computerized voting system. So what can they do?

***As a best practice and a verification of all voting machines in New Hampshire, election officials should hand count at least one randomly selected race in each and every machine count polling place in the Granite State. Because this is a preventive measure, it is an efficient and cost-effective way to secure our elections; it is less expensive than a recount and is priceless in terms of improving voter confidence in election results.***

To increase the integrity of this verification of election results, races can be chosen at random through simple methods like picking a race out of a hat. *As indicated by statistical analysts Simon and O'Dell, experts have determined that for this type of audit to be effective, it must be conducted in every polling place.*<sup>2</sup> This provides the best valid statistical sample, while alerting would-be tamperers that New Hampshire is off limits to their tactics.

The New Hampshire Secretary of State's office has explicit instructions (and training) on an easy and efficient hand count methodology and best practices, so hand counting ONE race will not be onerous or burdensome for these polling places.

It is an honored position to be a vote counter, and we know in New Hampshire that historically, community members are more than willing to step up to help when asked.

If needed, nonpartisan citizen groups like Democracy for New Hampshire can also volunteer counters for every community providing this check and balance for the honor and integrity of our election systems.

On March 10, 2006, the Ballot Law Commission convened for a public hearing on approval of the Diebold firmware 1.94W, and approximately 60 to 75 New Hampshire citizens testified against the approval. Citing the security risks as described in numerous scientific reports (referenced elsewhere in this kit), one after another, New Hampshire citizens made the case that the Granite State has a long and honorable tradition of hand counting. The case was presented that reverting to statewide hand counting was a better alternative than using problematic voting machines.

Four out of five Ballot Law Commissioners disagreed and approved the voting machines. But before his vote to approve, Commission Chair Gary Francoeur made the following heartfelt statement:

One thing I encourage everybody here today is, remember, we have this paper ballot. This is our backup. This can always be hand counted. Even in the towns that have the machines, they can still turn around if they want to and hand count these things. Nothing is stopping this committee today from allowing them to do that. They choose to use this electronic machine if they want to – they don't only have to use that. They can also hand count it.

## **Observable Elections are Important to 92% of Americans**

DFNH recently co-sponsored a Zogby poll<sup>3</sup> on voter attitudes about electronic voting. This poll revealed that, across the board, American voters indicated 92% support for public observation of vote counting and obtaining information about it. Michael Collins reported on the poll in Scoop News<sup>4</sup>:

A recent Zogby poll documents ground breaking information on the attitudes of American voters toward electronic voting. They are quite clear in the belief that the outcome of an entire election can be changed due to flaws in computerized voting machines. At a stunning rate of 92%, Americans insist on the right to watch their votes being counted. And, at an overwhelming 80%, they strongly object to the use of secret computer software to tabulate votes without citizen access to that software.

The American public is clear in its desire for free, fair, and transparent elections. An 80%-90% consensus on the right to view vote counting and opposition to secrecy by voting machine vendor is both rare and remarkable in American politics.

Collins goes on to identify who are these 92% of Americans:

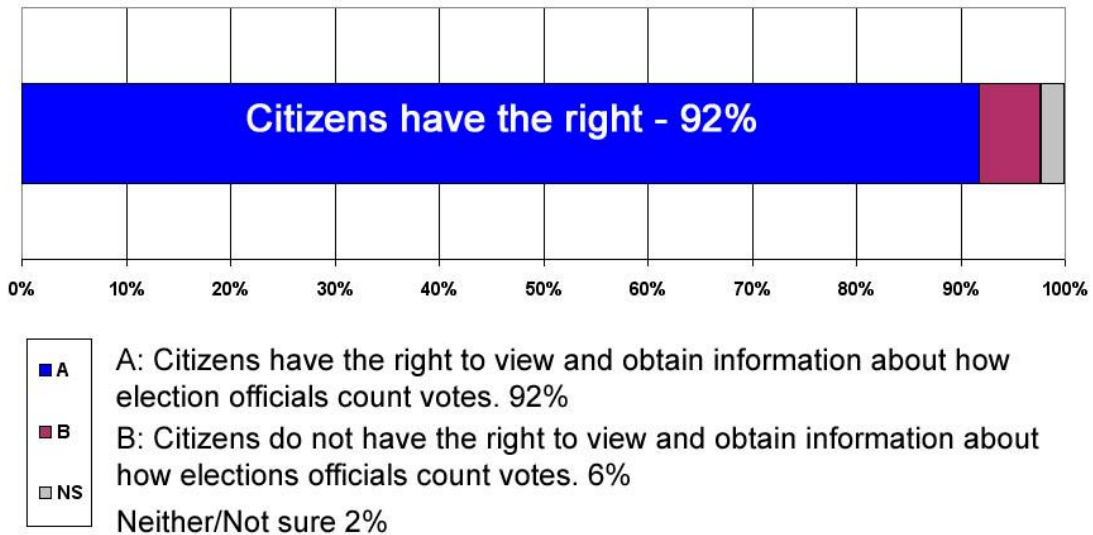
Four fifths of respondents within every demographic group selected the right for citizen review and access, Statement A. This includes overwhelming majorities of both Kerry (92.8%) and Bush supporters (90.8%); independents (96.9%); Catholics (92.8%), Protestants (90.8%), Jews (87.2%), and those with no religious affiliation (93.3%); and two points above the average, NASCAR fans, 93.9%.

This is no small thing. Let's look at what 92% means in polling terms:

- It's higher than people who wouldn't mind a free tax cut.
- It's higher than any Bush approval after 9-11.
- It's higher than the approval ratings of any dead President.
- It's higher than the approval rating of any senator, governor or President since WWII, at any time.

- It's higher than the percentage of people who can get a basic math multiplication problem right.

In some states, members of the public have the right to view the counting of votes and verify how that process is working. In other states, citizens are in effect barred from viewing vote counting even if they would like to view the process. Which of the following two statements are you more likely to agree with – A or B?



**What does this mean for New Hampshire? It means that 75-80% of our ballots will be counted on machines that go against the 92%! That's because our Diebold optical scanners, the only machine approved for use in NH elections, count our votes unobservably in a black box system using proprietary software that not even our election officials can know about.**

But 92% is a pretty hard number to beat. That's why we must be ready and willing to step up and help count the votes observably and in public. It's why all New Hampshire candidates should be on board with this idea. And it's why we should work with our local and state elected representatives and election officials so that we all step up to the winning side and make it a reality.

## **Why Every Machine Count Polling Place Needs a Hand Count Verification**

The Brennan Center for Justice report, released in June 2006, referenced elsewhere in this document points out the necessity for verifying results in machine count elections:

Computerized voting systems – like all previous voting systems – have shown themselves vulnerable to error. As detailed in the Security Report, votes have been miscounted or lost as a result of defective firmware (coded instructions in a computer system's hardware), faulty machine software, defective tally server software, election programming errors, machine breakdowns, malfunctioning input devices, and pollworker error. An old maxim in the area of computer security is clearly applicable here: "Almost everything that a malicious attacker

could attempt could also happen by accident; for every malicious attacker, there may be thousands of people making ordinary careless errors." Solid threat analyses should help to expose and to address vulnerabilities in voting systems, including not only security breaches but also simple malfunctions.<sup>5</sup>

The statistical analysts Jonathan Simon and Bruce O'Dell have studied the issue of random audits in election systems, and have concluded that verifying the integrity of machine results requires hand count ballot count verification in every polling place rather than in a selected percentage of polling places. Their recommendation is as follows:

We propose a uniform, omni-precinct, proportional handcount sampling of ballots be used as the most reliable check mechanism of machine counts, where full hand counting of paper ballots is not yet an acceptable alternative. Such a protocol obeys "crisp" laws of statistics and is highly reliable, with little or no incentive for gaming or practical way to do so. It can be implemented where paper ballots are in use, whether with opscan systems or, somewhat more problematically, where DREs ["direct recording electronic" voting machines] are fitted with a paper ballot printer. The labor involved at the precinct level is ...within the capacities of virtually every local Board of Elections. The consultant work...is also minimal. [This] is a viable and practical protocol that can be rapidly implemented to serve as a check mechanism.<sup>6</sup>

## **Preferred Method for Hand Counting**

(Adapted from the Letter Report on Electronic Voting, by the Committee on a Framework for Understanding Electronic Voting, National Research Council of the National Academies of Science)<sup>7</sup>

The ballot pile method is based on sorting ballots into piles. It involves one member of a two-person team picking up the ballots and placing them in piles corresponding to each choice in a particular race. The other team member observes each ballot as it is placed in a pile. After the sorting process is complete, one team member counts each pile in stacks of 25 and then the other team member recounts each stack.

This process enables at least two persons to simultaneously examine each ballot at least once, and to keep things simple by identifying choices in a single race at a time. If one person makes a mistake, the other can catch it. This method is often modified so that each ballot is rechecked during the stack-counting process. Hence, each ballot can be seen two times by each member of the team, for a total of up to four views of each mark on a ballot in each race.

The ballot sorting and pile method, which involves as many examinations of the same ballot as there are contests, is noticeably faster than the ballot reading and tally mark approach.

**This method is described in detail below, as excerpted from the New Hampshire Secretary of State's 2006 Election Procedure Manual.**

## **Election Night Reconciliation**

The most effective way to ensure the legitimacy of any election is to demonstrate the validity of election night results. Election night reconciliation—balancing the books, so to speak—is an important part of this process.

When a neighborhood convenience store locks up at night, the owner reviews inventory against sales made, and sales made against the money in the register. The store owner wants to be sure that what *appears* to have happened during the day is factually verified. If the numbers show that ten dollars worth of sales have occurred but twenty dollars of inventory is missing, that store owner knows there is a problem, and steps can be taken immediately to identify the source and rectify the situation.

Similarly, on election night, election officials and the citizens they represent want to know that the numbers all add up properly in the polling place.

Election night reconciliation verifies the integrity of all of the important activities that add up to the final election results: the number of ballots delivered to the polling place, the number of ballots cast, the number of voters checked in, the number of voters checked out, the number of votes cast in any given race, and the number of races or issues being voted on.

**This reconciliation process, as described in the New Hampshire Secretary of State's 2006 Election Procedure Manual, is found below.**

## **Election Night Hand Counting and Reconciliation of Voters-Ballots-Votes**

(The following methodologies are excerpted here exactly as documented in the New Hampshire Secretary of State's Election Procedure Manual.)<sup>8</sup>

### **XXVI. HAND COUNTING INSTRUCTIONS: COUNTING INSTRUCTIONS – MODEL 1: SORT AND STACK BY CANDIDATE METHOD**

NOTE: This is a model describing how some moderators have chosen to count ballots. State law authorizes the moderator to choose the system of hand counting to be used and to supervise the counting. RSA 659:60. This model is presented as a best practice in hand counting, based on the secretary of state's experience with hand recounts. However, neither state law nor the Secretary of State require that any particular system of counting be used. Moderators should ensure that the system of counting they adopt is accurate and efficient.

This process enables team members to simultaneously examine each mark on each ballot at least once, and to keep things simple by identifying choices in a single race at a time. If one team member makes a mistake, the other can catch it. This ballot sort and stack method is considered the faster and easier method, even though each mark is seen more times than the method using ballot reading and tally marks. Counters who have tried other methods express more pleasure with the sort and stack method because (a) it is simpler to count, and (b) counters are more confident in the results.

**The instructions through step # 7 are the same as for counting using Model 2, the ballot-by-ballot method.**

Step #1 – Close the Polls.

Step #2 – Verify that all absentee ballots have been processed.

Step #3 – Rearrange the polling place for counting. Counting tables must be at least 4 feet from the rail. All counting, however, must occur where it is visible to members of the public located outside the rail.

Step #3a – (Optional whether done election night or later) Have the supervisors count the number of registered voters (including those who registered on election day) who are checked off as having voted on the checklist.

Step #4 – Identify all those who will be counting.

Step #5 – Identify those who will be counting who are not election officials and who have not taken an oath of office.

Step # 6 – Swear in these non-election officials as election officials (inspectors of election pro tempore). RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. As election officials, the ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3.

Step # 7 – Read the instructions for counting to all the election officials who will be counting.

**Overview of the counting process:** Ballots will be sorted into piles, with one pile for each candidate or alternative on a question, with separate piles for skipped (abstentions) and defective ballots. The piles will then be counted by grouping the ballots into groups of ten, then counting the number of groups. Where a close race is at issue, the process may be repeated by a second counting team and the results of the two teams compared to ensure they are the same. Once the results for one office or question are determined, the ballots will be re-sorted into piles for the next office or question.

Step # 8 - Open the ballot box(es) in view of the public. Place an established quantity of ballots on the table to be used by each counting team. Experience suggests that by counting ballots in groups of 50, when it becomes necessary to redo a particular part of the process because the results do not equal the number of ballots, this number is manageable.

Step #- 9 - Have the counting teams sort the ballots by the first race that is to be counted.

For example, at a town election where there is only one contested race, for selectman and there are three candidates for that single office, the ballots would be separated into 5 piles. One pile for each of the three candidates, one pile for skipped or abstention ballots (where no candidate received a vote) and defective ballots (where two or more candidates received a vote) and a final pile for write-in votes.

Step #10 – As the teams sort ballots into piles, if there is any question regarding how a ballot should be counted, call the moderator to your table and seek his or her instructions on how the ballot should be counted.

If a ballot is marked for any office or question in a way that does not leave the intention of the voter clear, or if, after getting basic instructions on how different marks are counted from the moderator, there is disagreement over how to count a particular ballot for a particular office, a vote should be taken of the election officers present and counting votes. RSA 659:64. The moderator should call together the election officers, discuss the

ballot in question and take a vote. The majority rules, and if there if no alternative receives a majority of the votes, the ballot shall be treated as defective and therefore as an abstention for that office or question.

If there are many questioned ballots that need to be voted on, the moderator may choose to hold these ballots aside and vote on several at one time. If this is done, however, it is the best practice that all questionable ballots be voted on before the team totals are tallied up. This ensures that the election officials do not know whether the vote on a particular ballot will affect the outcome of the election. This process reinforces the neutrality and enhances the legitimacy of the counting process.

Step # 11 - Prepare a tally sheet. (Tally sheets should be prepared ahead of time.) The easiest procedure is to use sample ballots or photocopies of sample ballots. The tally sheet should have a space for the team to write in the total votes for each candidate, and the total skipped, defective, and write-in ballots.

Step #12 – Once each table has the ballots assigned to it sorted, start with the pile of ballots for the first candidate on the ballot. All other ballots (the other 5 piles) should be set aside, but remain in public view on that table. The team should then count the ballots in the first candidate's pile into groups of ten. The process used to make the groups of ten ballots should include the team members looking at the ballot to ensure (double check) it was initially sorted into the correct candidate's pile. Each group of ten ballots should be stacked at right angles, one on top of the other. Once a pile is completely grouped into piles of ten ballots each, the team can count the piles to obtain the total votes for that candidate in the pile. The team should write in the total votes for that candidate on the tally sheet. Then, start the grouping and counting process for the next candidate.

Step # 13 – When all the piles have been counted, that counting team is done with that set of ballots for that race. The team should add the votes for each candidate and the number of skipped/abstention ballots and the number of defective or overvote ballots. This total should equal the total number of ballots in the pile (for example 50 if the recommendation to count ballots in groups of 50 is adopted).

Step # 14 – The team should then start the process over for the next office or issue to be counted.

Step # 15 – The moderator should designate some election officer who routinely works with numbers, often the clerk, to tally the team totals. Ideally a second election officer will assist and act as observer for this tallying process. Usually these individuals do not work on a counting team. As each team completes its totals, the tally sheets should be turned in.

Step # 16 - When the last pile(s) have been counted and turned into the clerk or whoever is tallying the team totals, the moderator should ensure that these officials have peace and quiet to finish the tallies. The tallying must occur in public, however, when all the election officers and counters gather at the tallying table and watch the final calculations it puts pressure on those making the final calculations and makes errors more likely. The tallying team should tally the results for all elections. The use of a printing calculator or a laptop with a spreadsheet program such as Excel allows the team or the moderator to check the printed tape or the computer file as a means of ensuring the accuracy of the tally. The final tallies should be written down and presented to the moderator.

Step # 20 – The moderator should stop before announcing the results and check the final tallies. If a count was done of the total number of persons checked off as having voted on the checklist, the tallies for each office and question should be verified against that count. The number of ballots used at the election must be determined. The total votes for all candidates, including write-ins, plus the skipped/abstention ballots plus the defective or

overvote ballots should equal the total number of ballots used. The total votes for all candidates should never exceed the total number of ballots used or the total number of voters checked off as having voted at the election.

In towns or wards with 1000s of ballots and 1000s of voters checked off on the checklist, the moderator should be looking for any significant discrepancies between the totals. It is difficult to get a perfect count from the checklist. Therefore, it is not essential that the total count for each office or question exactly match the vote totals. Provided the write-in, skipped and defective votes were tallied, however, the totals from one office to the next should be the same. If any discrepancies are found, the moderator should investigate and attempt to resolve the discrepancy before declaring the results. Every effort should be made to correct any error that leads to the total votes for all candidates exceeding the total number of voters voting or the total number of ballots used. Other discrepancies, provided the discrepancy is smaller than the margin of victory in the closest race, do not leave the will of the voters in doubt.

### **XVIII. ELECTION NIGHT RECONCILIATION**

Moderators are obligated to ensure that votes are counted accurately. RSA 659:60. Moderators are strongly encouraged to adopt an election night reconciliation procedure that checks the apparent results of the ballot counting against other known election statistics to ensure that the results are accurate.

It is inherent in the nature of an election night count, particularly at polling places that hand count ballots, that even the most careful election officials can make mistakes. Most of the officials conducting the counting will have been working for 12 or more hours before the counting process starts. Often the counting is done under the pressure of the candidates, the public and the press watching and anxiously waiting for the results. Therefore, taking the steps described below to ensure that the count is accurate is necessary.

Each election, a small number of polling places report results which are conspicuously inaccurate. The results report votes for the candidates in a given race that when added together total more than the reported number of ballots used, or more than the total number of voters reported as voting. In most cases, an inquiry by the Secretary of State or a recount disclose a counting or tabulation error. Either mistakes are made when tallying up the counts done by individual teams doing hand counts or errors are made in the manner in which ballots which were machine counted but contain write-in votes are counted.

When election night results are invalid on their face, this diminishes the public's trust in our election system. It often results in a call for a recount. Finding and correcting easily identifiable errors on election night is less work and less expensive than a recount.

A great deal of effort is taken to afford every qualified voter the opportunity to vote quickly and easily. That effort is ineffective unless every vote is accurately counted. Voters deserve the extra effort that is required to conduct a reconciliation of election night results with other election statistics.

### **BALLOT INVENTORY**

The inventory of ballots is the starting point for the election night reconciliation of ballot counts. The ballot inventory establishes a baseline of how many ballots were used at the election. The moderator and clerk are required to keep track of the ballots made available for use at the election and those actually used. The Return of Votes that must be filed with the Secretary of State requires a report of the number of ballots used.

The Ballot inventory should start with determining the number of ballots received from the Secretary of State (“SOS”). During the counting process, determine the number of ballots produced by the Accessible Voting System (“AVS”) the telephone – fax voting system that must be available for use by voters with disabilities.

The number of absentee ballots must be determined. This can be done during the hand count by segregating the ballots or this can be kept track of during the processing of absentee ballots. At elections where federal office only ballots are used, these will always be absentee ballots, the number of these ballots should be kept track of separately. When reconciling the votes cast for federal offices, these federal office only ballots should be included in the calculation of the total number of ballots used at the election. When reconciling the votes cast for state and county offices the number of federal office only absentee ballots must be subtracted from the total number of ballots used.

**BALLOTS USED**

Determine the total number of ballots used at an election as follows:

<b>Election Day Ballots received from SOS</b>	=	_____
+ Ballots from IVS		_____
+ State Absentee Ballots Cast		_____
+ Federal Office only Absentee Ballots Cast		_____
+ Absentee Ballots/Photocopy ballots used for election day ballots		_____
- Spoiled Ballots		_____
- Election Day Ballots not used		_____
<b>= Total Ballots Cast at the Election</b>		_____

**COUNTING NUMBER OF VOTERS VOTING**

The Return of Votes form requires that the number of voters checked off on the checklist as having voted must be counted and reported.

**HAND COUNT POLLING PLACES.** In a hand count town the check-in checklist should be counted and compared to the check-out checklist to establish the number of voters who voted.

**MACHINE COUNT POLLING PLACES.** In a machine count town the number of voters checked off on the check-in checklist should be compared to the results tape from the ballot counting machine. The total ballots counted reported on the end of the election results tape must be added to the number of ballots that had to be hand counted. Typically a small number of ballots are rejected as not readable by the Accuvote optical scanning machine. These should be put in the side pocket during polling hours and hand counted after the polls closed. These ballots, which are entirely hand counted, are not included by the machine in its report stating the total number of ballots counted. Other ballots which contain write-in votes or which were read by the Accuvote machine as entirely blank will be found in the write-in bin beneath the machine. These ballots are included in the total ballots counted reported by the machine. Do not add them in twice.

The total from the tape plus the number of completely hand counted ballots is a statistic that serves the same function in a machine count town that the check-out checklist serves in a hand count town. This total of ballots should be compared to the number of voters checked off as having voted on the check-in list to determine the total number of voters who voted.

**TOTAL VOTES COUNTED**

The next step in reconciliation is to determine the total votes counted for each contested office or question. To effectively reconcile the election night results it is necessary to count not only votes for candidates in a race but also the number of voters who skip the race, that is abstain (submit a ballot with no candidate marked for that race). A ballot in which the voter overvoted, that is marked two or more candidates for a race where the instruction is to vote for no more than one, should for this purpose be treated as a skipped or abstention. The same applies in a multi-seat office where the voter votes for more than the permissible number of candidates. Because the voter may only vote for the permitted number and it is impossible to determine which candidates the voter preferred most, the ballot is treated as if the voter did not vote for anyone for that office.

**RACES BLANK, SKIPPED, OVERVOTED AND ABSTENTIONS.** In a hand count polling place the counting teams should be instructed to record the number of ballots where the voter skipped or abstained from voting in the race and the number where the voter overvoted. These numbers must be reported along with the total number of votes for each candidate and write-in.

The ballot counting machine automatically records as a “blank” each ballot where the voter skipped the race or abstained or where the voter overvoted. It is necessary to count the abstentions and overvotes only on the ballots that are entirely hand counted. If entirely blank ballots are found in the write-in bin which were improperly marked and can be hand counted, it will be necessary to subtract that ballot from the total blanks reported on the machine tape for every race where a vote is counted for a candidate.

**VOTES CAST FOR AN OFFICE**

To determine the total votes cast for an office:

For each office (vote for no more than one):

- All votes for first candidate \_\_\_\_\_
- + All votes for second candidate \_\_\_\_\_
- + All voters for each additional candidate \_\_\_\_\_
- + All write in votes \_\_\_\_\_
- + All blank/skipped/abstention/  
overvote ballots \_\_\_\_\_
- = **Total votes counted for the office** \_\_\_\_\_

Reconciliation. The election night results are reconciled if each of these statistics are equal for each contested race or question.

- Ballots used = \_\_\_\_\_
- Voters Voting = \_\_\_\_\_
- Total Votes Counted for the  
Office/Question** \_\_\_\_\_

Small differences in the number of ballots used, number of voters voting and the total number of votes counted for an office or question sometimes occur even when counts are accurate due to human error in marking the checklist. Under no circumstances should the total votes counted for an office or question exceed the total number of ballots used or the total number of voters voting. Every effort should be made to resolve any discrepancies of this character. Errors in the other direction, where there are fewer total votes counted than ballots used or voters voting are problematic, but do not create conspicuously invalid results.

If you are certain there is no counting error, declare the final results even if a small

difference exists. Occasional human error in checking the checklist as voters check in or in counting large numbers of blank ballots when determining the number of ballots used are unavoidable. Make the existence of that difference part of the record of the results. The difference usually will not be an issue, unless the margin of victory is less than the difference. In that case, a candidate will often request a recount.

### **EXPECTED UNDERVOTE**

A second approach to reconciling election night results is to compare the total votes counted for each candidate and write in the total number of voters voting/total number of ballots used and assess whether the undervote makes sense. At every election a certain number of voters will abstain in certain races, i.e. they will not vote for any candidate. Alternately, they will purposefully or by error vote for too many candidates, an overvote, thereby casting a ballot with the same effect as an abstention.

The rate of such undervoting is reasonably stable for the races at the top of the ballot. At elections where voters are voting for President of the United States, an undervote of 1/2 of one percent (.005) is common. Therefore, when reconciling the apparent results at an election where President is being voted for, if your results suggest that more than 3% (.03) of the voters did not vote for President, this is a warning sign. This result is possible, but should prompt the moderator to recheck the results before announcing them.

At an election where the Governor is the top candidate on the ballot, the undervoting rate is less constant, but generally should be less than 5% (.05). The same is true for candidates for United States Senate. If the apparent election night results indicate that more than 5% of the voters did not vote for Governor or United States Senator, the moderator should re-check the numbers before announcing the results.

The undervote rate for Representative to Congress can average around 4 – 5%. Therefore, results indicating that more than 7% of the voters did not vote in that race should prompt a review of the numbers. The undervote rate for offices below these on the ballot is too unpredictable to be helpful in reconciliation. However, it is sometimes the case that if an error is found regarding a top-of-the-ballot race, for example that the results from a hand count team were omitted from the tally, that error will have affected all the races and questions on the ballot. Checking the undervote for the top of the ballot races is another effective way to identify problems with the tallying.

## SECTION 3 | New Hampshire Voting Machines

### **Why Be Concerned about New Hampshire's Voting Machines?**

This section of the Kit contains several findings from scientific studies and reports conducted on the Diebold Accuvote Optical Scanner (OS). As troubling as these findings are, it bears mentioning that these are only a few of the reports that have been released to the public but inexplicably ignored by the mainstream media and many election administrators since 2003.

The Diebold Accuvote optical scanning machines are typically sold to our cities and towns for up to \$6,000 per machine with additional programming costs for each election at a cost of \$500 to \$700 per machine per election. These high costs for a product of dubious quality can not compete with the relatively low costs of running hand count elections, which some New Hampshire towns have estimated at only \$700 - \$900 when counting between 2,000 and 3,500 ballots in a general election. Nonetheless, the majority of our city and town election officials have opted for the computerized count. In 2006, the only voting machines approved for use in New Hampshire are the Diebold Accuvote optical scanners.

Since 2003 computer scientists have weighed in on the questionable design of this and other Diebold election equipment. Report after report spelled out, with increasing clarity, the gaping security and software reliability holes in the overall software and firmware design and architecture.

So let's have a look at what these top computer scientists from around the world have discovered about the Diebold Accuvote Optical Scanner.

Readers are encouraged to read every one of the findings shown below, ***because we all need to understand the urgency of the situation.***

*All of us – election workers, election officials, candidates and citizens – need to take responsibility for our democracy. When we are able to recognize the risks inherent in our election system, we can reduce and try to eliminate them.*

*New Hampshire can be first in the nation for more than our primary. We can be first in the nation for election integrity. By showing leadership and courage we can let would-be tamperers know that New Hampshire is not open for business, that we are watching, and that our election systems are secure and defensible against any challenge, legal or otherwise, to the integrity of our election results.*

## Government Accountability Office (GAO) Report on Elections

Formerly known as the General Accounting Office, the recently renamed Government Accountability Office (GAO) [for full source descriptions, see section entitled “Notes on Sources”] issued a report on electronic voting in the United States in September 2005. Its findings are as follows:<sup>9</sup>

While electronic voting systems hold promise for a more accurate and efficient election process, numerous entities have raised concerns about their security and reliability, citing instances of weak security controls, system design flaws, inadequate system version control, inadequate security testing, incorrect system configuration, poor security management, and vague or incomplete voting system standards, among other issues.

For example, studies found (1) some electronic voting systems did not encrypt cast ballots or system audit logs, and it was possible to alter both without being detected; (2) it was possible to alter the files that define how a ballot looks and works so that the votes for one candidate could be recorded for a different candidate; and (3) vendors installed uncertified versions of voting system software at the local level.

It is important to note that many of the reported concerns were drawn from specific system makes and models or from a specific jurisdiction’s election, and that there is a lack of consensus among election officials and other experts on the pervasiveness of the concerns. Nevertheless, some of these concerns were reported to have caused local problems in federal elections—resulting in the loss or miscount of votes—and therefore merit attention.

## Critical Security Issues with Diebold Optical Scan Design

Following are findings from a report by the nonpartisan organization, Black Box Voting, entitled *The Black Box Report Security Alert*, which was released in July 4, 2005.<sup>10</sup>

The findings of this study indicate that the architecture of the Diebold Precinct-Based Optical Scan 1.94w voting system inherently supports the alteration of its basic functionality, and thus the alteration of the produced results each time an election is prepared.... With this architecture, every time an election is conducted it is necessary to reinstall part of the functionality into the Optical Scan system via memory card, making it possible to introduce program functions (either authorized or unauthorized), either wholesale or in a targeted manner, with no way to verify that the certified or even standard functionality is maintained from one voting machine to the next.

On the Logic and Accuracy tests our election officials run to assure themselves the machines are properly programmed:

Election officials have been led to believe that these systems are accurate if they pass a “logic and accuracy test” before and/or after the election. Diebold voting machines are tested in “test mode,” which uses a different part of the program than that used on Election Day, reducing the value of the logic and accuracy test. However, even if the machines were tested in “election mode,” because there is no verification of what is inside the card, and because this design provides the ability to implement conditional logic, including date and time-sensitive triggers, by altering the executable program in the memory card, therefore *L&A tests appear to be an inadequate way to test the system for tampering.*

## Security Analysis of the Diebold AccuBasic Interpreter

The Voting Systems Technology Assessment Advisory Board (VSTAAB), a technology advisory board to the State of California, was commissioned by California Secretary of State Bruce MacPherson to study Diebold touch screen and optical scanning machines. Below are findings from their study, which was released in February of 2006.<sup>11</sup>

p. 36: In the longer term, or for statewide elections, the risks of not fixing the vulnerabilities in the AccuBasic interpreter become more pronounced. Larger elections, such as a statewide election, provide a greater incentive to hack the election and heighten the stakes. Also, the longer these vulnerabilities are left unfixed, the more opportunity it gives potential attackers to learn how to exploit these vulnerabilities. For statewide elections, or looking farther into the future, it would be far preferable to fix the vulnerabilities discussed in this report.

p. 35: The FEC 2002 Voluntary Voting System Standards expressly forbid interpreted code. The inclusion of interpreted languages\* in a voting system causes great burdens on examiners and code reviewers, who have to be highly skilled and do considerable analysis of the compiler and interpreter in order to verify that it does not present security vulnerabilities or permit malicious code to go unnoticed.

p. 9: All of this information on the memory cards is critical election information. If it is not properly managed, or if it is modified in any unauthorized way, the integrity of the entire election is possibly compromised. It is therefore vital, as everyone acknowledges, to maintain proper procedural control over the memory cards to prevent unauthorized tampering, and to treat them at all times during the election with at least the same level of security as ballot boxes containing voted ballots.

p. 11: There are serious vulnerabilities in the AV-OS and AV-TSx interpreter that go beyond what was previously known. If a malicious individual gets unsupervised access to a memory card, he or she could potentially exploit these vulnerabilities to modify the electronic tallies at will, change the running code on these systems, and compromise the integrity of the election arbitrarily.

p. 12: None of the vulnerabilities we found would have been found through standard testing, so testing is not the answer. This is a long-term problem with the use of interpreted code on removable memory cards, and with the failure to use defensive programming and other good security practices when implementing the interpreter.

p. 13: The consequence of these vulnerabilities is that any person with unsupervised access to a memory card for sufficient time to modify it, or who is in a position to switch a malicious memory card for a good one, has the opportunity to completely compromise the integrity of the electronic tallies from the machine using that card.

p. 13: The attack could manipulate the electronic tallies in any way desired.

p. 13: The attack could print fraudulent zero reports and summary reports to prevent detection.

p. 13: The attack could modify the contents of the memory card in any way, including tampering with the electronic vote counts and electronic ballot images stored on the card.

p. 13: The attack could erase all traces of the attack to prevent anyone from detecting the attack after the fact.

p. 13: It is even conceivable that there is a way to exploit these vulnerabilities so that changes could persist from one election to another. For instance, if the firmware or software resident on the machine can be modified or updated by running code, then the attack might be able to modify the firmware or software in a permanent way, affecting future elections as well as the current election. In other words, these vulnerabilities mean that a procedural lapse in one election could potentially affect the integrity of a subsequent election.

p. 16: It is conceivable that the attack might be able to propagate from machine to machine, like a computer virus.

p. 16: The attack could affect the correct operation of the machine. For instance, on the AV-OS, it could turn off under- and over-vote notification. It could selectively disable over-vote notification for ballots that contain votes for a disfavored candidate, or selectively provide false over-vote notifications for ballots that contain votes for a favored candidate.

p. 16: In addition, most of the bugs we found could be used to crash the machine.

p. 17: It is important to note that even in the worst case, the paper ballots cast using an AV-OS remain trustworthy; in no case can any of these vulnerabilities be used to tamper with the paper ballots themselves.

p. 18: Our analysis also confirmed that the AV-OS fails to check that the vote counters are zero at the start of Election Day.

\*"Interpreted languages" refers to software code that relies on the execution of the code to occur through the "interpretation" of one code by another. With Diebold optical scanners, the removable media (the memory cards) "talk to" the code in the machine itself, which executes commands told it by the memory card. Since memory cards are not tested in standard machine certification labs, or in election day machine testing, the interpreted code represents a huge security hole. The untested code on a memory card might be programmed in such a way to be "interpreted" by the machine to execute malicious election programming, which would never be detected through any form of testing on the machine itself.

## **Brennan Center for Justice Task Force on Voting System Security**

In 2005, the Brennan Center for Justice at New York University School of Law convened a Task Force of internationally renowned government, academic, and private-sector scientists, voting machine experts and security professionals to conduct a systematic analysis of security vulnerabilities in the nation's electronic voting systems. The Task Force spent more than a year conducting its analysis and report, of which the methodology, analysis, and text were extensively peer reviewed by the National Institute of Standards and Technology ("NIST").

For their study, the Task Force "surveyed hundreds of election officials around the country; categorized over 120 security threats; and evaluated countermeasures for repelling attacks. The study examined each of the three most commonly purchased electronic voting systems: electronic machines ("DREs") with – and without – a voter verified paper trail, and precinct-counted optical scan systems ("PCOS")."

The findings below were released in June 2006. <sup>12</sup>

**Note: The Brennan Center for Justice Task Force reinforces and supports our recommendations for parallel hand counted audits in our machine count towns.**

### **Systems With Paper Records Are Still Subject To Attack.**

Voting systems with some kind of voter verified paper record (i.e., DRE w/VVPT\* or PCOS\*\*) offer an important security advantage against software attack programs not offered by voting systems without voter verified paper records (i.e., DREs without VVPT): jurisdictions can conduct an audit of the voter verified paper record and compare that record to the electronic vote totals.

Unfortunately, most states that require voter verified paper records do not require automatic audits of paper records after each election. Our analysis shows that systems with voter verified paper records provide little, if any, security benefit over systems without such records, unless there are regular audits and/or recounts of the paper records.

Even assuming that such regular audits and/or recounts are conducted, jurisdictions that use, or are considering purchasing DREs w/ VVPT or PCOS should be aware of threats that are unique to these systems.

\* VVPT: Voter Verified Paper Trail

\*\* PCOS: Precinct Count Optical Scan, which is the only machine system used in New Hampshire

### **Security Recommendations**

The Brennan Center Task Force makes several clear recommendations for systems such as those used in New Hampshire.

The Task force has concluded that an independent voter verified paper trail without an automatic routine audit is of questionable security value. By contrast, a voter verified paper record accompanied by a solid automatic routine audit can go a long way toward making the least difficult attacks much more difficult. Specifically, the measures recommended below should force an attacker to involve hundreds of more informed participants in her attack.

- A small percentage of all voting machines and their voter verified paper records should be audited.
- Machines to be audited should be selected in a random and transparent way.
- The assignment of auditors to voting machines should occur immediately before the audits. The audits should take place by 9 a.m., the day after polls close.
- The audit should include a tally of spoiled ballots (in the case of VVPT cancellations), overvotes, and undervotes.
- There is a substantial likelihood that the election procedures and countermeasures currently in place in the vast majority of states would not detect a cleverly designed software attack program.
- A statistical examination of anomalies, such as higher than expected cancellations or undervotes and overvotes, should be conducted. Solid practices with respect to chain of custody and physical security of paper records prior to the automatic routine audit should be followed.

## SECTION 4 | New Hampshire Ballot Law Commission

### **Ballot Law Commission Approved Defective Voting Equipment for NH Elections**

On March 10, 2006 the Ballot Law Commission held a public hearing to consider approval of new firmware for the Diebold Accuvote optical scanning machines used in New Hampshire elections. These are the only voting machines in use in the Granite State. After nearly four hours of public testimony, most of which was against the approval, four out of five Ballot Law Commissioners voted to approve the firmware. Commissioner Gregory Martin was the sole Commissioner voting against the approval. He was also the sole Commissioner who had read the pertinent reports on the firmware and machines submitted for approval. And he was the sole Commissioner to question the Diebold vendor representative, John Silvestro, President of LHS Associates, about the documented problems with the product that he sells to our New Hampshire cities and towns.

**Video from the Ballot Law Commission hearing, including the testimony transcribed below, can be viewed on the DFNH website here:**

<http://www.democracyfornewhampshire.com/node/view/2682>.

### **Diebold Representative's Public Testimony on Voting Machine Problems**

The following transcript is of the final exchange between Diebold vendor representative John Silvestro and Ballot Law Commissioner Gregory Martin.

**Commissioner Martin:** *Do you know whether Diebold has responded to the report of Feb. 14<sup>th</sup>?*

**John Silvestro:** Yes, they have responded, and there is, they are going to address all of the concerns that are identified in there. There will be a new release of the firmware, which will address all of the concerns, with digital encoding and the arithmetic problem that's on the memory card.

The issue you have before you, and someone might, you might ask your follow up question would be why don't we wait till that, so I'm gonna give you the answer, before you ask that, I'll even answer it. Here's why you can't wait. I might actually have a product in sixty days, okay, and we may actually talk to the Secretary of State about coming back in to do this whole process again.

The problem that we have is, is that we have all the machines we need to replace the firmware with. And no-one controls those independent test laboratories. So before those fixes will be put in the field, they need to go through the independent test laboratories and all of the software and all of the source coding needs to be verified.

That might take 30 days, might take 60 days, might take 90 days. We are under a

timeline in that we have a November election. So we might well be back in here with a version of the firmware that Diebold has addressed all of the identified items in that report prior to November if time constraints allow for us to go out and replace the firmware. We may not be.

So I think we need, to be prudent, it would be to go forward from here, and then evaluate the situation and keep in contact with the Secretary of State's office and let them know where we are in the process.

**Commissioner Martin:** *So Diebold has acknowledged that these are legitimate bugs?*

**John Silvestro:** Yes. Diebold is not, I mean, they understand. You know there is a big difference between, in the business world, the guy down the street coming to tell you, you have a problem and the Secretary of State's office in California. Okay?

The Secretary of State's office in California tells you, you have a problem, you pay attention. The Secretary of State's office in New Hampshire tells you, you have a problem, you pay attention. And they acknowledge them, and they are being addressed.

## Why One Ballot Law Commissioner Voted No

Before voting against the approval, Commissioner Martin had this to say:

**Commissioner Martin:** I can't vote for the motion, and I can't in good conscience vote for the motion, because I did read the report of February 14, 2006. And I really want to focus on what our charge is, which is considering the integrity of our election system.

And this is not an aspersion on the Secretary of State's office, or on our towns or cities, because I think they do a fantastic job.

But I can't in good conscience vote for software that has been acknowledged to have problems, and if you read the report it goes beyond hacking. They talk about 16 bugs in the software program.

And I think it's incumbent upon the Ballot Law Commission to focus on that narrow question.

I know that I'm concerned about what the consequences of a no vote are as far as hand counting our ballots, but I think we can not in good conscience vote for a software upgrade that has been acknowledged by the distributor, and he acknowledged it here, that there are problems with the software program.

And the report, we don't have to go to the internet, we don't have to hear eye witness reports, we have an actual report that details the problems that are part of the software.

So I would have to vote no.

## SECTION 5 | New Hampshire Election Laws: Voting Machines

### **New Hampshire Laws Regarding Voting Machines<sup>13</sup>**

**656:40 Adoption.** The mayor and aldermen of any city or the selectmen of any town, subject to the approval of the ballot law commission, may authorize the use of one or more voting machines or devices for computerized casting and counting of ballots in such city or town on a trial basis for any regular or special election and pay the expense of such trial from any available funds. The use of such machines or devices so authorized shall be valid for all purposes. Any town, or the mayor and aldermen of any city, may vote to lease or purchase voting machines or devices for the elections held in said town or city. Any town, or the mayor and aldermen of any city, so acting shall notify the secretary of state of the action taken in regard to voting machines or devices; and, after said action, voting machines or devices shall be used in said town or city in accordance with said vote or authorization. Notwithstanding any vote of adoption of voting machines, the mayor and aldermen of any city or the selectmen of any town may petition the ballot law commission to allow the use of paper ballots in any one or more elections.

**656:41 Approval by Ballot Law Commission.** The ballot law commission shall act as a board to examine voting machines and devices for computerized casting and counting of ballots. The commission shall, whenever requested, examine any voting machine or device which may be capable of meeting the requirements for elections held in this state. The commission shall approve such voting machine or device in its discretion, and no voting machine or device shall be used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so approved by the ballot law commission. Any voting machine or device that is altered must be re-approved before it is used in any election in this state. For the purposes of this section, a machine shall be considered altered if any mechanical or electronic part, hardware, software, or programming has been altered.

**656:42 Rules.** I. The ballot law commission shall make such rules as may be necessary to ensure the accuracy of voting machines or devices, including rules for the testing of voting machines or devices prior to each election and the submission of testing records to the secretary of state. The ballot law commission shall make such rules as may be necessary in order that voting machines or devices for computerized casting and counting of ballots may be used in this state in such a manner that the election laws may be complied with as far as possible. Said commission shall have the power and authority in making rules to declare certain laws relative to distribution and marking of ballots and other requirements inconsistent with the use of voting machines or devices ineffective in towns and cities adopting such a method of voting. The presiding officer at each polling place shall enforce the rules of the ballot law commission made under the authority of this section.

II. Consistent with the rules of the ballot law commission the secretary of state shall include protocols for the testing of voting machines in the election manual authorized by

**RSA 652:22.** Each machine shall be tested after installation and prior to each election.

III. Any company, partnership, proprietorship, or other person, wherever located, which supplies, maintains, or programs voting machines which are used in elections in New

Hampshire is subject to regulation by this state.

IV. Each person described in paragraph III shall designate, in writing, an agent for service of all process, including, but not limited to summonses, writs, orders, petitions, and subpoenas, and shall agree in writing that the attorney general, in conjunction with any election investigation, may inspect its records, machines or other devices, and premises.

V. Any such person described in paragraph III who fails to properly program and test voting machines shall be liable to reimburse the state for the cost of any recount which is necessitated by such failure.

VI. Any person who knowingly violates the testing procedures established under this section or the rules of the ballot law commission shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**656:43 Lease or Purchase.** Any town or city authorizing the use of a voting machine or a device for computerized casting and counting of ballots shall pay the cost of lease or purchase. When such a machine or device is purchased by a town or city, the person from whom such machine is purchased shall give to the secretary of state a suitable bond with sufficient sureties to keep such machine in good working order for not less than two years at the seller's own expense.

**656:43-a Replacement.** If a city or town decides to replace all of its lever voting machines or devices for computerized casting and counting of ballots, it may, as a substitute, use the regular hand counted paper ballot system or one of the several approved voting machines or devices for the counting of ballots which reads the voter's choice on a paper ballot.

## SECTION 6 | Election Administration

### Chief Election Officers

A 2006 law defines city clerks as the Chief Elections Officers for the purpose of unifying procedures and practices in cities where there is more than one polling place.

**RSA 652:14-a City Chief Elections Officer.** *The city clerk shall be the chief elections officer with authority to establish uniform practices and procedures that conform to state and federal law for all elections conducted by the city.*

Their duties are defined in the following 2006 law:

**RSA 659:9-a City Chief Elections Officer Duties.** *The city chief elections officer shall establish uniform practices and procedures that conform to state and federal law for the conduct of elections at all polling places within the city. The moderators and other election officials who conduct elections at the individual polling places within the city shall comply with the uniform procedures established for the city by the city chief elections officer. The secretary of state shall resolve any conflicting interpretations of state and federal laws arising between the chief elections officer and other election officials. The legislative body of any city may vote to have the duties of the ward officers relative to the selection and equipping of polling places assigned to the city chief elections officer.*

### Pledging Allegiance to the Democratic Processes that Uphold the American Republic

In New Hampshire, as elsewhere, it is our friends and neighbors who are responsible for running our elections. In every city and town, community members step forward to assume responsibility for overseeing the conduct and integrity of the most fundamental of our democratic processes.

As we entrust our elections to these members of our community, we ask them to take an oath before carrying out their duties.

*This, of course, is something that no machine can do.*

The New Hampshire Election Procedures Manual provides the following guidance about the oath of office for this unique responsibility.

### Supervisors of the Checklist Oath

Following is the recommended oath to be taken by the Supervisors of the Checklist in New Hampshire. These are the people who maintain the list of registered voters.

We, the supervisors of the checklist of the town (or ward) of \_\_\_\_\_ do solemnly swear that, according to our best knowledge, the within list contains \_\_\_\_\_ (number) names of those persons only who are, by actual domicile, legal voters in said town (or ward).  
(RSA 654:29.)

## Election Officials and Workers Oath of Office

The New Hampshire Election Procedures Manual provides the following guidance:<sup>14</sup>

The moderator, town clerk, one of the selectmen or a justice of the peace may administer the oath of office. RSA 42:2.

Every town officer shall make and subscribe the oath or declaration as prescribed by part 2, article 84, of the Constitution of New Hampshire and any person who violates said oath after taking the same shall be forthwith dismissed from the office involved. RSA 42:1.

Except as otherwise provided, the term of any town officer elected shall begin upon his or her election and qualification for office and shall end upon the election and qualification of his or her successor. RSA 669:10, I; RSA 41:3. No person shall assume a town office until after the time period for requesting a recount is over. If a recount is requested, no person shall assume that office until the recount is completed. RSA 669:10, II. Taking the oath of office constitutes assuming office. State officers assume office on the date set by the New Hampshire Constitution and County officers assume office on the first Wednesday after the first Tuesday in January of the year following the state general election at which they were elected. RSA 653:10.

WORDS IN THE OATH OF OFFICE. The oath of office is set forth in the New Hampshire Constitution at Part 2, article 84 {Alternative language for those scrupulous of swearing set forth in italics in the brackets – the language the italicized words are substituted for is underlined}:

I, (state your complete name) do solemnly swear {affirm}, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God {This I do under the pains and penalties of perjury}.

I, (state your complete name) do solemnly and sincerely swear and affirm {affirm} that I will faithfully and impartially discharge and perform all duties incumbent on me as (state office elected/appointed to) according to the best of my abilities, agreeably to the rules and regulations of this constitution and law of the state of New Hampshire. So help me God{This I do under the pains and penalties of perjury}.

New Hampshire Constitution, Part 2, Article 84; RSA 42:1; RSA 21:24; RSA 21:25. All town officers must take the oath of office. RSA 669:9.

## SECTION 7 | Election Monitoring

### **Monitoring the Integrity of our Elections**

The majority of America's polling places now use computerized voting systems, and this means that for political candidates efforts in getting out the vote can have less of an impact on election results than anticipated. Arguably, the greater determinant on election results today is the manner in which the votes are cast and counted.

For candidates this means a whole lot more than sending volunteers to the polls to keep track of who votes on election day or wait for the results to be printed out from the scanners. Candidates interested in a fair outcome now need to incorporate intelligent but defensive election monitoring into their plans.

It's time for all of us to learn how to practice safe voting.

To volunteer in your community, contact your city or town clerk or moderator.

*If you want to volunteer to be an election monitor in New Hampshire but you're not sure how to do it, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com)*

### **Public Oversight of Elections**

Candidates need realistic strategies for election monitoring to be effective. They need to use their resources wisely, and understand what is possible and what is not possible to accomplish with their efforts. Entire aspects of the voting process are now conducted without benefit of any public oversight at all. This is because privatized and computerized voting—such as that done with the Diebold Accuvote optical scanners used in New Hampshire elections—has made it virtually impossible to do so.

***For instance, public oversight of New Hampshire's computerized voting system is impossible during the following critical points in the process:***

- When the firmware newly approved for the 2006 elections is configured and installed into each voting machine in the state.
- When the memory cards that contain the software for our voting machines—the software that will determine how the election is run and how the results will be tabulated, recorded, and reported—are manufactured.
- When employees of New England's Diebold vendor representative, LHS Associates, in Methuen, Massachusetts, are programming the software on those memory cards.
- When the memory cards that hold the election program are loaded on to a UPS truck to be shipped from Methuen to our cities and towns.
- When the UPS driver is entrusted with those election programs in good faith that he isn't interested in earning a few extra bucks by swapping out the LHS-programmed cards with someone else's personally programmed version.
- When the memory cards that hold our vote data are re-claimed by the Diebold vendor representative, sometimes within days, following an election.

The combination of corporate ownership and the computerized voting systems have cost

Granite Staters our legal rights to public oversight for many critical points in the administration of our elections. Additionally, it's impossible to observe the vote count itself when it's conducted in bits and bytes within a software program, especially when the developers of that software program tell us we are not allowed to inspect the program doing the counting.

*However, despite these challenges, we can still practice safe voting and assert rightful public oversight over our elections.*

But it takes a whole state to secure an election system.

That means all Granite Staters. That means you, me, and everyone.

**The first thing New Hampshire citizens in machine count towns need to do immediately is demand from your city or town clerks that memory cards—which contain the voting records and are essentially electronic ballots—used in your city or town are secured and locked away together with the paper ballots. Do not, under any circumstances, allow LHS Associates, the Diebold vendor representative, or anyone else to collect your election memory cards before the mandatory holding period for all ballots.**

*If you want to volunteer to be an election monitor in New Hampshire but you're not sure how to do it, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).*

## **Be an Election Day Volunteer**

Everyone who cares about fair elections should plan to be a volunteer on Election Day to watch the voting process, observe the counting, and pay attention to the scanners. Candidates, campaigns, citizens, and election workers all need to help monitor and secure the integrity of our elections on Election Day. Traditionally, campaigns and political parties send poll watchers to the polls so they can keep on top of how many people are voting, who has checked in and who hasn't. This is all by way of getting out the vote.

Times have changed.

Campaigns still need to get their people to the polls, but not just to watch who is checking in to vote and who still needs a ride to the polls. They need election integrity monitors onsite watching every step of the process, as much as is possible. And they need enough people to do a lot of watching at different times of the day, in different locales (especially for multi-district races), and in different areas within the polling places.

We urge everyone to volunteer on Election Day, and to also get dozens of friends and family members to volunteer.

*If you want to volunteer to be an election monitor in New Hampshire but you're not sure how to do it, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).*

## What You Can Do on Election Day

Campaigns and citizen oversight groups should calculate appropriately so they know how many people they need for how long and at which polls. They need enough people to watch a variety of things, such as these listed below:

- Observe the machine testing and start up on Election Day
- Observe the registration check-in process
- Observe the ballots being fed into the scanners or the ballot boxes
- Observe the machine report display
- Observe the final reconciliation of voters checked in and ballots cast
- Observe the final public display of vote tallies
- Observe the collection and storage process for the ballots
- Observe and document any service calls from the voting machine vendor
- Hold signs outside for their candidates (voters in NH expect that!)
- Call supporters to remind them to vote
- Drive people to the polls
- Conduct a candidate's exit polls (every candidate should conduct exit polls at key polling places; even taking a random sample of 50 people throughout the day will give you data to compare with final results)

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## SECTION 8 | New Hampshire Election Laws: Monitoring Elections

### New Hampshire Laws Regarding Monitoring Elections<sup>15</sup>

#### Inspectors of Election

**658:2 Appointment.** Each town and ward political committee of the 2 political parties which cast the largest number of votes for governor in the state at the last previous general election is authorized to appoint between September 15 and October 15 of each general election year 2 inspectors of election to act at each polling place. If the number of voters qualified to vote at a polling place shall exceed 2000, said political committees may each appoint for such polling place one additional inspector for each 1500 qualified voters or fraction thereof in excess of 2000. The town and ward political committees may also appoint such additional inspectors, equally divided between said 2 political parties, as the moderator considers necessary for the efficient conduct of the election. On or before October 15, the chairman of said political committees shall notify the appointees and the town or ward clerk and city clerk concerned as to appointments made under this authority. If any such appointments are not made by said political committees and proper notification thereof given on or before October 15, then the appointments shall be made by the selectmen of the town or ward in equal numbers from said 2 political parties.

**658:3 Qualifications.** The inspectors of election shall be registered to vote at the polling place where they serve.

**658:4 Oath; Term.** Each inspector of election shall be sworn to the faithful performance of his duties and shall hold office for 2 years from November 1 in the year in which he is appointed or until a successor is appointed and qualified.

**658:5 Alternates.** In making appointments of inspectors of elections as provided in RSA 658:2, town and ward political committees or town and ward selectmen may designate a list of alternates, who shall meet the same qualifications as inspectors of elections, to be called in numerical order to serve in case one or more of the principal appointees fails to accept the appointment or is otherwise unavailable to perform his duties.

**658:6 Appointment by Court.** In case any appointment shall not be made as herein provided or vacancies are not filled as provided in RSA 658:22, then, on application of 6 qualified voters of the town or ward, a justice of the municipal or district court shall appoint the inspectors.

## SECTION 9 | Advice from BlackBoxVoting.ORG

### **Advice from BlackBoxVoting: Which Polls to Watch for Election Integrity**

You can't be all places at all times. Strategic planning will help you assign integrity monitors to the right polling places.

***The following description of strategic poll watching for candidates and citizen groups is adapted from a unique posting by Bev Harris on her website, [www.BlackBoxVoting.ORG](http://www.BlackBoxVoting.ORG).***

***Note that BlackBoxVoting.ORG now has a Citizen's Toolkit available for download on their website, The Toolkit is chock full of valuable information and can be found here: <http://www.blackboxvoting.org/toolkit.pdf>.***

This exact scenario doesn't entirely apply to New Hampshire, but it's useful to help in framing your thinking in strategic terms when considering where to allocate your poll watching resources (*which races, which polling places, and which personnel represent your points of risk and vulnerability*).

Here is a theory of vote manipulation for a federal election that could work—but it would take an organized team.

We know that the history of vote-rigging especially targeted certain local elected positions, such as those like commissioner, supervisor, or alderman, which control construction, land use, zoning, and award contracts. That's where the money flows, and therein lies the traditional bribery train.

Another position typically targeted is the county sheriff's position; that position controls contraband (drugs, guns), and also signs off on the traffic studies needed to get zoning approval for land use projects.

These positions have been targets for corruption going way back to the paper ballot hand counted days, and there is no reason to expect that they would suddenly not be targets for corruption now that we have voting machines. Once these positions are corrupted on a local level, elections are likely to follow because the commissioners or supervisors oversee the elections administrator, and the sheriff is in charge of ballot chain of custody.

To manipulate a federal election, you'd need to know which jurisdictions are "open for business." There will be a patchwork of these locations, not a blanket.

However, skilled political operatives will know where these opportunities exist, and will know how to exploit the local corruption as well. That's their job. To manipulate a federal election, you'd want to be very strategic about your selection. You wouldn't go for everywhere. You'd target

specific states, and within those states, you'd target specific counties or jurisdictions. You'd identify which of those jurisdictions was likely to be approachable. You'd know that, if you knew your way around the block as a political operative, because you'd have been working your way up the ladder doing elections.

It's the job of the operatives to know the lay of the land. They know who's been naughty and who's been nice. You'd select the most "approachable" people who can get at selected strategic areas. The kinds of manipulation would vary from area to area, depending on their local "specialties."

You'd cobble together the opportunities.

Yes, national elections on the presidential level have operations with the connections, skills, and knowledge of the terrain to do that. You'd certainly not tell the candidate what you are doing. And by the way, if the candidate had no direct knowledge, even if caught you probably can't remove him from office for vote-tampering.

You'd certainly operate in "cells" so as to minimize damage if anyone is caught.

And this is nothing new. It's just that the voting machines and new voter registration databases offer new attack points.

Can it be done? Yes, I think so.

Can it be done by one person? Not on a federal level. Not yet.

One person might be able to achieve it on a state level in a state with a uniform voting system. Those states include Georgia, Maryland, Utah and Mississippi and now, 44 of the 88 counties in Ohio, probably putting Ohio elections into the one-man-manipulation category.

But even if it would take several people, it wouldn't require that many people.

If I were doing it I'd assign one well-placed operative in each strategic state, one who knows the terrain well enough to know who to approach.

Piece of cake.

*If you want to volunteer to be an election monitor in New Hampshire but you're not sure how to do it, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).*

## **Advice from BlackBoxVoting: What to Watch for When Poll Watching for Election Integrity**

Once you've made it to the polls as an official or an unofficial integrity monitor, how do you know what to look for?

***BlackBoxVoting.org provides the following useful checklist.***<sup>16</sup>

If you are poll watching for a candidate or campaign, be prepared to document the election with a video camera, still camera, and pen and paper. If you find odd things happening such as described in any of the items below, it may be a good reason to ask for a recount.

### **Document Any of the Following Obstructive Behaviors**

- You are not allowed to watch poll closing activities
- You are not allowed to watch votes being counted
- You are not allowed to follow the ballot box or memory card chain of custody
- You are not allowed to watch the processing of the absentee ballots
- You are not allowed to see the computer screens
- Some of the processing and tabulation takes place in rooms you cannot see
- They won't tell you where any other networked machines are or, they won't let you observe the area where other networked machines are [in NH there should be NO networked voting machines at all. The only networked machine is the disability solution, which is a Fax machine.]
- You cannot see who is handling memory cards
- You are not allowed to watch pre-election voting machine preparation
- You are not allowed to watch pre-election voting machine testing
- You are not allowed to see all of the rooms where the ballot box or memory card processing is taking place
- You are not allowed to watch check-in of memory cards
- They turn off the machine or blank the screen so you can't see what's on it (for example, hiding error messages)
- You are not allowed to have all of the results reports
- You are not allowed to see the polling place results tapes at the precinct (end of day precinct results)
- They won't let you access public records, such as voting machine logs, reports, pollbooks
- They won't tell you the names of the people working there
- It's too dark to see handling of memory cards, envelopes and election materials.

### **Document Any of the Following Chain of Custody Problems**

- They won't tell you the chain of custody
- Gaps in the accounting for (or your ability to see) handling of voting machines, memory cards, or ballots
- Handling of memory cards by political party operatives or vendors
- Service calls by vendor during the election

- Swapping out of memory cards during the election
- Technicians working on voting machines during the election
- Technicians working on voting system during the election or count
- Machine does not print precinct results
- Voting machines, ballot boxes, or memory cards sent home with poll workers

### **Document Any of the Following Counting Problems**

- Cards won't upload
- Results don't match each other
- Results for a candidate go down when more votes come in
- Negative votes or machines count backwards
- Auditing problems
- Things don't add up
- More votes than voters
- Votes show up in precincts with no registered votes

Additional useful guidance is found here:

<http://www.blackboxvoting.org/toolkit.pdf>

*If you want to volunteer to be an election monitor in New Hampshire but you're not sure how to do it, please contact us at [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).*

## SECTION 10 | New Hampshire Election Laws: Purity of Elections

### New Hampshire Laws Regarding Purity of Elections

#### CHAPTER 666 - PROVISIONS FOR PURITY OF ELECTIONS<sup>17</sup>

##### General

**666:1 General Penalty.** Any person guilty of an offense against any provision of the laws relating to elections for which no penalty is specified shall be guilty of a violation if a natural person or guilty of a misdemeanor if any other person.

**666:2 Official Malfeasance.** A moderator, supervisor of the checklist, selectman or town clerk shall be guilty of a misdemeanor if at any election:

- (a) He shall knowingly receive and count any illegal vote; or
- (b) He shall knowingly omit to receive and count any legal vote; or
- (c) He shall knowingly remove any vote from the number of legal votes cast; or
- (d) He shall knowingly add any illegal vote to the number of legal votes cast; or
- (e) He shall receive or count any vote given at such election by proxy, that is, without the personal delivery of such vote by the person entitled to give the same; or
- (f) He shall fraudulently declare the state of the vote in the election of any officer.

**666:3 Official Misconduct.** Any public officer upon whom a duty relating to elections is imposed who shall knowingly fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects thereof shall be guilty of a misdemeanor if no other penalty is provided by law.

##### Challengers

**666:4 Challengers Appointed by Party Committee.** The state committee of a political party may appoint a person to act as challenger of voters at any polling place in the state at a state election. A city or town committee of such a party may appoint a person to act as such challenger at any polling place in such city or town at a town election, business meeting, or city election. A statement signed by the chairman of the committee appointing him shall be sufficient evidence of the authority of any such challenger. He may be reasonably compensated for his services by the political party whose committee appointed him. He shall be assigned by the moderator or other election officer presiding at the polling place to such position within the polling place as will enable him to see and hear each voter as he offers to vote. Nothing herein contained shall deprive any other person of the right to challenge a voter as provided by law.

**666:5 Challengers Appointed by Attorney General.** The attorney general may appoint a person to act as challenger of voters at any polling place in the state at a state election. A statement signed by the attorney general appointing him shall be sufficient evidence of the authority of any such challenger. He shall be assigned by the moderator or other election officer presiding at the polling place to such position or positions within the polling place as will enable him to see and hear each voter as he offers to vote. Nothing herein contained shall deprive any other person of the right to challenge a voter as provided by law.

### **Illegal Influence**

**666:6 False Documents, Names or Endorsement.** Any person who shall, without authority, sign the name of another person to any letter or other document, or falsely represent that any other has written such letter or document, knowing such representation to be false, for the purpose of influencing votes, or who shall by false representation, use, employ or assign the name of any other person, or a fictitious name on a radio or television broadcast or other means of communication, to signify endorsement of a political party, candidates or programs, or, for the purpose of influencing votes, shall be guilty of a misdemeanor.

**666:7 Publication of Forged Document.** Whoever publishes any such forged letter or document, knowing the same to be forged, with like intent, shall be guilty of a misdemeanor if a natural person and shall be guilty of a felony if any other person.

**666:7-a Impersonation of Candidates.** . I. Any person who places a telephone call during which the person falsely represents himself or herself as a candidate for office shall be guilty of a misdemeanor.

II. (a) Whoever violates paragraph I shall be subject to a civil penalty not to exceed \$1,000.

(b) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of RSA 666:7-a a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the election fund established pursuant to RSA 5:6-d.

(c) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the election fund established pursuant to RSA 5:6-d

### **Enforcement of the Election Laws**

**666:8 Attorney General.** The attorney general shall be responsible for the enforcement of the election laws as provided in RSA 7:6-c.

**666:9 Examination on Complaint.** Repealed by Chapter 152, Laws of 1997

**666:10 Procedure.** Repealed by Chapter 152, laws of 1997

**666:11 Prosecution.** Repealed by Chapter 152, Laws of 1997

**666:12 Testimonial Privilege.** No witness in any proceeding for the violation of election laws shall be excused from giving his testimony upon the ground that such testimony would incriminate him; but no such testimony shall be used against him at any time or in any prosecution. And any person who voluntarily discloses the facts to the proper authorities and procures a conviction in any such proceeding shall not be prosecuted for his connection with the bribery or attempted bribery.

**666:13 Impounding Ballots.** If directed by the attorney general as part of his enforcement of the election laws, the state police which he designates shall collect all ballots requested from the town and city clerks who have custody of the ballots. The state police shall deliver the ballots to the public facility which is designated by the attorney general.

**666:14 Administrative Complaint Procedures.** The attorney general may establish an administrative complaint procedure for the resolution of complaints of federal voting law violations, pursuant to the Help America Vote Act of 2002, Public Law 107-252. The attorney general may adopt administrative rules under RSA 541-A to implement the complaint resolution procedures. The ballot law commission is hereby designated as the body providing alternative dispute resolution as required by section 402(a)(2)(I) of the Help America Vote Act of 2002, Public Law 107-252.

## SECTION 11 | New Hampshire Election Laws: Election Fraud

### New Hampshire Laws Regarding Election Fraud

Ch. 68 (HB1222) ,Eff. 9/1/6 ,NEW

**RSA 659:34, II. Wrongful Voting: Penalties for Voter Fraud.** II. A person is guilty of a class B felony if, at any election, such person purposefully or knowingly commits an act specified in subparagraph I(b). A person is guilty of a class A misdemeanor if, at any election, such person purposefully or knowingly commits any of the other acts listed in paragraph I.

Ch. 68 (HB1222) , Eff. 9/1/6 ,amended

**RSA 659:34-a Voting in More Than One State Prohibited.** I. A person is guilty of a class B felony if, at any election, such person knowingly checks in at the checklist and casts a New Hampshire ballot on which one or more federal or statewide offices or statewide questions are listed if the person also casts a ballot in the same election year in any election held in any other state or territory of the United States where one or more federal or statewide offices or statewide questions are listed. For federal or statewide offices and statewide questions, neither the candidates nor the questions need be the same in both jurisdictions for a violation to occur. The titles for offices need not be identical, but must serve an equivalent role in government, for a violation to occur.

II. Two or more elections occur with the same election year if:

(a) The election for federal or statewide office or on a question being voted on statewide in another state or territory is held on the same day that New Hampshire holds its general election; or

(b) The term of office for any office listed on the ballot in the other state or territory starts in the same year as the term of office for that office or its equivalent in New Hampshire.

III. The state shall not be required to prove that the person actually marked the ballot for a candidate for any specific office; it shall be sufficient to prove that the person cast a ballot. Evidence that a person was checked off on the checklist, or the equivalent record in another state or territory as having voted is prima facie evidence that the person cast a ballot in that election.

IV. If the election in New Hampshire and the other state or territory are held on different dates, it is an affirmative defense that the person legitimately moved his or her domicile to or from the other state or territory between the dates when elections were held.

Ch. 305 (HB1238) , Effl 1/1/07 , amended

**RSA 659:40-a Interference With Communications.** Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class B felony.

Ch. 305 (HB1238), Eff 1/1/07. amended

**RSA 659:42 Tampering with Voting Machines.** Whoever shall tamper with or injure or attempt to injure any voting machine or device for the computerized casting and counting of ballots to be used or being used in an election or whoever shall prevent or attempt to prevent the correct operation of such machine or device or whoever shall tamper with software used in the casting or counting of ballots or design such software so as to cause incorrect tabulation of the ballots or any unauthorized person who shall make or have in his or her possession a key to a voting machine to be used or being used in an election shall be guilty of a class B felony if a natural person or guilty of a felony if any other person.

## SECTION 12 | Recount Readiness

### The Recount in New Hampshire

At the March 10, 2006, public hearing of the Ballot Law Commission, Secretary of State Bill Gardner made the following statement:

One of the things that I said at the hearing when the Ballot Law Commission met to decide whether to approve these machines for the very first time, was that if these machines were to be approved, that so long as I was Secretary of State we would have hand counted recounts. We would not simply put the ballots back through the machines, as they've done in other places. That we would actually have hand counted recounts. And that that would be something that was important to me as a test. And that if something were to come up during those hand counted recounts then everyone in the state would know about it.

Secretary Gardner's position when coming into office some thirty years ago was subsequently supported by the passage of New Hampshire law mandating paper ballots even when voting machines are used in the state:

...no voting machine or device shall be used in any election in this state unless it reads the voter's choice on a paper ballot and is of a type so approved by the ballot law commission. - RSA 656:41

And recently passed legislation signed into law by Governor Lynch in April, 2006, transformed Secretary Gardner's 30-year tradition of manual recounts into the law of the land for every election (local, state and federal) and every ballot question that is recounted in the Granite State. House Bill 1147 and 1118, which passed with enthusiastic bipartisan support, states that for recounts:

When counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots.

**-RSA 660:11 Conduct.**

**and**

When counting the ballots, the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots.

**RSA 669:32 Board of Recount.**

Recently enacted NH law also clarified the Granite State's paper ballot gold standard for all elections:

For purposes of facilitating the examination and recounting of votes cast, all elections shall be conducted using paper ballots in accordance with this title.

**-RSA 656:1-a Paper Ballots.**

## **Recount as a Check and a Balance**

Paper ballots and accessible manual recounts certainly provide a reasonable check and balance for elections, regardless of whether the original election results are hand counted or machine counted. As Secretary Gardner stated in his March testimony, if a recount ever turned up anything awry, his office would make that information public so that “everyone in the State would know about it.”

So if we have concerns about the integrity of election results coming from the Diebold Accuvote optical scanners—and the findings from studies and testing done on this equipment are troublesome—we need to ask ourselves: What is the most intelligent strategy for invoking the recount, currently the principle check and balance available to us in our New Hampshire elections?

The poll watching techniques and strategies described in this Kit provide guidance as to what types of activities or events might trigger a candidate’s recount request. And we hope that candidates understand that they should not only look to the margin of victory to trigger a recount request, because the margin of victory could be easily programmed into the election software.

Candidates need to understand too, that they will be actively discouraged by many people, even in their own party, from asking for a recount.

But the fact remains, that when the Ballot Law Commission approved the use of election equipment that the vendor representative himself publicly admitted had severe programming defects, they admonished public citizens at the hearing to remember that “we always have this paper ballot, and it can always be counted.”

*In New Hampshire today, our best defense in securing our elections against machine fraud is to conduct random hand counts of at least one race in every polling place on election night, as suggested earlier in this Kit.*

And our second defense against machine fraud is the recount.

## **Recount Readiness for New Hampshire Candidates**

It is the right and patriotic duty of every New Hampshire candidate to ask for a recount if they have any reason at all to suspect the integrity of the election results. This includes evidence, such as that described in this Kit, of things to which poll watchers should pay attention—evidence of any interference in the fair and honest process we have come to expect in New Hampshire.

*In today’s world of computerized elections, which can offer one-stop shopping for dedicated election riggers, New Hampshire’s legal tradition that honors the paper ballot and the voter’s intent as the vote of record can stand us in good stead.*

Smart candidates will prepare themselves for recount readiness well ahead of the election.

## Knowing When the Votes are Not Counted

One way to be prepared for recount readiness is to understand how machines do and don't count our votes. It's important to understand that even without any machine failure or tampering, New Hampshire's Diebold optical scanners simply do not count every vote. That's because the optical scanners only read what is known as "perfectly marked" ballots. If the voter fills in the ovals on the ballots as instructed, then the votes, in a perfectly functioning machine, will be counted. But if the voter chooses a different form of political expression, such as circling the name of the candidate they like, or drawing a check mark, or anything other than filling in the oval, the machine will not count the vote. These unread votes are recorded by the machines as blanks.

When the votes are tallied at the close of elections, the machine record should include a tally for the number of blank votes for every race and ballot question. Many of these blank votes are legitimate; they represent races in which voters chose not to select any candidate for that given race. But other blank votes actually represent races in which the voter did make a choice, but in such a way that the machine could not read their choice on the ballot.

So here's a secret for knowing definitively when to request a recount based on the machine count totals.

*Always request a recount when the margin of victory is close or equal to the number of recorded blanks in a given race or ballot question.*

Consider this example:

In his race for the State Senate, Jeremiah Johnson received 100 votes. His opponent, Emma Goldman received 110 votes. The machine record indicated 20 blanks for this race. Jeremiah asks for a recount because he knows that—while some of those blanks really resulted from people who did not cast a vote in his race—there is also the likelihood that within those 20 blank votes there could well be votes for him that were just not counted because the machine didn't read the ballot the way the voter marked it.

## Other Ways to Prepare for Recount Readiness

Here are some other things candidates can do ahead of the election to become recount ready:

- Determine the estimated amount it would cost them to conduct a recount. The laws referenced in this Kit define recount costs as they relate to different margin spreads in election results. (RSA 660:1, 660:2) The Secretary of State's office can also provide estimates for the cost of conducting recounts for given districts if the results differential spread exceeds three percent.
- Establish a dedicated fund ahead of the election to pay for recounts, if necessary, and solicit donations specifically for that purpose.
- Recruit and train enough poll watchers for election integrity monitoring.
- Conduct a strategic political analysis to understand which polling places, personnel, and races are attractive and potentially vulnerable to election rigging.
- Conduct informal exit polls at every polling place: Randomly query 50-60 people throughout the day and compare this exit poll with the announced outcome.

- Advise their Party, staff, aides, and constituents that they will not concede until every vote has been fairly, observably, and securely counted, even if it means asking for a recount.
- Prepare against the inevitable pressure to concede and to not ask for a recount.
- Remember, it is not just about the Candidate. It's about the integrity of the election. It's about all of us.
- Remember that it's about counting the votes.

## **Request from a Frustrated Voter to all Interested Candidates<sup>18</sup>**

So, you're going to run? Are you ready to sign the Pledge?

### **THE HONEST ELECTION CANDIDATE'S PLEDGE: It's about the democracy!**

1. I pledge to work hard to make sure that every citizen who votes for me has their vote counted for me.
2. I will not consider any contest I am involved in to be over until I know that every ballot—absentee and non-absentee—has been counted.
3. I shall make sure that non-partisan exit polling is conducted.
4. If the final results of counted votes are different from the exit polling by more than the margin of error, I will ask for a recount.
5. I shall exhaust every possible legal recourse to assure that every vote cast for me by a legal citizen is counted for me.
6. If asked to "concede" I shall respond: "Only when every vote cast for me has been counted -- to do anything less would be a violation of the Constitution."
7. If I am called a "sore loser" or a "waster of taxpayer time" I will reply that: "Democracy is never a waste of time and wanting to see democratic government working is never a bad cause."

## SECTION 13 | New Hampshire Election Laws: Recounts

### New Hampshire Laws Regarding Recounts

In New Hampshire any candidate may request a recount. Recount fees will vary depending on the result differential percentage, as noted in the laws shown below. Recounts for every election in New Hampshire—federal, state, or local, and including ballot questions—are by tradition, and as of 2006 by law, conducted manually.

#### Chapter 660 Post-Election Procedure<sup>19</sup>

##### State General Election Recounts

**660:1 Application.** Any candidate for whom a vote was cast for any office at a state general election may apply for a recount. The application shall be made in writing to the secretary of state and shall be submitted no later than the Friday following the election. Each candidate requesting a recount shall pay the secretary of state fees as provided in

##### 660:2 Fees.

I. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be less than one percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

- (a) Candidate for president, United States senator or governor, \$500.
- (b) Candidate for United States representative, \$250.
- (c) Candidate for executive councilor, \$100.
- (d) Candidate for state senator or county officer, \$50.
- (e) Candidate for state representative, \$10.

II. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between one percent and 2 percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

- (a) Candidate for president, United States senator or governor, \$1,000.
- (b) Candidate for United States representative, \$500.
- (c) Candidate for executive councilor, \$200.
- (d) Candidate for state senator or county officer, \$100.
- (e) Candidate for state representative, \$20.

III. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be between 2 percent and 3 percent of the total votes cast in the towns which comprise the office to be recounted, the following fees shall apply:

- (a) Candidate for president, United States senator or governor, \$2,000.
- (b) Candidate for United States representative, \$1,000.
- (c) Candidate for executive councilor, \$400.
- (d) Candidate for state senator or county officer, \$200.
- (e) Candidate for state representative, \$40.

IV. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be greater than 3 percent of the total votes cast in the towns which comprise the office to be recounted, the candidate shall pay the fees as provided in RSA 660:2, III and shall agree in writing with the secretary of state to pay any additional costs

of the recount.

**660:3 Number of Recounts.** Any candidate for whom a vote was cast for any office at a state general election shall be entitled to apply for only one recount under this chapter, and the declaration made by the secretary of state under 660:6 shall be final, subject to a change in the result following an appeal to the ballot law commission, as provided in RSA 665:8, II. If more than one candidate for the same office in the same district applies for a recount under this chapter, and a recount is completed, such applications shall not result in a second recount.

**660:4 Time and Notice.** Upon satisfactory application for a recount as provided in RSA 660:1, the secretary of state shall begin the process of recounting the ballots on the Wednesday following the deadline for requesting a recount. A recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state. The secretary of state shall give a reasonable notice thereof to the applicant and to each of the opposing candidates. The secretary of state shall also prepare and distribute to the applicant and to each of the opposing candidates the rules and procedures governing the recount at the same time notice of the time and place for holding the recount is given to the applicant and to each opposing candidate.

**660:5 Conduct of Recount.** If directed by the secretary of state, the state police shall collect all ballots requested from the town or city clerks having custody of them and shall deliver them to the public facility designated by the secretary of state. At the time and place so appointed, the ballots cast for such office shall be counted by the secretary of state and such assistants as he may require. The candidates, their counsel and assistants shall have the right to inspect the ballots and participate in the recount under such suitable rules as the secretary of state may adopt. Each candidate or his counsel shall have the right to protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on said ballot and shall attach thereto a memorandum stating such ruling and the name of the candidate making the protest. If, at any time during the counting of the ballots, a discrepancy appears in any ballot for any reason, the secretary of state shall suspend the recount until the discrepancy is resolved, at which time he shall continue the recount. In no event shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

**660:6 Declaration; Certificate.**

I. If the recount shall show that some candidate other than the one declared elected upon the original canvass of votes has the greatest number of votes cast for the office, the secretary of state shall declare said candidate to be elected; and, unless the result is changed upon an appeal taken to the ballot law commission, as provided in RSA 665:8, II, such candidate shall be entitled to a certificate of election.

II. If any person who has applied for a recount is declared elected by reason of said recount, the secretary of state shall return to the person within 10 days of the recount all fees paid at the time of applying.

III. If any person who has applied for a recount loses the recount by a margin of less than one percent of the total votes cast in the towns which comprise the district for the office recounted, the secretary of state shall return to the person within 10 days of the recount any fees that were paid in excess of those required by RSA 660:2, I.

### **State or Presidential Primary Recounts**

**660:7 Application.** Any person for whom a vote was cast for any nomination of any party at a state or presidential primary may apply for a recount. The application shall be made in writing to the secretary of state and shall be submitted no later than the Friday after the primary for a recount of all ballots cast for such nomination. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2.

**660:8 Notice of Conduct.** Notice shall be given and the recount shall be conducted as provided for in RSA 660:4 and 660:5.

**660:9 Declaration of Result, State Primary.** If the recount after a state primary election shall show that some candidate other than the one declared nominated upon the original canvass of votes has the greatest number of votes cast for the nomination, such candidate shall be declared nominated and shall be placed upon the official ballot at the following election unless appeal is taken to the ballot law commission in accordance with RSA 665:6, I, I. If the person who applied for the recount was thereby shown to be the one chosen as the candidate of the party, the person shall also have any fee paid returned.

**660:9-a Declaration of Result, Presidential Primary.** If the recount after a presidential primary election shall show that the applying candidate qualified under RSA 659:93 for at least one more delegate than the original count indicated or that such candidate did qualify for federal election funding, such candidate shall receive such funding or shall be apportioned delegates to the national party convention in accordance with RSA 659:93 unless appeal is taken to the ballot law commission in accordance with RSA 665:6, I. If the person who applied for the recount was thereby shown to be entitled to federal funding or at least one more delegate under RSA 659:93, the person shall also have any fee paid returned.

### **General Provisions for Recounts**

#### **660:16 Disposal of Ballots.**

I. Upon the conclusion of every recount, the secretary of state shall replace the unprotested ballots and absentee voter envelopes in a suitable container for storage. The secretary of state shall retain the ballots and the absentee envelopes for at least 60 days following the recount. Upon an order of the ballot law commission, the secretary of state shall produce the ballots for the inspection of the commission. Following the commission's inspection, the secretary of state shall replace the ballots and envelopes, seal them, and certify the contents and the date when they were examined by the commission. The envelopes and ballots shall be subject to the order of the body to which such person claims to be elected or of the officers required by law to examine the records and to issue certificates of election to such office or of any court having jurisdiction over them.

II. **Ballots**, including cast, cancelled, and uncast ballots and successfully challenged absentee ballots still contained in their envelopes, prepared or preserved in accordance with the election laws shall be exempt from the provisions of RSA 91-A. This exemption shall apply to any ballots or absentee voter affidavit envelopes prepared for or used in any election conducted by the state or any political subdivision, including federal elections.

**660:17 Penalty for Violating Requirements.** Whosoever shall knowingly violate any of the provisions of RSA 660:1 - 660:16 shall be guilty of a violation.

#### **Contested Elections to General Court**

**660:18 Notice.** Whenever any person intends to contest the election of a state senator or representative, he shall send to him a notice in writing of such contest with the reasons therefor, citing the acts constituting the violation and, if known, the specific sections of the law or of the constitution being violated. The notice shall be sent by certified mail and postmarked on or before the December 15 immediately following the election. At the same time the notice is sent to the senator or representative, a copy thereof shall be sent to the secretary of state.

**660:19 Petition.** In a contested election case, neither party shall be entitled to a hearing before the general court unless their remonstrance or petition shall be presented to the clerk of the senate or house before the second Wednesday of the first session thereof.

**660:20 Depositions.** In any case of contested elections, depositions may be taken as in civil causes. The magistrate taking depositions shall prepare captions therefor, shall seal up the depositions and shall transmit the package to the clerk of the senate or house, as the case may be, with a notation stating the session at which and the case in which the depositions are to be used.

**660:21 Evidence.** But for good cause shown, neither party shall be entitled to have any evidence considered before the committee conducting the hearing which is not in readiness to be submitted before the third Wednesday of the first session of the general court.

**660:22 Compensation.** The party failing to sustain his right to a seat shall not be entitled to any compensation for his services or for any expenses he may have incurred in the contest therefor. However, any person who has received a certificate of election as representative or senator and who has taken his seat but who is unsuccessful in retaining it shall be paid for his mileage for the period during which he has served.

#### **Resolution of Ties**

**660:23 Primaries; County Offices in a General Election.** If the candidates having the highest number of votes for any nomination made at a state or presidential primary or for election to county office made at a state general election shall have an equal number, the secretary of state shall determine the nomination by lot in the presence of the candidates who are tied if, after notice from him, they elect to be present.

**660:24 State Offices in State General Elections.** If the candidates having the highest number of votes for the office of governor, councilor, state senator, or state representative shall have an equal number, the choice shall be made as provided in the state constitution. Such candidate chosen shall then be declared duly elected.

**660:25 United States Senator or Representative.** If 2 or more candidates for United States representative in any district or United States senator shall receive the largest and equal number of votes in any state general election so that no choice is made, the governor, with advice of the council, shall cause precepts to be issued to the selectmen of the several towns within such district for another election, requiring them

to warn meetings to be held at the time specified in such precepts for the choice of a representative or senator. The votes given at any such meeting shall be received, sorted, counted, declared, recorded and certified, and the returns thereof made out, signed, certified, sealed, directed and forwarded in the manner prescribed by RSA 659.

**660:26 Canvass.** The secretary of state, as soon as may be, shall lay all returns received pursuant to RSA 660:25 before the governor and council, and the votes shall be examined and counted and the election of the person having the largest number of votes declared and certified, and the certificate thereof shall be made out and transmitted in the manner described in RSA 659:84. If upon second balloting 2 or more persons shall have the largest and equal number of votes in any district, so that no choice is made therein, the same proceedings shall be again had as are provided in RSA 660:25; and so from time to time, so long as may be necessary, until some one shall have the largest number of votes.

## SECTION 14 | Guidance from NEDA

### **Guidance from the National Election Data Archive**

*Kathy Dopp of the National Election Data Archive (<http://uscountvotes.org/>) provides additional guidelines for candidates, parties, and voters. These guidelines are slightly adapted below for the New Hampshire experience.*

### **For Candidates: How to Assure that Votes in Your Race Are Counted Accurately**

We need the help of candidates to assure all votes are accurately counted.

#### **Before the Election**

##### **Make Open Records Requests**

Make open records requests to the election office in each city and town where you are on the ballot. Ask them to provide you with electronic versions of unofficial and official vote counts broken out by precinct and by precinct and vote type\* as soon as they become available after the election. Sample open records request letters will be available at ElectionArchive.org.

\*Absentee, overseas, military, Election Day, Early, Early-provisional, and Election Day-provisional, etc.

##### **Prepare for Hand Recounts and Legal Challenges**

The time to request a recount after an election is often very limited. You must be prepared to pursue a recount quickly. Start by finding out the cost of a manual recount. Earmark sufficient campaign funds for a recount or identify donors who will pay for a recount if one is needed.

##### **Obtain a List of Precincts and Polling Locations**

Obtain the list of polling locations from city and town election offices and upload them to ElectionArchive.org. This information is needed for the operation of ElectionArchive.org in order to analyze your detailed vote count data to detect if any precinct vote counts are suspicious.

### **After the Election – Ensure Every Vote is Counted**

Have detailed vote count data analyzed by independent statisticians. If you are not declared the winner, it is critical that you obtain detailed vote counts for your race before conceding. Without detailed vote counts, it is possible for someone to wrongfully add votes for a candidate in one vote type, while wrongfully subtracting votes for another candidate in another vote type; and to hide evidence of vote switching.

##### **Submit Your Detailed Vote Counts to ElectionArchive.org**

Upload your detailed vote count data files to ElectionArchive.org where they will be made public for independent analysts to examine.

##### **Request Recounts**

If your results are statistically improbable or if there are other indications for electoral impropriety then request a recount.

## What Political Parties Can Do to Ensure Votes Are Counted Accurately

### Observe the Election Process

Before Election Day consult with your city or town election official:

- Ask to tour the vote counting facilities in advance.
- Ask if there are any rules against taking recorders and cameras (still or video) with you as an observer. Get your response in writing and take it with you.
- Find out where the voting machines are warehoused between initial programming and election use. Consider putting that location under surveillance, particularly if it is an isolated location.
- Make open records requests in advance to obtain the unofficial and official detailed vote count data by precinct and by vote type (absentee, overseas, military, early, early-provisional, Election Day, Election Day - provisional) as soon as it becomes available after the election.
- Study state law in advance, with particular regard to the following:
  - candidate or party access to observing the vote tallying (canvassing) process,
  - types of public postings that may be required at the precinct level,
  - whether candidates or parties can observe poll closing operations,
  - whether observers can take pictures of vote total displays on electronic voting machines if available. (Such displays are often not printed or kept)
- The evidence from a 35mm camera is more tamper-resistant than a digital camera. Use date and time stamping on the picture itself if your camera supports that. Use a written log (or a voice recorder) by picture number.
- In some states absentee, mail-in, overseas, and early votes are counted early. Observe this process as well.
- Observe the logic and accuracy testing, if you are permitted.

Make sure you do not interfere in any way with the processes you are observing.

*NOTE: Be aware that no amount of observation or reconciliation can prevent or detect some types of electronic tampering. Independent audits of voter-verified paper ballots and election data monitoring are needed for accuracy.*

Make Open Records Requests for Detailed Vote Count Data broken out by precinct and by precinct and vote type (absentee, early, overseas, military, provisional, Election Day, etc.); and encourage all your candidates to refuse to concede until after obtaining and analyzing this data which often reveals many types of vote miscounts. (See NEDA's Advice to Candidates for details.)

### Monitor and Log Calls for Assistance Made to the Vendor Representative (LHS Associates) from the Precincts

Note the following:

- Which precinct did the call come from?
- What is the problem?
- Was a technician dispatched?
- How is the technician dispatched?

- Did the technician take replacement machines to the precinct?
- How long did it take to resolve the problem?
- Log the names of the partisan observers.

### **Monitor the Closing of the Polls**

**As poll workers close the polls and compile the reports and memory cards, notice and log the following.**

- Do poll workers check the seals when they receive the envelopes containing the reports and the memory cards?
- What happens to the envelopes? Are they tracked?
- Do poll worker register the number of memory cards indicated in handwriting on the envelope?
- What happens to the Zero Total Reports and the End of Day Precinct Totals Report inside the envelopes? Are they removed, saved, logged? Are the totals tracked?
- What happens to the memory cards after the poll worker breaks the seal? What recording does the poll worker do? Are the cards counted (there should be one for every optical scanner)? By whom? How many times? What happens to the accumulator card containing the precinct totals?
- Does the poll worker check or verify the serial numbers or any other identifying information on the memory cards?
- Are all the cards from the precinct kept together?
- Ask where the Internet access is located relative to the vote counting equipment.
- Observe whether there is an infra-red wireless port on the scanner. If so, observe whether it is blinking and transmitting information or not.
- Use binoculars if needed, to observe the tabulator monitor screen in case you are not close enough to it. Write any error messages down in your notebook, noting the time. If the program suddenly disappears (program crash) or the computer crashes, note the time and file a public records request for the audit log. Call incidents in to the Election Protection Hotline at +1 866 OUR-VOTE.

[NEDA expresses thanks to VerifiedVoting.org, Arthur Keller, <mailto:voting@kellers.org>, U. Cal Santa Cruz, Roxanne Jekot, Co-Founder of CountTheVote.org, Lillie Coney at the National Committee for Voting Integrity, the NAACP, and BlackBoxVoting.org for contributions to the sections on election observation. An earlier version of how to observe is available <http://www.verifiedvoting.org/article.php?id=5195>]

*NOTE: Because you cannot observe what goes on inside the memory cards or the firmware, vote count manipulation or miscounts could possibly occur even with the most diligent observations.*

After the election, it may be possible through city and town elections office or open records requests to look at the original signed poll tapes, and to reconcile the tapes' numbers against the numbers reported. Note that New Hampshire election workers are required by the Secretary of State's office to also reconcile the number of voters checked in against the number of ballots cast.

### **Raise Funds for Public Exit Polls and Election Data Monitoring**

Detailed exit poll and vote count data could be used to detect precinct-level vote count errors prior to candidates' conceding.

In the absence of post-election independent audits of vote counts, insiders have freedom to make vote count errors without detection. If an election is rigged, it does not matter how much money, how good a message, or how many voters a candidate musters.

### **What Voters Can Look for and Report to Local Officials**

#### **Optical scan systems: Look for the following signs of problems in the polls:**

- The scanner continually rejects the ballot, even though the ballot is in good order.
- The scanner mangles the ballot.
- If any of these problems occur, make sure you notify the poll workers and insist that the particular voting machine be removed from service for remainder of the election. Note the time, actions taken, persons involved, etc. and contact appropriate election integrity groups.

#### **What Else Can Voters Do?**

- Read NEDA's Advice to Political Parties & Candidates and volunteer to assist
- Vote for Candidates who promise not to concede any elections until after:
  - Obtaining and analyzing their detailed vote count data broken out by precinct and by vote-type (absentee, early, overseas, military, provisional, Election Day, etc.)
  - Making sure that every vote is counted – including provisional, overseas, and absentee
  - Requesting hand recounts
  - Taking legal actions if it seems warranted

Merely going to the polls is not enough!

## SECTION 15 | New Hampshire Election Laws: Voters and Checklists

### New Hampshire Laws Regarding Voters and Checklists

#### CHAPTER 654 - VOTERS AND CHECKLISTS<sup>20</sup>

##### Eligibility

##### **654:1 Voter; Office Holder.**

I. Every inhabitant of the state, having a single domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

II. Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served. Any vacancy so created shall be filled as prescribed by law.

**654:2 Temporary Absence.** A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his or her presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

**654:2-a Voters Confined in Penal Institutions.** I. The domicile for voting purposes of a person confined in a penal institution shall be the town or city in New Hampshire in which such person had his or her domicile immediately prior to such confinement, even though such person no longer maintains a domicile in said town or city and even though his or her intent to return thereto is uncertain. The domicile for voting purposes of a person confined in a penal institution shall not include the municipality where the person is confined unless the person was domiciled in that municipality prior to confinement. If the person was domiciled immediately prior to confinement in the municipality where the person is confined, the person shall be considered absent for purposes of voter registration and absentee voting during the period of confinement.

II. A person confined in a penal institution whose domicile is in a town or city in New Hampshire shall be eligible to vote in state elections and shall exercise that right by absentee ballot provided:

(a) The person complies with all other applicable requirements and qualifications of the state of New Hampshire, including, but not limited to, the requirement that an absentee voter take the steps necessary to have his or her name placed on the voter checklist no later than 10 days before an election and the requirement that the absentee voter take the steps necessary to make sure that his or her ballot is received by the town or city clerk from whom it was sent by 5:00 p.m. on election day. A person confined in a penal institution shall use the mail to comply with all applicable requirements and qualifications.

(b) The person is not registered to vote or eligible to vote in any other state or election district of a state or in any territory or possession of the United States.

(c) The person is not a citizen of another state.

III. In completing a voter registration form, as specified in RSA 654:7, a person confined in a penal institution shall list the address of his or her domicile in the address section, and the address of the penal institution in the mailing address section.

**654:3 Voting Rights of Overseas Citizens.** Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled outside the United States, shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he or she had his or her domicile immediately prior to his or her departure from the United States, even though he or she no longer maintains domicile in said town or city and even though his or her intent to return thereto is uncertain, provided:

I. He or she complies with all other applicable requirements and qualifications of the state of New Hampshire; and

II. He or she is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and

III. He or she has a valid passport or card of identity issued under the authority of the secretary of state of the United States.

**654:4 Armed Services Voters.**I. Notwithstanding any other provision of law to the contrary, an armed services voter, as hereinafter defined, being a citizen of the United States and being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire shall have the right to vote absentee in any state election in the town or city in New Hampshire in which he had his domicile immediately prior to such service, even though he no longer maintains domicile in said town or city and even though his intent to return thereto is uncertain, provided:

(a) He complies with all other applicable requirements and qualifications of the state of New Hampshire.

(b) He is not registered to vote in any other state or election district of a state or in any territory or possession of the United States.

II. As used in this section, the term "armed services voter" means:

(a) Members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, and all regular and reserve components thereof, while in active service.

(b) Members of the Merchant Marine of the United States in active service, including persons (other than members of the armed forces) employed as officers or members of crews of vessels documented under the laws of the United States, or of vessels owned by

the United States, or of vessels of foreign-flag registry under charter to or control of the United States, and persons (other than members of the armed forces) enrolled with the United States for employment, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessels; but does not include persons so employed or enrolled for such employment or for training for such employment, or maintained for such emergency relief service, on the great lakes or the inland waterways.

(c) Civilian employees of the United States government, including the peace corps, serving outside the territorial limits of the several states of the United States and the District of Columbia, whether or not the employee is subject to civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(d) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces.

(e) The spouses or dependents of any person described in subparagraph (a), (b), (c), or (d) when residing with or accompanying them.

**654:5 Disqualification for Felony.** A person sentenced for a felony shall forfeit his rights as provided in RSA 607-A:2.

**654:6 Disqualification for Bribery or Intimidation.** Any person convicted of bribery or intimidation relating to elections under RSA 659:40 shall thereafter be forever disqualified from exercising the right to vote, except that the Supreme Court may, on notice to the attorney general, restore the privileges of a voter to any person who may have forfeited them by conviction of such offenses.

### **General Voter Registration**

**RSA 654:7 Voter Registration Form.** A standard registration application form shall be used throughout the state. The registration form shall be no larger than 8 ½ inches by 11 inches. The secretary of state shall prescribe the form of the voter registration form, which shall be in substantially the following form...

**654:7-a Registering at the Polling Place; Election Day Registration.** I. The provisions of this section and those of RSA 654:7-b shall be used as an additional procedure for voter registration. For the purposes of this section and RSA 654:7-b, the term "election day" shall refer to state primary and to state general elections, to all town, city, school district, and village district elections, and to all official ballot meetings where persons may vote by absentee ballot. A person who registers to vote on election day according to the provisions of this section shall also be required to complete the voter registration form provided for in RSA 654:7. The provisions of this section and those of RSA 654:7-b shall apply notwithstanding any provision of RSA 654 to the contrary.

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant shall be required to produce appropriate proof of qualifications as provided in RSA 654:12.

III. Any person who is waiting to register to vote at the polling place on election day at the time scheduled for the closing of the polls shall be allowed to vote if determined to be qualified to register.

**654:7-b Effect of Registration on Election Day.** Any person who registers to vote on election day according to the provisions of RSA 654:7-a shall be registered to vote at

all subsequent town, state, and federal elections.

**654:8 Application to Town or City Clerk.** The provisions of this section shall apply in all cities and in all towns. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk, or to the supervisors of the checklist as provided in RSA 654:11, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall be required to accept applications from such persons under the following conditions:

- I. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.
- II. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.
- III. Such application shall be made during the regular office hours of the town or city clerk.

**654:8-a Voter Registration in Cities.**

I. Any person qualified as a voter in a city whose name does not appear on the checklist where registration is required because the voter's voting domicile has changed from one ward in the city to another ward in the same city, and who is otherwise registered to vote in the election, may change voter registration at the office of the city clerk. A change in voter registration under this section shall be made no later than the final date set for correcting the checklist in the city. The city clerk shall require the voter to provide acceptable proof of identification and acceptable proof of domicile.

II. Upon compliance with the procedures in paragraph I, the city clerk shall notify the supervisors of the checklist of the proper polling place directing that the voter be added to the checklist and be permitted to cast a ballot.

**654:9 Forms to be Forwarded.** The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the registration forms of all persons making application to the clerk since the previous meeting of said supervisors.

**654:10 Repealed by Chapter 287 Laws of 1992.**

**654:11 Application to Supervisors.** When the supervisors of the checklist receive a registration form from the town or city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his or her name to be added to the checklist, unless it is established that it is more likely than not that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof.

**RSA 654:12, III Determining Qualifications of Applicant; Identity; Verification.**

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship, age, and domicile, as provided in the following categories:

(a) **CITIZENSHIP.** The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship:

the applicant's birth certificate, a passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Ch. 300 (SB403), Eff. 9/1/06, NEW

III. To prove the qualifications set forth in paragraphs I and II, an applicant for registration as a voter must prove his or her identity to establish that the evidence used to prove age, citizenship, and domicile relate to the applicant. A person who has in his or her immediate possession a photo identification approved for use by paragraph II must present that identification when applying for registration. A person who does not have an approved photo identification with him or her may establish identity through any reasonable means, including, but not limited to: photo identification not approved by paragraph II, but determined to be legitimate by the supervisors of the checklist or clerk, verification of the person's identity by another person registered as a voter and known to the supervisor or clerk, or completion of the affidavit to be completed by a challenged voter. Residents of a nursing home or similar facility may prove their identity through verification of identity by the administrator of the facility or by his or her designee. For the purposes of this section, the application of a person whose identity has been verified by an official of a nursing home or similar facility shall be treated in the same manner as the application of a person who proved his or her identity with a photo identification.

IV. Any person who is applying for registration as a voter and who is currently registered to vote in a different town or ward in New Hampshire shall complete the voter registration form provided for in RSA 654:7. If the election official receiving the application confirms through the centralized voter registration database required by RSA 654:45 that the applicant is currently registered to vote in New Hampshire, the applicant shall prove identity and domicile, but shall not be required to prove his or her age or citizenship.

V. (a) The election official approving the application for registration as voter of a person who does not present an approved form of photo identification as proof of identity when registering, shall mark the voter registration form to indicate that no photo identification was presented. The person entering the voter information into the centralized voter registration database shall determine if the person is listed in the system as having been previously registered in the town or ward reported by the applicant on the voter registration form. If the person is a new registrant who has not been previously registered anywhere in New Hampshire or if the centralized voter registration database does not confirm a previous registration claimed on the voter registration form, the election official shall cause the record created in the centralized voter registration database to indicate that the person is a new applicant in New Hampshire and that no photo identification was presented. When municipalities enter information on people who register on election day into the centralized voter registration database, to the extent practical applicants who are registering for the first time in New Hampshire and who also register without presenting an approved photo identification shall be entered first.

(b) The secretary of state shall cause a letter of identity verification to be mailed by first class mail to each voter identified at a state general election as a first-time election day registrant in New Hampshire who also did not verify his or her identity with an approved photo identification. The letter shall be mailed within 90 days after the general election.

The secretary of state shall mark the envelope with instructions to the United States Post Office not to forward the letter and to provide address correction information. The letter shall notify the person that a person who was unable to present photo identification registered or registered and voted using his or her name and address and instruct the person to contact the attorney general immediately if he or she did not register and vote.

(c) The secretary of state shall cause any letters mailed pursuant to subparagraph (b) that are returned as undeliverable by the United States Post Office to be referred to the attorney general. Upon receipt of notice from a person who receives a letter of identity verification that the person did not register and vote, or upon receipt of a referral from the secretary of state, the attorney general shall cause an

**659:30**

**(b) AGE.** Any reasonable documentation indicating the applicant is 18 years of age or older.

**(c) DOMICILE.** Any reasonable documentation which indicates that the applicant has a domicile and intends to maintain a domicile, as defined in this chapter, in the town, city or ward in which he or she desires to vote, or if the applicant does not have reasonable documentation in his or her possession at the place and time of voter registration, an affidavit in the following form:

**659:30**

II. The supervisors may refuse to add the name of an applicant to the checklist if he or she fails to present the evidence or an affidavit as required by this section. Without limiting the acceptance of other forms of proof of domicile or identity deemed reasonable by the supervisors:

(a) Any one of the following documents is presumptive evidence that the individual seeking to vote meets the domicile requirement, provided the document is currently valid, was issued to or in the name of the applicant, and shows the address the applicant claims as a domicile:

- (1) New Hampshire driver's license.
- (2) New Hampshire vehicle registration.
- (3) Armed services identification, or other photo identification issued by the United States government.

(b) Any one of the following is presumptive evidence of the identity of an applicant sufficient to satisfy the identity requirement for an official authorized by RSA 659:30 to take the oath of an applicant swearing to a citizenship, domicile, or election day affidavit:

- (1) Photo driver's license issued by any state or the federal government.
- (2) United States passport, armed services identification, or other photo identification issued by the United States government.
- 3) Photo identification issued by local or state government.

(c) The presumptions established in this paragraph may be defeated by evidence establishing that it is more likely than not that the applicant is not qualified as a voter.

**654:13 Action by Supervisors.**

I. If the supervisors decide to add the name of the applicant to the checklist, then they shall retain the original of the registration form for their own file, forward one copy to the supervisors of the checklist of the city or town of the applicant's last voting address if said address is in the state of New Hampshire, Vermont, Maine, Massachusetts, Connecticut or Rhode Island, and send another copy to the clerk of their town or city.

II. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification in writing to the applicant within 7 days stating the reason for the denial. They shall write the word "REJECTED" and the date of rejection across the registration form. They shall retain the original in a separate file for proof that such an application was made.

**654:14 Complaint to Superior Court.** Any applicant may file, as provided in RSA 654:42, a complaint with the superior court stating that his name has been illegally kept from the checklist and asking to have his name added thereto for the reasons stated in the complaint.

**654:15 Party Registration.** Whenever names are added to the checklist the supervisors shall register the party membership of the voter if he desires such membership registered. The party membership of each voter may be registered by writing in ink, printing, or rubber stamping after the name of such voter the first 3 letters of the name of the party with which he registers.

### **Absentee Voter Registration**

**654:16 Applicability.** Any person who has his domicile in any town or city in this state and is qualified to vote therein at the next subsequent election to be held in said town or city except for the fact that his name does not appear on the checklist to be used at the election, and who is temporarily absent therefrom or who by reason of physical disability is unable to attend a meeting of the supervisors of the checklist, may cause his name to be added to such checklist by applying to the city or town clerk or the secretary of state for a voter registration form provided for in RSA 654:7 and an appropriate absentee registration affidavit provided for in RSA 654:17.

### **654:17 Absentee Registration Affidavit.**

I. The absentee registration affidavit shall be prepared by the secretary of state and shall be in substantially the following form...

**654:18 Forwarding.** The voter registration form and the absentee registration affidavit shall be forwarded directly to the applicant by the city or town clerk or by the secretary of state.

**654:19 Submission; Effect.** The applicant shall forward the absentee registration affidavit and the applicant's registration form to the clerk of the town or city named for submission to the supervisors of the checklist. If the supervisors find that the affidavit and the voter registration form are properly executed, they shall follow the procedure for applications made in person as provided in RSA 654:11, 654:13, and 654:15, except that in the case of an absentee voter they shall accept an absentee registration affidavit and a registration form. An affidavit which is properly executed shall be considered valid and shall be effective for both a primary and a general election for armed services voters and for absent voters who reside outside the continental United States.

Overseas Citizens Voting: Federal Elections Only

**654:20 Affidavit.** Any person qualified to vote as an overseas voter in a city or town as provided in RSA 654:3 because he or she is domiciled outside the United States, may apply to the city or town clerk or to the secretary of state for an overseas citizens federal election absentee registration affidavit. Such affidavit shall be prepared by the secretary of state and shall be in substantially the following form...

**654:21 Forwarding.** Each such affidavit shall be directly forwarded to the applicant by the city or town clerk or by the secretary of state.

**654:22 Repealed by Laws of 1988.**

**654:23 Effect.** Unless the supervisors of the checklist shall be of the opinion that the applicant does not qualify as an overseas voter in the city or town as provided in RSA 654:3, domiciled outside the United States, they shall, at their next session for the correction of the checklist subsequent to their receipt of such affidavit properly executed, cause his name to be added to the checklist together with a mark or sign clearly indicating that the applicant has been entered on the checklist for the purpose of voting in federal elections only. Thereafter, such person shall be entitled to vote by overseas citizens absentee ballot at both federal primary and general elections. If the supervisors decide not to add the name of the applicant to the checklist, they shall send notification to the applicant in writing within 7 days stating the reason for that denial.

**Voters in Unincorporated Places**

**654:24 Registration.** Domiciliaries of unincorporated places shall register to vote as provided in RSA 668.

**Checklists: All State Elections**

**654:25 Preparing Checklist.** The secretary of state shall issue and distribute guidelines for the composition and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which will be maintained and updated by the supervisors. The secretary shall establish standard forms and procedures for the use of the supervisors for the maintenance of such information. The information to be maintained and updated shall include the full name, address, and party affiliation, if any, of each voter on the checklist and such other information as the secretary requires. Every checklist used at any election shall contain the full name, address, and party affiliation, if any, of each voter on the checklist. The name and address of a voter shall not appear on the checklist at the request of the voter if the voter presents to the supervisors of the checklist a valid protective order pursuant to RSA 173-B. The name, address, and mailing address, if different, of such a voter shall be maintained on a separate list of voters, which shall be nonpublic. If it is necessary to establish such a nonpublic list, the public checklist shall be marked at the end with a notation of the number of voters whose names are maintained on the nonpublic list.

**II. Repealed**

**654:26 Posting Checklist.** The supervisors shall make and post copies of the current checklist at the office of the town or city clerk or at the town hall not later than the fourth Tuesday before the day of any state election.

**654:27 Session for Correction.** In cities and towns, the supervisors of the checklist shall be in session for the correction of the checklist at some suitable place in the city or town on the Saturday 10 days prior to the election and upon which all hearings shall be finally closed; provided that if the Saturday falls on a holiday weekend, that session shall be held on Tuesday, 7 days prior to the election, between 7:00 p.m. and 7:30 p.m. and at the discretion of the supervisors for extended hours. Notice of the day, hour, and place

of each session of the board of supervisors shall be given upon the checklists first posted and shall be published in a newspaper of general circulation in the city or town at least 7 days prior to each such session. The reconvening of any session which has been adjourned shall not require the publication of notice.

**654:28 Procedure.** The supervisors of the checklist shall hear all applications for a correction of the checklist and the evidence submitted thereon and shall correct it according to their best knowledge so that it contains only the names of those persons qualified to vote at said election. The names of all persons not qualified to vote at the time of any session, but who shall clearly be qualified to vote on election day, may be added to the checklist at that session. The session which is held on the Saturday 10 days prior to election day shall be held as a minimum requirement between 11:00 a.m. and 11:30 a.m. and at the discretion of the supervisors for additional hours. No additions or corrections shall be made after the Saturday session, except as provided in RSA 659:12, or RSA 654:27, provided, however, that if the Saturday falls on a holiday weekend, that session shall be held on Tuesday, 7 days prior to the election, between 7:00 p.m. and 7:30 p.m. and at the discretion of the supervisors for extended hours. The additions and corrections resulting from such session shall be made to the previously posted checklist on or before midnight on the succeeding Friday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions or corrections to the checklist shall also be given to the town or city clerk.

**654:29 Certification of List.**

I. The supervisors shall subscribe and make oath to the following certificate on the checklist, as corrected by them: We, the supervisors of the checklist of the town (or ward) do solemnly swear that, according to our best knowledge, the within list contains (number) names of those persons only who are, by actual domicile, legal voters in said town (or ward).

II. They shall file 2 true copies of the corrected list, attested by them, with the town clerk. The checklists so corrected shall be used at the election. Any person who swears falsely in making such certificate shall be guilty of perjury.

**654:30 Correcting Data Files.** After each state election, the supervisors shall use the checklist from such election to correct the standard data files to conform to any changes which are evident from the checklist. Information from the voter registration data file shall be available as provided in RSA 654:31-a.

**654:31 Availability of Checklist.** The checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors shall furnish one or more copies of the most recent checklist to any person requesting such copies. If the supervisors maintain or have access to the checklist or information from which the checklist was derived in more than one form, the person requesting copies shall be furnished copies in any of those forms according to his preference. The supervisors may charge a reasonable fee for copies that is based on the actual costs incurred when reproducing an existing checklist, except that in no event shall the fee for paper copies of any single town or ward checklist be less than \$5 nor more than \$25 per checklist. The fee charged for checklists on computer disk or tape, or in any form other than paper, shall be based solely on the additional costs incurred to provide such checklist to the individual requesting it. The fee shall be for the use of the town or city.

Ch. 305 (HB1238)

Eff. 8/18/06  
amended

I. In this section:

- (a) "Checklist information" means the data, in any form, required to be placed on the public checklist by RSA 654:25, when that data is obtained or derived from a checklist or from the statewide centralized voter registration database maintained by the secretary of state.
- (b) "Commercial purposes" means knowingly using, selling, giving, or receiving the checklist information for the purpose of selling or offering for sale any property or service unrelated to an election or political campaign.
- (c) "Nonpublic checklist" means the checklist bearing the names of voters who by law are entitled to have their status as a voter kept nonpublic.
- (d) "Public checklist" means the checklist required by RSA 654:25 which contains the names of voters who by law are to be listed on a checklist available to the public in accordance with the restrictions established by this section.

II. In towns and cities, the public checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors of the checklist shall furnish one or more copies of the most recent public checklist of their town or city to any person requesting such copies. The supervisors of the checklist may only provide checklist information for their town or city. The supervisors of the checklist may charge a fee of up to \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist may charge a fee of up to \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.

III. Any person may view the data that would be available on the public checklist, as corrected by the supervisors of the checklist, on the statewide centralized voter registration database maintained by the secretary of state at the state records and archives center during normal business hours, but the person viewing data at the state records and archives center may not print, duplicate, transmit, or alter the data. The secretary of state may only provide copies of the most recent public checklist to a political committee of a political party as defined in RSA 664:2, V, or to a candidate who has filed for consideration for any office in any primary or general election or who has been nominated for any office in a general election. The secretary of state may not provide public checklists of less than the entire state. The secretary of state may charge a fee of up to \$25 plus \$0.50 per thousand names or portion thereof in excess of 2,500 plus shipping charges for each copy of the statewide public checklist. The secretary of state may provide public checklists as prescribed in this section on paper, computer disk, computer tape, electronic transfer, or any other form.

IV. Fees collected by the secretary of state under this section shall be deposited in the election fund established pursuant to RSA 5:6-d. Fees collected by a town or city under this section shall be for the use of the town or city.

V. No person shall use or permit the use of checklist information provided by the secretary of state for commercial purposes. Whoever knowingly violates any of the

provisions of this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

VI. This section shall not be construed to restrict the transfer of checklist information to the state or federal courts as required by RSA 654:45 for any lawful purpose.

**RSA 654:31-a Right to Know Exemption.**

Ch. 94 (HB391), Eff. 7/8/06, Amended

**AND**

Ch. 305 (HB1238), Eff. 8/18/06, Amended

The information contained on the checklist of a town or city, specifically, the name, street address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, citizenship and domicile affidavits, and application for absentee ballot shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Notwithstanding the foregoing, citizenship and domicile affidavits are public records subject to RSA 91-A for the sole purpose of challenging an individual registering to vote or voting, challenging ballots to be recounted, to the extent that such ballot challenges are specifically authorized by law, or determining the accuracy of any citizenship or domicile affidavit. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, citizenship and domicile affidavits, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of the specific individuals who are the subject of the investigation or prosecution.

**Checklists: Additional Provisions for Primary Elections**

**654:32 Hearings on Alterations to Party Registration.** Before each state or presidential primary election, the supervisors of the checklist shall be in session before each primary for the change of registration of legal voters as provided in RSA 654:34 or 654:34-a or both. Before the presidential primary, the session shall be on the Friday preceding the first day of the filing period, between 7:00 p.m. and 7:30 p.m. and at the discretion of the supervisors for extended hours. Before the state primary election, the session shall be on Tuesday before the first Wednesday in June between 7:00 p.m. and 7:30 p.m. and at the discretion of the supervisors for extended hours.

**654:33 Posting Copies; Notice of Sessions.** The supervisors shall post copies of the checklist, showing the persons in the town or ward entitled to vote, with their party registration, so far as such registration has been made, at the office of the town or city clerk or at the town hall at least 10 days prior to any session provided for in RSA 654:32; and notice of the date, hour and place of the session or sessions to revise such registration shall be given upon such checklist.

**654:34 Change of Registration.**

I. Change of registration of a voter whose party membership has been previously registered.

(a) Any legal voter whose party membership has been registered may change such registration by appearing in person before the supervisors of the checklist for his town or ward any time they meet, except as prohibited by paragraph IV, and stating to them under oath or affirmation, if required, that:

(1) He intends to affiliate with and generally supports the candidates of the party with which he offers to register, in which case he shall be registered as a member of such party; or

(2) He does not wish to be registered as a member of any party, in which case his party designation shall be removed from the checklist.

(b) He may also change such registration at any primary, upon making oath or affirmation to the same effect, but he shall not be permitted in such case to vote the ballot of any party at such primary.

II. Change of registration of a voter who has been registered as an undeclared voter.

(a) Any legal voter who has been registered as an undeclared voter may register as a member of the party of the voter's choice by appearing before the supervisors of the checklist for the voter's town or ward any time they meet, except as prohibited by paragraph IV, and stating to them, under oath or affirmation, if required, that the voter intends to affiliate with and generally supports the candidates of the party with which the voter offers to register, in which case the voter shall be registered as a member of such party.

(b) A voter may also register as a member of a party at any primary by requesting to be registered as a member and voting the ballot of the party of the voter's choice. A voter may also register once again as an undeclared voter after voting in a primary as a registered member of a party by returning the card provided for in paragraph V to the person at the polls designated by the town or city clerk to accept the card. All such cards shall be in the possession of the supervisors of the checklist at the close of the polls on election day.

III. Notwithstanding any provision of paragraphs I and II to the contrary, no person who has voted in a primary may thereafter on the day of said primary change the person's party registration, unless, prior to voting in the primary, the person was registered as an undeclared voter, in which case the person may once again register as an undeclared voter, as provided in subparagraph II(b).

IV. No person, who is already registered to vote, whether his party membership has been previously registered or not, shall affiliate with a party or disaffiliate from a party between the first Wednesday in June and the day before the state primary election.

V. (a) At any primary, the supervisors of the checklist shall make available within the polling place a card to enable a voter who was registered as an undeclared voter but who changed registration on the day of the primary in order to vote as a registered member of a party to change registration so that the voter is registered once again as an undeclared voter. The card shall be in substantially the following form...

(b) The supervisors of the checklist, upon receipt of such a card, shall keep it until their next session of supervisors of the checklist for changing party registration at which time the sender's party registration shall be changed as indicated on the card.

**654:34-a Application to Town or City Clerk; Changes to Be Forwarded.**

I. A town or city shall permit changes in party affiliation to be registered with a town or city clerk.

II. In addition to the methods of changing party affiliation provided in RSA 654:34, any

person whose name appears on the checklist of a town or ward may apply to the town or city clerk for the purpose of having his party affiliation changed. A person desiring to change his party affiliation shall state to the town or city clerk under oath or affirmation that:

(a) He intends to affiliate with and generally supports the party with which he offers to register; or

(b) He does not wish to be registered as a member of any party.

III. No application for a change of party affiliation shall be accepted on the day of a primary election, except as provided in RSA 654:34, I and II.

IV. Any application made under the provisions of this section shall be made during the regular office hours of the town or city clerk.

V. Town and city clerks shall have the power to administer oaths to the applicants that appear before them for the purposes of this section.

VI. Any application made under the provisions of this section shall be signed and dated by the applicant.

VII. The town or city clerk shall present to the next meeting of the supervisors of the checklist, in accordance with the checklist guidelines as provided by RSA 654:25, the name of any person who made application to him for a change of party affiliation and the name of the party with which he desires to be affiliated or that he desires to be affiliated with no party. The supervisors of the checklist shall cause the party affiliation of the applicant to be changed on the checklist. Any change submitted which is prohibited by the provisions of RSA 654:34, IV, shall be retained by the supervisors; and the change shall be made as soon as permitted by law.

### **654:34-b Repealed by Chapter 287, Laws of 1992**

**654:35 Corrected List.** After a pre-primary session, the supervisors shall prepare a corrected checklist showing the registration of party members as corrected by them; and such checklist with the corrections that shall have been made in the sessions provided for in RSA 654:27 through 654:32 shall be used at the primary.

### **Periodic Maintenance and Verification of Checklists**

**654:36 Reports of Transfer.** If the supervisors of the checklist have received a notice of transfer from another board of supervisors of the checklist in the state of New Hampshire that a voter whose name is on the checklist has been added to the checklist of some other town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. They shall retain the notice as proof of their reasoning in striking the name from the checklist.

Ch. 243 (HB 1567), Eff 7/31/06, NEW

**RSA 654:36-a Request to Correct the Checklist.** I. A supervisor of the checklist, the town or city clerk, or any other person, may submit a request for correction of the checklist to the supervisors of the checklist or to the town or city clerk based upon evidence that a person listed on the checklist is not qualified as a voter in the town or ward. The clerk shall forward requests for correction of the checklist to the supervisors of the checklist. At the next session of the supervisors, they shall examine the requests and determine whether or not it is more likely than not that the person's qualifications are in doubt.

II. If the supervisors of the checklist determine that it is more likely than not that the person's qualifications are in doubt, they shall send a notice to the person and afford the person at least 30 days to provide proof of his or her qualifications. If the person fails to

respond to the 30-day notice or responds but fails to provide proof that establishes that it is more likely than not that the person is qualified to vote in the town or ward, the person's name shall be removed from the checklist.

**RSA 654:36-b Reports of Change of Address.** If the supervisors of the checklist receive a report from the United States Postal Service or the department of safety directly or as communicated by the secretary of state through the centralized voter registration database that a voter has permanently changed his or her address to another town, city, or state, they shall strike that name from the checklist at the next session for the correction of the checklist. As an alternative, the supervisors of the checklist may first send a 30-day notice letter and then shall remove the name from the checklist if the voter does not respond to that notice.

**654:37 Reports of Death.** Whenever there is filed in his office an official notice of the death of any person or persons of the age of 18 years or over, the town or city clerk shall notify the supervisors of the checklist of said deaths by submitting a notice of same to the supervisors at their next regular meeting. Upon receipt of such notice, the supervisors shall examine the checklist; and, if the name of said deceased person appears thereon, it shall be removed prior to the next election. Any supervisor who shall neglect or refuse to erase the name of such deceased voter from the checklist after receiving such notice from the town or city clerk shall be guilty of a violation.

**654:38 Time for Verification of Checklists.** On petition of 50 registered voters or 5 percent of the registered voters in any town or ward, whichever is less, or on petition of a majority of the board of supervisors of the checklist filed with the secretary of state no later than the fifth Friday after a state election, the ballot law commission shall conduct an investigation to determine whether or not there should be a revision and verification of the checklist of said town or ward. At least one public hearing duly advertised in a newspaper of general circulation in said town or city shall be held by the commission at such time and place it may determine. In the event of an affirmative decision, the commission shall direct the supervisors to revise and verify such checklist. Thereupon the supervisors shall revise and verify such checklist in the following manner:

I. Between April 1 and August 1 in the next even-numbered year, the supervisors shall advertise notice of their sessions at least twice in a newspaper of general circulation in the town or city and hold sufficient sessions for verification of the checklist as in their opinion will enable all eligible voters in said town or ward to appear before them and register or reregister as the case may be. Whenever a person is reregistered, his party designation, if any, on the checklist undergoing revision shall not be changed except as provided in RSA 654:34.

II. Beginning June 1, and not later than 60 days thereafter, the supervisors shall review the checklist and shall strike therefrom the names of all persons who have not registered or reregistered under paragraph I of this section; provided that there shall not be stricken from said checklist the name of any person duly qualified to vote unless such person shall, not less than 30 days prior to such action, have been sent notice by the supervisors at his last known address of his failure to reregister stating the procedure to be followed in order to reregister and have his name retained on said checklist nor unless such person shall have been given a reasonable opportunity to follow said procedure.

III. Upon completion of verification of the checklist, but, in no event later than September 1, the supervisors shall file with the secretary of state the following certificate: We, the supervisors of the checklist of the town (or ward ) of \_\_\_\_\_, do hereby certify that we have verified the checklist of registered voters in the town (or ward of the city) of

as directed by the ballot law commission.

IV. In verifying the checklist in accordance with the provisions hereof, the supervisors shall not register or reregister any person unless he is a duly qualified voter as required by the provision of RSA 654:1 - 654:6.

V. The supervisors may appoint such temporary assistant supervisors as may be necessary, but who shall have none of the powers and duties of supervisors. As compensation for services performed hereunder, the supervisors and assistant supervisors shall receive such sums as may be voted by the city government or town meeting of the city or town in which they serve.

**654:39 Verification Every Ten Years.**

I. In addition to any verification carried out under the provisions of RSA 654:38, the supervisors shall verify the checklist in 1981 and once every 10 years thereafter.

II. Between April 1 and August 1 of 1981 and thereafter in each year ending with a one, the supervisors shall advertise and post notice of their sessions at least twice in a newspaper of general circulation and at the office of the town or city clerk or at the town hall and hold sufficient sessions for verification of the checklist as in their opinion will enable all eligible voters in said town or ward to appear before them and register or reregister as the case may be. Whenever a person is reregistered, his party designation, if any, on the checklist undergoing revision shall not be changed except as provided in RSA 654:34.

III. Beginning June 1 of such year, the supervisors shall review the checklist and shall strike therefrom the names of all persons who have not registered or reregistered under paragraphs I and IV; provided, that there shall not be stricken from said checklist the name of any person duly qualified to vote unless such person, not less than 30 days prior to such action, shall have been sent notice by the supervisors at his last known address of his failure to reregister stating the procedure to be followed in order to reregister and have his name retained on said checklist nor unless such person shall have been given a reasonable opportunity to follow said procedure.

IV. For the purpose of this section, a person shall be deemed reregistered and need not appear before the supervisors if:

(a) The person voted in either of the 2 previous state general elections immediately preceding a 10-year verification; or

(b) The person voted in the annual town election in the year of a 10-year verification or, if in a city, the most recent regular city election held prior to the verification.

V. Upon completion of verification of the checklist, but in no event later than September 1, the supervisors shall file with the secretary of state the following certificate: We, the supervisors of the checklist (or registrars of voters) of the town (or ward \_\_\_\_ ) of , do hereby certify that we have verified the checklist of registered voters in the town (or ward of the city) of \_\_\_\_\_, pursuant to the provisions of RSA 654:39.

VI. In verifying the checklist in accordance with this section, the provisions of RSA 654:38, IV and V shall apply.

**Checklists: Special Provisions**

**654:40 Checklist for Additional Polling Place.** In towns which have established an additional polling place as provided in RSA 658:10, a separate checklist shall be prepared as provided in RSA 658:12.

**654:41 Checklists for Unincorporated Places.** Checklists for voters in unincorporated places shall be prepared and corrected as provided in RSA 668.

**654:42 Complaint to Superior Court.** Any citizen of the state may, in term time or vacation, file a complaint with the superior court stating that his name is illegally kept from or his name or that of some other citizen is illegally placed upon the checklist of a town or ward and the facts upon which the complaint is based. Said complaint shall be deemed sufficient if it sets forth the basis of the complaint and may be filed by the complainant with the clerk of court or any justice thereof. The complainant may appear with or without counsel. Thereupon, the presiding justice in term time, or any justice of the superior court in vacation, shall order that a copy of the complaint be served on the supervisors of the checklist of the town and on the citizens other than the complainant named in the petition and shall set a time and place for an immediate hearing. The justice hearing the case may order the name of the voter concerning whom the complaint is made to be added or removed from the checklist as justice requires, and his decision shall be final on questions of fact as in equity cases.

**654:43 Penalty for Failure to Keep Correct List.** The supervisors of the checklist shall be guilty of violations if the supervisors at any session held for the correction of the checklist, on receiving satisfactory evidence:

- I. Shall neglect or refuse to strike from the list the name of any person who is not a legal voter; or
- II. Shall neglect or refuse to insert on the list the name of any person who is a legal voter; or
- III. Shall neglect or refuse to hear or examine any evidence offered for such purpose in either of these cases under paragraph I and II; or
- IV. Shall at any time knowingly insert on the list the name of any person not a legal voter; or
- V. Shall knowingly strike out therefrom or omit to insert the name of any legal voter.

**654:44 Removing Names from Checklist; Notice Required.**

I. The supervisors shall remove no person's name from the checklist of their town or ward unless they shall send notice by mail to the last known address of the person whose name they wish to remove from the checklist stating the reason they are considering removing such person's name from the checklist. Such notice shall also state the time and the place at which the supervisors shall meet to consider the removal of that person's name and shall give the date of such meeting which shall be at least 30 days after they send such notice. At such meeting, the person whose name the supervisors wish to remove shall have a chance as he wishes to state in person or to present in writing personally, or by mail or other messenger, or by any such combination of these as he chooses, the reasons why his name should be left on the checklist. The supervisors shall not remove a person's name from the checklist until after the completion of the written or oral statement, if any, of the person whose name they wish to remove from the checklist at the meeting held at least 30 days after they sent the notice this section requires. The supervisors shall keep records as proof of compliance with this paragraph.

II. The provisions of this section do not apply to the removal of the names of persons for whom the supervisors have received a report of transfer or death as provided in RSA 654:36 or 654:37, nor to the removal of names during the period for verification of the checklist as provided in RSA 654:38 or 654:39, nor to the removal of names of persons for whom they have received a notice from a duly authorized board of registration from a community outside New Hampshire stating that a person whose name is on the checklist of the town or ward in New Hampshire has registered to vote outside New Hampshire.

**RSA 654:45 Centralized Voter Registration Database.**

I. The secretary of state is authorized to plan, develop, equip, establish, site, and maintain a statewide centralized voter registration database and communications system, hereinafter referred to as the voter database, connecting users throughout the state. The voter database shall include the information on the voter registration form and the voter checklists maintained by each city, ward, and town in the state.

II. Any election official in the state authorized by this chapter to have direct access to the voter database may obtain immediate electronic access to the information contained in the voter database related to individuals registered or registering to vote in the election official's jurisdiction. The office of the clerk is hereby designated as a database access point for each town or city. The secretary of state may authorize additional database access points in a town or city, including election day access points at polling places.

III. The voter database shall, upon certification by the secretary of state, be the official record of eligible voters for the conduct of all elections held in this state.

IV. (a) The voter database shall have the following minimum components:

(1) An electronic communications system that provides access for election officials from at least one point in each city and town within the state.

(2) An interactive computer program allowing local election officials access to records contained in the database with a process to add, delete, modify, or print a voter registration record related to the election official's jurisdiction. The system shall be designed so that there can be regular updates to the database, the records reflect the name of each registered voter with no duplication, and the names of ineligible voters are removed. The system shall contain safeguards to ensure that the names of properly registered voters are not removed in error.

**NEW. Ch. 266; 2003, (HB 577) 7/15/03**

(b) Voter database record data shall be verified by matching the records with those of the department of safety and the federal social security administration as are required by law, and with the records of the state agency or division charged with maintaining vital records. For this purpose the voter registration record database may be linked to the state agency or division charged with maintaining vital records and the department of safety, provided that no linked agency or division may save or retain voter information or use it for purposes other than verifying the accuracy of the information contained in the voter database. The link authorized by this subparagraph shall not allow the department of state or election officials direct access to the motor vehicle registration or driver's license records maintained by the division of motor vehicles. The commissioner of safety may authorize the release of information from motor vehicle registration and driver's license records to the extent that the information is necessary to department of state and department of safety cooperation in a joint notification to individuals of apparent discrepancies in their records and to the extent that the information is necessary to resolve those discrepancies. The commissioner of safety and the secretary of state are authorized to enter into an agreement that establishes the services to be provided by the department of safety and the cost for those services. The department of safety shall not be required to provide any services under this subparagraph unless an agreement is in place and there are sufficient funds in the election fund to pay the cost for the services. The system shall facilitate the identification and correction of voter registration records whenever a registered voter has died or has been disenfranchised pursuant to part I, article 11 of the New Hampshire constitution or RSA 654:5 through RSA 654:6, or when the domicile address does not match the address provided by the same individual to the department of safety.

(c) Access by local election officials to the voter database shall be limited to the

supervisors of the checklist, city registrars and deputy registrars, and town or city clerks and their deputies, as determined by the secretary of state. Access by local election officials shall be subject to the limitations of paragraph VI, and shall be limited to the records of individuals who are currently registered to vote in the official's jurisdiction and individuals who are applying to register to vote in the official's jurisdiction.

V. The secretary of state shall:

(a) Specify the employees of the department of state authorized to access records contained in the voter database, subject to the limitations of paragraph VI.

(b) Provide adequate technological security measures to deter unauthorized access to the records contained in the voter database.

(c) Issue guidelines to implement the voter database.

VI. The voter database shall be private and confidential and shall not be subject to RSA 91-A and RSA 654:31. The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor.

# AFTERWORD

## What's at Stake

In our country today, the news is filled with stories of electoral problems. Machines routinely break down, vendors don't meet their obligations, and challenges to election results are becoming a routine occurrence.

Currently proposed national legislation could strip away much of our state and local controls over the administration of our own elections. Proponents of federal oversight point to the many problems that are rampant in different election systems throughout the nation. They forget that many of these problems were caused by national election reforms to begin with, such as the Help America Vote Act of 2002, which promoted and paid for the proliferation of the computerized and privatized voting equipment that is now so prevalent in the nation.

In New Hampshire we have always prided ourselves on our exemplar election system, but we are not exempt from the problems that other states are facing. Most of our ballots are being counted by the same problematic equipment being used throughout the country.

It is up to us, to all of us, to secure a defensible election system for the Granite State; a system that not only upholds the integrity of the vote, but is defensible against legal challenges or any rationale for federalization that would cause us to effectively lose our own state and local controls over New Hampshire elections.

On the ground defensible systems are those that can withstand challenges because they withstand the test of integrity.

We accomplish this by working together as citizens, voters, candidates, election officials, election workers, and community volunteers.

## The Electoral Train Wreck

Many citizens concerned about election integrity today refer to the coming electoral "train wreck." They point to the system failures that have occurred already and which they predict will continue to occur.

If we are indeed on an electoral train wreck, and there are plenty of signs to support that metaphor, we have some choices as to how we want to respond.

1. We can sit on the train as it roars down the tracks until it comes to a crashing, screeching halt.
2. We can spread the news like wildfire around the nation as an all points bulletin and demand action on a grand scale.
3. We can feed the boiler, repair the railroad ties, and lend the engineers a hand.

There are consequences to each of these actions.

With Number 1 we contribute to bringing the election system to a complete and total halt.

With Number 2 we “get out the word,” producing both positive and negative results. The most troubling of the negative results being that we ring out the alarm so loud and so hard that we effectively “call in the troops.” We invite the federal government to take over and straighten out the mess, and, like Italy in pre-World War Two, we demand that the government—as is said of Mussolini—gets our trains running on time and on schedule with an unparalleled efficiency. But by pushing for reforms that will bring us an election system with maximum “efficiency,” we end up with a system the actual nature of which may be more conducive to Mussolini’s Italy than our vision of an American democracy.

With Number 3 we do whatever we can to keep the trains running—even with some problems—because without them we are lost.

As Granite Staters and as patriotic Americans, we can all work towards option #3. Let’s do whatever it takes to secure our New Hampshire elections. Let’s get off this train wreck and start feeding the boilers, repairing those railroad ties, and lending the engineers—our good and honest election workers—a hand.

## **Learn More and See Hand Counting in Action**

To learn more, please contact us to receive a CD that shows the two typical ballot counting methods used for hand counting, as filmed in Election 2004 in the New Hampshire towns of Lyndeborough, Walpole, and Wilton, as well as a statewide recount conducted in Concord by the New Hampshire Secretary of State.

To download these videos, go to the Democracy for New Hampshire website at: <http://www.democracyfornewhampshire.com/node/view/2648>

To order the DVD, please email your request to [fec@democracyfornewhampshire.com](mailto:fec@democracyfornewhampshire.com).

## **Bring the “Parties” Back to the Polling Places**

In 2005, an experiment was launched in New Hampshire to see how voter turnout could be expanded by celebrating the election. This wonderful study can be found online, and the source is listed below. Here is an excerpt:<sup>21</sup>

A century and a half ago, casting a vote was a celebratory experience, as voters at the polls engaged their friends, imbibed free booze, listened to lively entertainment, and generally had a good time. Americans have lost touch with the raucous and engaging elections of the past. As historian Richard Benseel points out, by comparison to the elections of the nineteenth century, contemporary polling places have a mausoleum-like atmosphere (Benseel, 2004).

Our polling places have been drained of their celebratory elements, and the 90%-plus rates of voter turnout that accompanied them have disappeared from our collective consciousness. But the disappearance of festive elections is felt in ways that go beyond diminished rates of voter turnout. Like other aspects of community life, poignantly described by Robert Putnam (Putnam, 2000), the community ties that elections once provided are gone. Certainly, working on a campaign brings people

together, but rarely does campaigning bring together the community as a whole. Indeed, campaigns often split communities apart, sometimes in ways that have long-range implications. It is from this starting point that we began to ask about the feasibility of creating a more celebratory and community-focused atmosphere at the polls. Can the festive, social environment surrounding old-fashioned elections be recreated in ways that increase voter turnout? What would it mean to change the polling environment? Would it increase voter turnout? Might it change the orientation of people toward their community?

This report describes the results of a pilot study of the effects of a widely publicized Election Day festival conducted in New Hampshire during its spring 2005 local elections....

The initial results of this pilot project suggest that a well-advertised party at the polls on Election Day may substantially increase voter turnout in a local election. . . .

In addition to increasing voter turnout in the election accompanying the party, the poll party appeared to have the potential for more long-ranging positive spillover effects, which warrant further study. The festivities at the Hooksett polls were enjoyed by scores of children. While these children were too young to vote, they learned that Election Day can be a fun, family-friendly, community activity. During our part, one Hooksett child said that he was having so much fun at the party that he wished every day could be Election Day. If a positive experience with voting at a young age encourages young people to start voting at eighteen, the poll party could play a positive role in increasing youth voter turnout. Future research in the area could track these children and find out if those who grow up in towns with Election Day festivals are more likely to vote once they reach voting age eligibility than children who grow up in towns in the control group.

Some aspects of nineteenth century elections – petty bribes and drunken brawls – are best left in the past. Nevertheless, contemporary America has something positive to learn from its distant past. The question for future discussion and research is whether it is feasible to recreate the festive atmosphere that surrounded these past elections and to do so in a way that only raises turnout in a particular election but also leaves good feelings about elections in general. The encouraging results of this pilot study suggest that the social aspects of voting warrant further investigation.

# NOTES ON SOURCES

**Black Box Voting** ([www.blackboxvoting.org](http://www.blackboxvoting.org)) is a nonpartisan, nonprofit, 501c(3) organization. They are considered the official consumer protection group for elections, funded by [citizen donations](#). Black Box Voting has conducted groundbreaking studies and research on computerized voting systems since 2003.

**The Brennan Center for Justice at New York University School of Law** ([www.brennancenter.org](http://www.brennancenter.org)) states that its mission is to “develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms.”

In 2005, the Brennan Center convened a Task Force of internationally renowned government, academic, and private-sector scientists, voting machine experts and security professionals to conduct a systematic analysis of security vulnerabilities in the nation’s electronic voting systems. The Task Force spent more than a year conducting its analysis and report, of which the methodology, analysis, and text were extensively peer reviewed by the National Institute of Standards and Technology (“NIST”).

For their study, the Task Force “surveyed hundreds of election officials around the country; categorized over 120 security threats; and evaluated countermeasures for repelling attacks. The study examined each of the three most commonly purchased electronic voting systems: electronic machines (“DREs”) with – and without – a voter verified paper trail, and precinct-counted optical scan systems (“PCOS”).”

**The Government Accountability Office (GAO)** ([www.gao.gov](http://www.gao.gov)) is “an agency that works for Congress and the American people. Congress asks GAO to study the programs and expenditures of the federal government. GAO, commonly called the investigative arm of Congress or the congressional watchdog, is independent and nonpartisan. It studies how the federal government spends taxpayer dollars. GAO advises Congress and the heads of executive agencies (such as Environmental Protection Agency, EPA, Department of Defense, DOD, and Health and Human Services, HHS) about ways to make government more effective and responsive. GAO evaluates federal programs, audits federal expenditures, and issues legal opinions. When GAO reports its findings to Congress, it recommends actions. Its work leads to laws and acts that improve government operations, and save billions of dollars.”

**The Voting Systems Technology Assessment Advisory Board (VSTAAB)** is a technology advisory board to the State of California. Early in 2006, California Secretary of State Bruce MacPherson commissioned the Board to study Diebold touch screen and optical scanning machines. The study was conducted by three respected computer scientists (David Wagner, David Jefferson, and Matt Bishop) and their assistants from the University of California in Berkeley.

# SOURCES

<sup>1</sup> New Hampshire State Constitution. Bill of Rights, Article 11.  
<http://www.state.nh.us/constitution/billofrights.html>.

<sup>2</sup> O'Dell, Bruce; Simon, Jonathan. *Little Stat Helper*. 2006.

<sup>3</sup> Zogby Press Release August 23, 2006: "Americans Concerned About Election Transparency and Security". <http://www.zogby.com/news/ReadNews.dbm?ID=1163>.

<sup>4</sup> Michael Collins, New Zogby Poll: *It's Nearly Unanimous*, Scoop News, August 21, 2006,  
<http://www.scoop.co.nz/stories/HLO608/S00220.htm>

<sup>5</sup> Norden, Lawrence D. (Chair) and the Brennan Center Task Force on Voting System Security. *The Machinery of Democracy: Protecting Elections in an Electronic World*. Brennan Center for Justice at NYU School of Law. June 2006. <http://www.brennancenter.org/programs/downloads/SecurityFull7-3Reduced.pdf>.

<sup>6</sup> O'Dell, Bruce; Simon, Jonathan. *Little Stat Helper*. 2006.

<sup>7</sup> Letter Report on Electronic Voting, Committee on a Framework For Understanding Electronic Voting, National Research Council. <http://www.sos.nh.gov/electionsnew.htm>.

<sup>8</sup> New Hampshire Secretary of State Election Procedure Manual 2006, Concord, NH.

<sup>9</sup> Government Accountability Office (GAO). *Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to Be Completed*. September 2005.  
<http://www.gao.gov/new.items/do5956.pdf>.

<sup>10</sup> Hursti, Harri. [BBVreport@hursti.net](mailto:BBVreport@hursti.net). *The Black Box Report, SECURITY ALERT: July 4, 2005: Critical Security Issues with Diebold Optical Scan Design*. July 2005.  
<http://www.blackboxvoting.org/BBVreport.pdf>.

<sup>11</sup> Wagner et al. *Security Analysis of the Diebold AccuBasic Interpreter*. Voting Systems Technology Assessment Advisory Board for the State of California. February 2006.  
[http://www.ss.ca.gov/elections/voting\\_systems/security\\_analysis\\_of\\_the\\_diebold\\_accubasic\\_interpreter.pdf](http://www.ss.ca.gov/elections/voting_systems/security_analysis_of_the_diebold_accubasic_interpreter.pdf).

<sup>12</sup> Norden, Lawrence D. (Chair) and the Brennan Center Task Force on Voting System Security. *The Machinery of Democracy: Protecting Elections in an Electronic World*.

<sup>13</sup> New Hampshire Election Laws Chapter 656. <http://www.sos.nh.gov/rsa656.htm>. All of New Hampshire's election laws can be found online at: <http://www.sos.nh.gov/statutes.htm>.

<sup>14</sup> The New Hampshire Election Procedure Manual. <http://www.sos.nh.gov/electionsnew.htm>.

<sup>15</sup> New Hampshire Election Laws Chapter 658. <http://www.sos.nh.gov/rsa658.htm>. All of New Hampshire's election laws can be found online at: <http://www.sos.nh.gov/statutes.htm>.

<sup>16</sup> Adapted from Black Bow Voting.  
<http://www.bbvforums.org/forums/messages/1954/30499.html>.

<sup>17</sup> Laws specifically relating to purity of elections can be found here:  
<http://www.sos.nh.gov/rsa666.htm>. All of New Hampshire's election laws can be found online here:  
<http://www.sos.nh.gov/statutes.htm>.

<sup>18</sup> Slightly adapted from posting on BradBlog.com. <http://www.bradblog.com/archives/00002928.htm#53>.

<sup>19</sup> Laws specifically relating to recounts can be found here:  
<http://www.sos.nh.gov/rsa660.htm>. All of New Hampshire's election laws can be found online here:

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<http://www.sos.nh.gov/statutes.htm>.

<sup>20</sup> Laws specifically relating to recounts can be found here:

<http://www.sos.nh.gov/rsa654.htm>. All of New Hampshire's election laws can be found online here:  
<http://www.sos.nh.gov/statutes.htm>

<sup>21</sup> Addonizio, Elizabeth; Green, Donald (Yale University) and Glaser, James (Tufts University). *Putting the Party Back into Politics: Results of a Pilot Experiment Designed to Increase Voter Turnout through Music, Food, and Entertainment*. May 2005. <http://www.yale.edu/isps/publications/hooksett.pdf>