

LEGISLATIVE COMMITTEE MINUTES

SB89

Bill as Introduced

SB 89 - AS INTRODUCED

2021 SESSION

21-0999
11/05

SENATE BILL

89

AN ACT adopting omnibus legislation relative to election procedures and registers of probate.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill adopts legislation relative to:

I. The city chief elections officer.

II. Prohibiting the taking of certain photographs within the guardrail.

III. Allowing the opening of the absentee ballot outer envelopes and the preprocessing of absentee ballots.

IV. Establishing a committee to study post election audit counting devices.

V. The duties of the registers of probate.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting omnibus legislation relative to election procedures and registers of probate.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Sponsorship. This act consists of the following proposed legislation:

2 Part I. LSR 21-0999, relative to the city chief elections officer, sponsored by Sen. Gray,
3 Prime/Dist. 6.

4 Part II. LSR 21-1002, prohibiting the taking of certain photographs within the guardrail,
5 sponsored by Sen. Gray, Prime/Dist. 6.

6 Part III. LSR 21-1004, allowing the opening of absentee ballot outer envelopes and the
7 preprocessing of absentee ballots, sponsored by Sen. Gray, Prime/Dist. 6.

8 Part IV. LSR 21-1051, establishing a committee to study post election audit counting devices,
9 sponsored by Sen. Gray, Prime/Dist. 6.

10 Part V. LSR 21-0998, relative to the duties of the registers of probate, sponsored by Sen. Gray,
11 Prime/Dist. 6.

12 2 Legislation Enacted. The general court hereby enacts the following legislation:

13 PART I

14 Relative to the City Chief Elections Officer.

15 1 Chief Elections Officer; City Clerk. Amend RSA 659:9-a to read as follows:

16 659:9-a City [~~Chief Elections Officer Duties~~] **Clerk Uniform Practices.** The city [~~chief~~
17 ~~elections officer~~] **clerk** shall establish uniform practices and procedures that conform to state and
18 federal law for the conduct of elections at all polling places within the city. The moderators and
19 other election officials who conduct elections at the individual polling places within the city shall
20 comply with the uniform procedures established for the city by the city [~~chief elections officer~~] **clerk.**
21 The secretary of state shall resolve any conflicting interpretations of state and federal laws arising
22 between the [~~chief elections officer~~] **city clerk** and other election officials. The legislative body of
23 any city may vote to have the duties of the ward officers relative to the selection and equipping of
24 polling places assigned to the city [~~chief elections officer~~] **clerk.**

25 2 Repeal. RSA 652:14-a, relative to city chief elections officers, is repealed.

26 3 Effective Date. Part I of this act shall take effect 60 days after its passage.

27 PART II

28 Prohibiting the Taking of Certain Photographs within the Guardrail.

29 1 New Section; Election Procedure; Prohibited Acts; Photography. Amend RSA 659 by inserting
30 after section 45 the following new section:

SB 89 - AS INTRODUCED

- Page 2 -

1 659:45-a Certain Photography Prohibited. No person shall take or cause any photograph to be
2 taken within the guardrail that captures another voter or another voter's ballot.

3 2 Effective Date. Part II of this act shall take effect 60 days after its passage.

4 **PART III**

5 **Allowing the Opening of Absentee Ballot Outer Envelopes and the Preprocessing of Absentee Ballots.**

6 1 Processing Absentee Ballots. Amend RSA 659:49, II to read as follows:

7 II. Notwithstanding the provisions of paragraph I, ~~[upon the written challenges of 10 or~~
8 ~~more voters who are present at the polls no later than 1:00 p.m., the moderator shall postpone the~~
9 ~~processing of all absentee ballots until after the polls close and prior to the counting of all ballots~~
10 ~~cast in the election.]~~ the moderator, or his or her designee, shall post the time at which the
11 processing of absentee ballots shall begin at the polling place and one other public location at least
12 24 hours before the polls open. In addition, when the polls open the moderator shall announce the
13 time at which the processing of absentee ballots shall begin.

14 2 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as
15 follows:

16 659:49-b Opening Absentee Ballot Outer Envelopes.

17 I. The town and city clerks or their designee shall open outer envelope of all absentee ballots
18 received prior to 5:00 pm on the day prior to election day. The envelope containing the ballot shall
19 not be removed from the outer envelope at such time.

20 II. The clerk shall establish a policy identifying when the outer envelopes will be opened and
21 the review of the affidavit conducted. When election day is within 2 weeks the opening of the
22 envelopes and review of the affidavit shall occur not later than the next business day after the clerks
23 receive the returned absentee ballot.

24 III. The affidavit shall be reviewed pursuant to RSA 659:50.

25 IV. If errors are identified during this review that would cause the ballot to be rejected the
26 town or city clerk or their designee shall attempt to contact the voter to notify them of the errors and
27 possible methods to correct the error using the telephone or email information, if provided, on the
28 application. The clerk shall make a record that notice was provided to the voter on the clerk's list of
29 absentee ballots.

30 3 New Section; Processing Absentee Ballots; Pre-processing of Absentee Ballots. Amend RSA
31 659 by inserting after section 49-b the following new section:

32 659:49-c Pre-processing of Absentee Ballots.

33 I. The moderator or the moderator's designee may authorize the pre-processing of absentee
34 ballots as described below provided that the pre-processing occurs in public with notice of the time
35 and place.

36 II. After the corrected checklist to be used at the election has been posted, and based on the
37 reviews conducted per RSA 659:49-b, notations may be made on the checklist to help facilitate

1 processing of the ballot on election day. The ballot shall remain secure in the unopened affidavit
2 envelope until final processing on election day.

3 III. The moderator or moderator's designee shall not initiate compliance with RSA 659:51
4 and RSA 659:52 until the time specified in RSA 659:49 on election day.

5 4 Processing Absentee Ballots; Challenges. Amend RSA 659:51, I to read as follows:

6 I. All absentee ballots are subject to challenge after the moderator publicly announces the
7 name of the absentee voter, except for voters provided for in RSA 7:46, but not after *the checklist is*
8 *marked with the red "A.V." or* the ballot is removed from the envelope. No challenge to an
9 absentee ballot may be asserted except in conformity with the requirements of RSA 659:27-a.

10 5 Processing Absentee Ballots; Opening Envelope; Depositing Ballot. Amend RSA 659:52 to
11 read as follows:

12 659:52 Opening Envelope; Depositing Ballot. If the absentee ballot is not challenged, the
13 moderator shall, after announcing the name of the voter, open the envelope containing the ballot so
14 the affidavit is not destroyed. The moderator shall then take the ballot out of the envelope without
15 unfolding the ballot or without permitting the ballot to be examined, and he or she shall preserve the
16 affidavit with the ballots cast at the election as provided in RSA 659:101. The moderator shall then
17 ~~[have a checkmark placed beside the name of the absentee voter on the checklist and write~~
18 ~~therewith]~~ *mark the checklist in such a way as to indicate the voter has voted, and write* the
19 letters "A.V." in red ink and shall then deposit the ballot in the ballot box.

20 6 Effective Date. Part III of this act shall take effect August 1, 2021.

21 PART IV

22 Establishing a Committee to Study Post Election Audit Counting Devices.

23 1 Committee Established. There is established a committee to study post election audit
24 counting devices.

25 2 Membership and Compensation.

26 I. The members of the committee shall be as follows:

27 (a) Two members of the senate, appointed by the president of the senate.

28 (b) Three members of the house of representatives, appointed by the speaker of the
29 house of representatives.

30 II. Members of the committee shall receive mileage at the legislative rate when attending to
31 the duties of the committee.

32 3 Duties. The committee shall determine what ballot counting equipment is available which
33 would support a post election audit in New Hampshire, and shall study the feasibility, time
34 constraints, and cost of conducting a post election audit using any vote counting equipment
35 identified. The committee may use ballots cast in prior elections to test ballot counting equipment,
36 provided that such use is in conjunction with the secretary of state and with the approval of the
37 ballot law commission.

1 4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from
2 among the members. The first meeting of the committee shall be called by the first-named senate
3 member. The first meeting of the committee shall be held within 45 days of the effective date of this
4 section. Three members of the committee shall constitute a quorum.

5 5 Report. The committee shall report its findings and any recommendations for proposed
6 legislation to the president of the senate, the speaker of the house of representatives, the senate
7 clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library
8 on or before November 30, 2021.

9 6 Effective Date. Part IV of this act shall take effect upon its passage.

10 PART V

11 Relative to the Duties of the Registers of Probate.

12 1 Establishing Compensation; Register of Probate. Amend RSA 23:7 to read as follows:

13 23:7 Establishing Compensation. Every county convention shall have the power to establish
14 salaries, benefits, and other compensation paid to elected county officers including the county
15 attorney, sheriff, register of deeds, *register of probate*, treasurer, and county commissioners. For
16 the purposes of this section, *except for the register of probate*, "compensation" shall include
17 salary, longevity pay, vacation and sick pay, allowances, and all other payments made by the county
18 to its officers, plus the fair market value of any compensation paid in kind if reportable as income for
19 federal income tax purposes, plus all fringe benefits that may be provided including health insurance
20 and retirement, and may also include an upper limit on the amount of mileage and out-of-pocket
21 expenditures reimbursable to each officer. Said compensation shall be established biennially by the
22 county convention prior to the filing date required under RSA 655:14 for the elected offices listed in
23 this section, upon recommendation of the executive committee which shall remain in effect during
24 their term of office. Notwithstanding any other provision of law to the contrary, in counties in which
25 any of the officers listed in this section receive fees or mileage, or both, for services performed by
26 them as part of their compensation, the county convention may put such officer on a salary and
27 expenses basis. Such officer may be required to continue to collect the usual fees and mileage for the
28 service performed and to pay over all such fees and mileage to the county treasurer for the use of the
29 county. In such event, the amount such officer received in fees and mileage, less expenses, shall be
30 included in determining the minimum at which his *or her* salary may be established unless a lesser
31 amount is agreed upon by the incumbent officer at that time. In no case, *except for the register of*
32 *probate*, shall the salary or other compensation of any of such officers be established at a lesser
33 amount than that which was in effect December 31, 1972.

34 2 Salaries for Counties; Register of Probate. Amend RSA 23:8 to read as follows:

35 23:8 Salaries for Counties.

36 I. Every county shall establish the salary for its register of deeds at a fixed dollar value.
37 Said salaries may not be established either in part or in total as a percentage of fees or other charges

1 or payments collected by said register. Said salaries shall be established not less than biennially by
2 the county convention, upon recommendation of the executive committee. In no case shall the salary
3 of any of said registers of deeds be a lesser amount than the salary which said register was receiving
4 on January 1, 1974.

5 ***II. Every county shall establish the salary for its register of probate at a fixed dollar***
6 ***value. Said salaries may be established either in part or in total as a percentage of fees or***
7 ***other charges or payments collected by the county treasurer or the state and consistent***
8 ***with RSA 548:17. Said salaries shall be established not less than biennially by the county***
9 ***convention, upon recommendation of the executive committee.***

10 3 Supreme Court; Entry Fees. RSA 490:24, I is repealed and reenacted to read as follows:

11 I. For the benefit of the state and counties, there shall be paid to the clerk for the entry of
12 every reserved case, bill of exceptions, petition, appeal, or other action, for the filing of every motion
13 or other document supplementary to the entered case, and for any service rendered by the clerk,
14 such fees as shall from time to time be established by the court. The clerk shall determine the total
15 amount of probate entry fees collected in each county. The clerk shall set aside 10 percent of each
16 probate entry fee paid to the probate division of the circuit court for allocation to the counties for the
17 salary, benefits, and other compensation costs of the registers of probate as set forth in RSA 490:27.
18 From the remaining entry fees, 6 percent shall be set aside for deposit into a special escrow account
19 established under RSA 490:26-c and 30 percent for deposit into the judicial branch information
20 technology fund established under RSA 490:26-h. The proceeds of fees for motions to appear in court
21 pro hac vice shall be paid into the law library revolving fund established in RSA 490:25, III.

22 4 Escrow Fund for Court Facility Improvements. Amend RSA 490:26-c to read as follows:

23 490:26-c Escrow Fund for Court Facility Improvements.

24 I. ~~[Sic]~~ ***From the entry fees remaining after the deductions required under RSA***
25 ***490:24, I, 6 percent of each entry fee collected in the supreme, superior, and circuit courts shall be***
26 ***deposited in escrow for judicial branch facility improvements. Moneys in the escrow fund shall be***
27 ***used for improvements to judicial branch facilities by the department of administrative services as***
28 ***recommended and approved by the supreme court.***

29 II. The state treasurer shall establish procedures for deposits to and expenditures from the
30 ***judicial*** escrow fund for court facilities. The ***judicial*** escrow fund shall be a dedicated capital
31 reserve fund for the improvement of existing court facilities, or those facilities acquired pursuant to
32 an act of the general court.

33 III. The funds on deposit in the ***judicial*** escrow fund for court facility improvements shall
34 be invested by the state treasurer in obligations of the United States government, in government
35 agency obligations, in obligations which are legal investments for savings banks and trust
36 companies, and in all types of savings accounts or certificates of deposit of both state or federally
37 chartered institutions.

1 5 Judicial Branch Information Technology Fund. Amend RSA 490:26-h, I(a) to read as follows:

2 (a) ~~[Thirty]~~ ***From the entry fees remaining after the deductions required under***
3 ***RSA 490:24, I, 30*** percent of each entry fee collected in the supreme, superior, and circuit courts and
4 16.67 percent of the penalty assessment collected pursuant to RSA 106-L:10 shall be deposited in the
5 judicial branch information technology fund.

6 6 Supreme Court; Probate Division of the Circuit Court Fees. Amend RSA 490:27 to read as
7 follows:

8 490:27 Probate Court Fees.

9 I. Probate ***division of the circuit*** court fees as established by the supreme court under RSA
10 490:26-a shall be paid to the clerk of the applicable circuit court established in RSA 490-F for the
11 benefit of the state ***and counties***.

12 II. The sum of \$5 shall be added to each entry fee collected in the probate ***division of the***
13 ***circuit*** courts and shall be deposited in the mediation and arbitration fund established under RSA
14 490-E:4. ***Probate entry fees shall be set to allow for the allocation to the counties of up to 10***
15 ***percent of the fees collected for the salary, benefits, and other compensation costs of***
16 ***registers of probate in eligible counties having established such compensation pursuant to***
17 ***RSA 23:7 and RSA 23:8. Such costs shall only be reimbursed to counties that have***
18 ***established compensation pursuant to RSA 23:7 and RSA 23:8, and only to the extent***
19 ***covered by 10 percent of the probate entry fees collected. No later than 30 days after each***
20 ***calendar quarter, eligible counties shall report the salary, benefits, and other***
21 ***compensation costs for the register of probate to the administrative office of the courts.***
22 ***The office shall distribute up to 10 percent of the probate entry fees collected in the***
23 ***preceding quarter based on each county's share of total statewide probate cases filed.***

24 7 Circuit Court Clerks; Appointment. Amend RSA 490-F:13 to read as follows:

25 490-F:13 Circuit Court Clerks; Appointment. The administrative judge of the circuit court shall
26 appoint a clerk with responsibility for each circuit court site. In the interest of the effective
27 administration of justice, any such clerk may have responsibility for one or more circuit court
28 locations. Circuit court clerks shall have the same duties as clerks of the former district court ~~[and~~
29 ~~judicial branch family division and as registers of probate with the exception of RSA 15-B, RSA 456-~~
30 ~~B, RSA 548, RSA 653, RSA 655, and RSA 661 which shall remain as duties of the registers of~~
31 ~~probate. Circuit court clerks shall hold office at the pleasure of the administrative judge of the~~
32 ~~circuit court].~~

33 8 Judicial Conduct Commission; Definitions; Clerk. Amend RSA 494-A:2, I to read as follows:

34 I. "Clerk" means a clerk of court or a deputy clerk, ~~[a register of probate or deputy register,]~~
35 a court stenographer or reporter, and any person performing the duties of a clerk~~[, register,]~~ or
36 reporter.

37 9 Judges and Their Jurisdiction; Records. Amend RSA 547:27-b, I to read as follows:

1 I. The probate *division of the circuit* court shall [~~appropriately retain all wills and their~~
2 ~~probate; all proceedings with regard to real estate; all accounts settled, and all orders, decisions, and~~
3 ~~appointments from which an appeal may be claimed~~] *provide system access to the electronic*
4 *probate files to check on activities related to probate matters.*

5 10 Judges of Probate and Their Jurisdiction; Probate Division of the Circuit Court Entry Fees.
6 Amend RSA 547:27-c to read as follows:

7 547:27-c Probate Court Entry Fees.

8 I. *Probate division of the circuit court* entry fees as established by the supreme court
9 under RSA 490:26-a shall be paid to the clerk of each applicable circuit court established in RSA 490-
10 F for the benefit of the state *and counties.*

11 II. *The clerk shall determine the total amount of probate entry fees collected by*
12 *each county. From the entry fees remaining after the deductions required under RSA*
13 *490:24, I,* the clerk shall set aside 6 percent of each entry fee paid into the court for deposit into a
14 special escrow account established under RSA 490:26-c and 30 percent [~~of each entry fee paid into~~
15 ~~the court~~] for deposit into the judicial branch information technology fund established under RSA
16 490:26-h. The proceeds of fees for motions to appear in court pro hac vice shall be paid into the law
17 library revolving fund established in RSA 490:25, III.

18 11 Registers of Probate; Residence. Amend RSA 548:1 to read as follows:

19 548:1 Residence, etc. The register of probate shall [~~dwell~~] *reside* in the county in which [~~the~~
20 ~~probate records are required to be kept~~] *he or she is elected.* If a register shall [~~dwell~~] *reside* in
21 any other county and continue so [~~dwelling~~] *residing* for 30 consecutive days, the office shall be
22 deemed vacant.

23 12 New Sections; Registers of Probate; Authority: Deputy Registers of Probate. Amend RSA 548
24 by inserting after section 1 the following new sections:

25 548:1-a Authority.

26 I. Pursuant to the New Hampshire constitution, the elected register of probate shall have
27 access to and oversee the filings in the probate division, of the circuit court, which shall be known as
28 the probate court, in the county for which they are elected. The register of probate shall have an
29 office collocated with the county resister of deeds or located in the probate court in the county for
30 which they were elected. The register of probate shall have "read only" access to all probate records
31 remotely and matters to assist county residents. The register of probate shall have access to court
32 personnel and authority to request processes necessary to further all probate matters. The
33 administrative judge of the circuit court shall appoint staff to provide individualized training and
34 instruction to each register of probate on the current electronic and telephonic systems in the
35 probate court.

36 II. The authority and responsibility of the register of probate, as contained in the New
37 Hampshire constitution and state law shall include but not be limited to access to all probate court

1 filings governed under state statute. The authority of the register of probate shall include, but not
2 be limited to, access to all probate division filings under RSA 5, RSA 15-B, RSA 87, RSA 151-A:15,
3 RSA 456-B, RSA 490-F, RSA 547, RSA 548, RSA 553, RSA 554, and RSA 661. The register of
4 probate shall work with court personnel to resolve all probate issues presented to the register of
5 probate by the public.

6 548:1-b Deputy Registers of Probate. The county commissioners may appoint a deputy to
7 perform the duties of the register of probate in case of sickness, temporary absence, disability, or
8 other cause. Such appointment shall be made in writing and shall be for a length of time not
9 exceeding the register of probate's remaining term of office. The deputy shall be qualified in the
10 same manner as the appointing officer and perform the duties of the register of probate under
11 statute, until such time as the appointment is no longer necessary. The appointed deputy shall be
12 compensated from the register of probate's salary or as otherwise directed by the county delegation.

13 13 Registers of Probate; Records. RSA 548:5 is repealed and reenacted to read as follows:

14 548:5 Records. The register of probate shall have access to the electronic probate files in order
15 to view the recordings of all wills and their probate; all proceedings with regard to real estate; all
16 accounts settled; and all orders, decisions, and appointments from which an appeal may be claimed.
17 The judicial branch and the secretary of state, division of archives and records management shall
18 make available on their websites links to all available electronically scanned New Hampshire
19 probate records including those created or maintained by any nongovernmental entity until such
20 time as the state has the capability to make all such records available through state resources.
21 Beginning on July 1, 2020, all paper probate records older than 35 years shall be kept in the state
22 archives.

23 14 New Section; Registers of Probate; Record of Decedent's Real Estate. Amend RSA 548 by
24 inserting after section 7-a the following new section:

25 548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other
26 instrument pertaining to real estate filed with the probate court in connection with the
27 administration of any estate that the estate contains real estate located in another county within the
28 state, the probate court, shall notify within 15 days, the register of deeds of the county in which the
29 real estate lies of the name and date of death of the decedent. A register of deeds who receives such
30 a notice shall record in the grantor's index the name of the decedent, his or her date of death, and
31 the county in which the estate is being probated. The cost for filing said notice shall be assigned to
32 the estate.

33 15 Probate Division of the Circuit Courts and Estates; Publication of Notice. RSA 550:10 is
34 repealed and reenacted to read as follows:

35 550:10 Publication and Notice in Newspaper. Whenever notice is required to be published in a
36 newspaper by any provision of this title, the probate division of the circuit court shall cause such
37 notice to be made available to the public on the New Hampshire judicial branch website or by other

1 electronic media not less than 2 weeks before the date for which notice is given, unless otherwise
2 ordered by the judge.

3 16 County Officers; Registers of Probate. Amend RSA 661:9 to read as follows:

4 661:9 County Officers.

5 I. If a vacancy for a period of one year or longer occurs in the office of county sheriff, county
6 attorney, register of deeds, *register of probate*, or county treasurer, the members of the county
7 convention shall fill the vacancy for the unexpired term by a majority of the ballots cast. If a
8 vacancy for a period of less than a year occurs in any such office, the members of the county
9 convention shall, by majority vote of the county convention, vote to either fill the vacancy or to leave
10 the office vacant.

11 II.(a) If a vacancy occurs in the office of a county commissioner, the members of the county
12 convention, or, if the vacancy occurs in Hillsborough county, the members of the county convention
13 representing the cities and towns in the commissioner's district, shall fill the vacancy by a majority
14 of the ballots cast until the next biennial election of county officers. If the term filled is less than the
15 unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district
16 filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by
17 the voters of the county for a 2-year term.

18 (b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no
19 later than 30 days preceding the printing of the ballots for the primary election.

20 (c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate
21 party committees for vacancies in an office on a primary or general election ballot, respectively, shall
22 apply to vacancies to be filled under this paragraph.

23 III. If any person holding a county office enumerated in paragraph I or II becomes
24 temporarily absent or incapacitated, the county convention may, upon application of the [~~county~~
25 ~~attorney or~~] county commissioners, declare a temporary absence and fill the same for a limited
26 period of time expressed in the appointment.

27 IV. Any officer of a county [~~including the register of probate,~~] may be removed by the county
28 convention for official misconduct. Any removal under this paragraph shall be initiated by petition
29 of a majority of the county commissioners, of the county attorney, or of a superior court judge. No
30 officer of a county may be removed without notice of the allegations supporting the petition for
31 removal and an opportunity to be heard by the county convention.

32 17 Repeal. The following are repealed:

33 I. RSA 548:28, relative to the penalty for registers of probate.

34 II. RSA 661:9-a, relative to vacancies in office of register of probate.

35 18 Effective Date. Part V of this act shall take effect January 1, 2022.

SB 89 - AS AMENDED BY THE HOUSE

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2021 SESSION

21-0999
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SENATE BILL

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AN ACT adopting omnibus legislation relative to election procedures.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Election Law and Municipal Affairs

AMENDED ANALYSIS

This bill adopts legislation relative to:

- I. The city chief elections officer.
- II. Prohibiting the taking of certain photographs within the guardrail.
- III. Establishing a committee to study post election audit counting devices.
- IV. The effect of certain federal laws on New Hampshire elections.

Explanation:

Matter added to current law appears in ***bold italics***.

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3 Prime/Dist. 6.

4 Part II. LSR 21-1002, prohibiting the taking of certain photographs within the guardrail,
5 sponsored by Sen. Gray, Prime/Dist. 6.

6 Part III. LSR 21-1051, establishing a committee to study post election audit counting devices,
7 sponsored by Sen. Gray, Prime/Dist. 6.

8 2 Legislation Enacted. The general court hereby enacts the following legislation:

9

PART I

10

Relative to the City Chief Elections Officer.

11

1 Chief Elections Officer; City Clerk. Amend RSA 659:9-a to read as follows:

12

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

21

2 Repeal. RSA 652:14-a, relative to city chief elections officers, is repealed.

22

3 Effective Date. Part I of this act shall take effect 60 days after its passage.

23

PART II

24

Prohibiting the Taking of Certain Photographs Within the Guardrail.

25

1 New Section; Election Procedure; Prohibited Acts; Photography. Amend RSA 659 by inserting
26 after section 45 the following new section:

27

659:45-a Certain Photography Prohibited. No person shall take or cause any photograph to be
28 taken within the guardrail that captures another voter or another voter's ballot.

29

2 Effective Date. Part II of this act shall take effect 60 days after its passage.

30

PART III

1 Establishing a Committee to Study Post Election Audit Counting Devices.

2 1 Committee Established.

3 I. There is established a committee to study post election audit counting devices.

4 II. The members of the committee shall be as follows:

5 (a) Two members of the senate, appointed by the president of the senate.

6 (b) Three members of the house of representatives, appointed by the speaker of the
7 house of representatives.

8 III. Members of the committee shall receive mileage at the legislative rate when attending
9 to the duties of the committee.

10 IV. Duties. The committee shall determine what ballot counting equipment is available
11 which would support a post election audit in New Hampshire, and shall study the feasibility, time
12 constraints, and cost of conducting a post election audit using any vote counting equipment
13 identified. The committee may use ballots cast in prior elections to test ballot counting equipment,
14 provided that such use is in conjunction with the secretary of state and with the approval of the
15 ballot law commission.

16 V. Chairperson; Quorum. The members of the study committee shall elect a chairperson
17 from among the members. The first meeting of the committee shall be called by the first-named
18 senate member. The first meeting of the committee shall be held within 45 days of the effective date
19 of this section. Three members of the committee shall constitute a quorum.

20 VI. Report. The committee shall report its findings and any recommendations for proposed
21 legislation to the president of the senate, the speaker of the house of representatives, the senate
22 clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library
23 on or before November 30, 2021.

24 2 Effective Date. Part III of this act shall take effect upon its passage.

25 PART IV

26 Relative to the effect of certain federal laws on New Hampshire election procedures.

27 1 New Hampshire Election Procedures; Certain Federal Laws Non-Controlling.
28 Notwithstanding the adoption by the United States Congress of S.1, also known as the "For the
29 People Act of 2021," all procedures and requirements relating to elections conducted pursuant to the
30 New Hampshire constitution and as prescribed by New Hampshire law shall remain in full force and
31 effect for all state and county officers, including but not limited to those procedures and
32 requirements relating to voter eligibility, voter registration, absentee voting, conducting the vote,
33 and counting of votes.

34 2 Effective Date. Part IV of this act shall take effect upon its passage.

CHAPTER 177
SB 89 - FINAL VERSION

03/25/2021 0825s
3Jun2021... 1610h

2021 SESSION

21-0999
11/05

SENATE BILL

89

AN ACT adopting omnibus legislation relative to election procedures.

SPONSORS: Sen. Gray, Dist 6

COMMITTEE: Election Law and Municipal Affairs

AMENDED ANALYSIS

This bill adopts legislation relative to:

- I. The city chief elections officer.
- II. Prohibiting the taking of certain photographs within the guardrail.
- III. Establishing a committee to study post election audit counting devices.
- IV. The effect of certain federal laws on New Hampshire elections.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 177
SB 89 - FINAL VERSION

03/25/2021 0825s
3Jun2021... 1610h

21-0999
11/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT adopting omnibus legislation relative to election procedures.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 177:1 Sponsorship. This act consists of the following proposed legislation:

2 Part I. LSR 21-0999, relative to the city chief elections officer, sponsored by Sen. Gray,
3 Prime/Dist. 6.

4 Part II. LSR 21-1002, prohibiting the taking of certain photographs within the guardrail,
5 sponsored by Sen. Gray, Prime/Dist. 6.

6 Part III. LSR 21-1051, establishing a committee to study post election audit counting devices,
7 sponsored by Sen. Gray, Prime/Dist. 6.

8 177:2 Legislation Enacted. The general court hereby enacts the following legislation:

9

PART I

10

Relative to the City Chief Elections Officer.

11

177:1 Chief Elections Officer; City Clerk. Amend RSA 659:9-a to read as follows:

12

13

659:9-a City [~~Chief Elections Officer Duties~~] *Clerk Uniform Practices*. The city [~~chief elections officer~~] *clerk* 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~~] *clerk*. The secretary of state shall resolve any conflicting interpretations of state and federal laws arising between the [~~chief elections officer~~] *city clerk* 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~~] *clerk*.

21

177:2 Repeal. RSA 652:14-a, relative to city chief elections officers, is repealed.

22

177:3 Effective Date. Part I of this act shall take effect 60 days after its passage.

23

PART II

24

Prohibiting the Taking of Certain Photographs Within the Guardrail.

25

177:1 New Section; Election Procedure; Prohibited Acts; Photography. Amend RSA 659 by inserting after section 45 the following new section:

27

659:45-a Certain Photography Prohibited. No person shall take or cause any photograph to be taken within the guardrail that captures another voter or another voter's ballot.

29

177:2 Effective Date. Part II of this act shall take effect 60 days after its passage.

CHAPTER 177
SB 89 - FINAL VERSION
- Page 2 -

PART III

Establishing a Committee to Study Post Election Audit Counting Devices.

177:1 Committee Established.

I. There is established a committee to study post election audit counting devices.

II. The members of the committee shall be as follows:

(a) Two members of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

IV. Duties. The committee shall determine what ballot counting equipment is available which would support a post election audit in New Hampshire, and shall study the feasibility, time constraints, and cost of conducting a post election audit using any vote counting equipment identified. The committee may use ballots cast in prior elections to test ballot counting equipment, provided that such use is in conjunction with the secretary of state and with the approval of the ballot law commission.

V. Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

VI. Report. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library on or before November 30, 2021.

177:2 Effective Date. Part III of this act shall take effect upon its passage.

PART IV

Relative to the effect of certain federal laws on New Hampshire election procedures.

177:1 New Hampshire Election Procedures; Certain Federal Laws Non-Controlling. Notwithstanding the adoption by the United States Congress of S.1, also known as the "For the People Act of 2021," all procedures and requirements relating to elections conducted pursuant to the New Hampshire constitution and as prescribed by New Hampshire law shall remain in full force and effect for all state and county officers, including but not limited to those procedures and requirements relating to voter eligibility, voter registration, absentee voting, conducting the vote, and counting of votes.

177:2 Effective Date. Part IV of this act shall take effect upon its passage.

CHAPTER 177
SB 89 - FINAL VERSION
- Page 3 -

Approved: July 30, 2021

Effective Date:

Part I shall take effect September 28, 2021.

Part II shall take effect September 28, 2021.

Part III shall take effect July 30, 2021.

Part IV shall take effect July 30, 2021.

Amendments

Amendment to SB 89

1 Amend the bill by replacing Part IV with the following:

2

3

PART IV

4

Establishing a Committee to Study Post Election Audit Counting Devices and Authorizing the
Attorney General to Count Ballots as Part of an Investigation into Recount Discrepancies.

5

6

1 Committee Established.

7

I. There is established a committee to study post election audit counting devices.

8

II. The members of the committee shall be as follows:

9

(a) Two members of the senate, appointed by the president of the senate.

10

(b) Three members of the house of representatives, appointed by the speaker of the

11

house of representatives.

12

III. Members of the committee shall receive mileage at the legislative rate when attending
to the duties of the committee.

13

14

IV. Duties. The committee shall determine what ballot counting equipment is available
which would support a post election audit in New Hampshire, and shall study the feasibility, time
constraints, and cost of conducting a post election audit using any vote counting equipment
identified. The committee may use ballots cast in prior elections to test ballot counting equipment,
provided that such use is in conjunction with the secretary of state and with the approval of the
ballot law commission.

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V. Chairperson; Quorum. The members of the study committee shall elect a chairperson
from among the members. The first meeting of the committee shall be called by the first-named
senate member. The first meeting of the committee shall be held within 45 days of the effective date
of this section. Three members of the committee shall constitute a quorum.

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VI. Report. The committee shall report its findings and any recommendations for proposed
legislation to the president of the senate, the speaker of the house of representatives, the senate
clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library
on or before November 30, 2021.

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2 State General Election Recounts; Conduct of Recount. Amend RSA 660:5 to read as follows:

29

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 *or question, including votes cast for the candidates or question on the*

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31

32

1 **ballot, write-in votes, and not voted (resulting from overvotes or undervotes)**, shall be
2 counted by the secretary of state and such assistants as the secretary of state may require. When
3 counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot.
4 No mechanical, optical, or electronic device shall be used for the counting of ballots. The candidates,
5 their counsel, and assistants shall have the right to inspect the ballots and participate in the recount
6 under such suitable rules as the secretary of state may adopt. If the candidate requesting the
7 recount cannot attend the recount, the candidate shall designate, in writing, to the secretary of state
8 the name of an individual who will attend the recount and who will be authorized to make decisions
9 on the candidate's behalf. Each candidate or his or her counsel or designee shall have the right to
10 protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on
11 said ballot and shall attach thereto a memorandum stating such ruling and the name of the
12 candidate making the protest. If, at any time during the counting of the ballots, a discrepancy
13 appears in any ballot for any reason, the secretary of state shall suspend the recount until the
14 discrepancy is resolved, at which time the secretary of state shall continue the recount. In no event
15 shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

16 3 Ballot Law Commission; General Duties. Amend RSA 665:6, III to read as follows:

17 **III. When the ballot law commission finds by a majority vote of members present**
18 **and voting that a significant and unexplained discrepancy exists between the election**
19 **results reported by moderators and the recount conducted pursuant to RSA 660, the results**
20 **of any audit conducted by the secretary of state, or any other credible information that the**
21 **commission believes, if not resolved, could undermine public confidence in the accuracy of**
22 **election results, the commission shall request the attorney general to investigate.**

23 **IV. The jurisdiction vested in the ballot law commission under paragraphs I and II of this**
24 **section shall be exclusive of all other remedies.**

25 4 Attorney General; Enforcement of Election Laws. Amend RSA 7:6-c, II to read as follows:

26 **II. Without limiting the authority granted pursuant to paragraph I, whenever the**
27 **ballot law commission requests an investigation to be conducted pursuant to RSA 665, or**
28 **upon his or her own motion, the attorney general may unseal and reseal ballot boxes,**
29 **examine or cause to be examined for that purpose any equipment, books, records, papers,**
30 **ballots, or other documentary materials, or may examine any person under oath and**
31 **subject to the pains and penalties of perjury that the attorney general thinks may have**
32 **knowledge of any violation of election laws.**

33 **III.(a) Beginning January 31, 2013, the attorney general shall, at least once during every 6-**
34 **month period, provide a rolling report to the general court on the status of all complaints of alleged**
35 **violations of the election laws received. The attorney general shall submit the report to the standing**
36 **committees of the senate and house of representatives with jurisdiction over election law.**

37 (b) The report shall include, but not be limited to the following:

Amendment to
- Page 3 -

1 (1) A summary of complaints received during the preceding 6 months, or during the
2 period since the previous report if such period is less than 6 months, including the number of
3 complaints categorized by type of complaint and month received.

4 (2) For each complaint investigated, the results of the investigation and a
5 description of actions taken following the investigation.

6 (3) For each complaint not investigated, an explanation of why the complaint was
7 not investigated.

8 (c) The requirements of subparagraph (b)(2) or (b)(3) may be satisfied by including with
9 the report, for the complaint described, a closure letter, settlement agreement, cease and desist
10 order, or complaint filed with a court, or any other official communication.

11 5 Enforcement of the Election Laws; Impounding Ballots. Amend RSA 666:13 to read as follows:

12 666:13 Impounding Ballots. If directed by the attorney general as part of his enforcement of the
13 election laws *pursuant to RSA 7:6-c*, the state police which he designates shall collect all ballots
14 requested from *secretary of state* or the town and city clerks who have custody of the ballots. The
15 state police shall deliver the ballots to the public facility which is designated by the attorney general
16 *and may conduct inspections of the ballots as the investigation requires.*

17 6 Effective Date. Part IV of this act shall take effect upon its passage.

UNAPPROVED

Amendment to SB 89

1 Amend the bill by replacing Part V with the following:

2

3

PART V

4

Relative to the Duties of the Registers of Probate.

5

1 Establishing Compensation; Register of Probate. Amend RSA 23:7 to read as follows:

6

23:7 Establishing Compensation. Every county convention shall have the power to establish
7 salaries, benefits, and other compensation paid to elected county officers including the county
8 attorney, sheriff, register of deeds, **register of probate**, treasurer, and county commissioners. For
9 the purposes of this section, **except for the register of probate**, "compensation" shall include
10 salary, longevity pay, vacation and sick pay, allowances, and all other payments made by the county
11 to its officers, plus the fair market value of any compensation paid in kind if reportable as income for
12 federal income tax purposes, plus all fringe benefits that may be provided including health insurance
13 and retirement, and may also include an upper limit on the amount of mileage and out-of-pocket
14 expenditures reimbursable to each officer. Said compensation shall be established biennially by the
15 county convention prior to the filing date required under RSA 655:14 for the elected offices listed in
16 this section, upon recommendation of the executive committee which shall remain in effect during
17 their term of office. Notwithstanding any other provision of law to the contrary, in counties in which
18 any of the officers listed in this section receive fees or mileage, or both, for services performed by
19 them as part of their compensation, the county convention may put such officer on a salary and
20 expenses basis. Such officer may be required to continue to collect the usual fees and mileage for the
21 service performed and to pay over all such fees and mileage to the county treasurer for the use of the
22 county. In such event, the amount such officer received in fees and mileage, less expenses, shall be
23 included in determining the minimum at which his **or her** salary may be established unless a lesser
24 amount is agreed upon by the incumbent officer at that time. In no case, **except for the register of**
25 **probate**, shall the salary or other compensation of any of such officers be established at a lesser
26 amount than that which was in effect December 31, 1972.

27

2 Salaries for Counties; Register of Probate. Amend RSA 23:8 to read as follows:

28

23:8 Salaries for Counties.

29

I. Every county shall establish the salary for its register of deeds at a fixed dollar value.

30

Said salaries may not be established either in part or in total as a percentage of fees or other charges

31

or payments collected by said register. Said salaries shall be established not less than biennially by

32

the county convention, upon recommendation of the executive committee. In no case shall the salary

1 of any of said registers of deeds be a lesser amount than the salary which said register was receiving
2 on January 1, 1974.

3 **II. Every county shall establish the salary for its register of probate at a fixed dollar**
4 **value. Said salaries may be established either in part or in total as a percentage of fees or**
5 **other charges or payments collected by the county treasurer or the state and consistent**
6 **with RSA 548:17. Said salaries shall be established not less than biennially by the county**
7 **convention, upon recommendation of the executive committee.**

8 **III. There is hereby established in the state treasury a separate fund to be known as**
9 **the county registers of probate fund, which shall be used to help fund salaries, benefits and**
10 **other compensation paid by counties to registers of probate. The fund shall consist of all**
11 **moneys collected pursuant to RSA 490:24, III and RSA 490:27, III. Payment to the counties**
12 **shall be limited to the extent funds are available in the county registers of probate fund.**

13 **IV. Moneys in the county registers of probate fund shall be nonlapsing and**
14 **continually appropriated to the counties for the purposes stated in RSA 23:8, III.**

15 **V. Counties shall report to the state treasurer each year on or before the 15th of**
16 **March, June, September, and December the total salary and benefits paid to registers of**
17 **probate in each county since the last report. The administrative judge of the circuit court**
18 **shall provide by the same dates a summary of the number of probate court filings by county**
19 **since the last report. The state treasurer shall pay to the counties on or before the 30th of**
20 **March, June, September, and December of each year a distribution from the county**
21 **registers of probate fund an amount up to the total salary paid by each county in the**
22 **previous reporting period. The distribution to the counties shall be calculated on a pro-**
23 **rata allocation based on the number of probate court cases filed in each county.**

24 3 New Paragraph; Supreme Court; Costs; Entry Fees. Amend RSA 490:24 by inserting after
25 paragraph II the following new paragraph:

26 **III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of**
27 **the circuit courts and shall be deposited into the county register of probate fund established under**
28 **RSA 23:8, III.**

29 4 New Paragraph; Probate Court Fees. Amend RSA 490:27 by inserting after paragraph II the
30 following new paragraph:

31 **III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of**
32 **the circuit courts and shall be deposited in the county registers of probate fund established under**
33 **RSA 23:8, III.**

34 5 Judicial Conduct Commission; Definitions; Clerk. Amend RSA 494-A:2, I to read as follows:

35 **I. "Clerk" means a clerk of court or a deputy clerk, [a register of probate or deputy register,]**
36 **a court stenographer or reporter, and any person performing the duties of a clerk [register,] or**
37 **reporter.**

Amendment to SB 89

- Page 3 -

1 6 Registers of Probate; Residence. Amend RSA 548:1 to read as follows:

2 548:1 Residence, Etc. The register of probate shall ~~[dwell]~~ **reside** in the county in which ~~[the~~
3 ~~probate records are required to be kept]~~ **he or she is elected**. If a register shall ~~[dwell]~~ **reside** in
4 any other county and continue so ~~[dwelling]~~ **residing** for 30 consecutive days, the office shall be
5 deemed vacant.

6 7 New Sections; Registers of Probate; Authority; Deputy Registers of Probate. Amend RSA 548
7 by inserting after section 1 the following new sections:

8 548:1-a Authority. The register of probate shall have an office collocated with the county
9 register of deeds or such other location as determined by the county commissioners. The authority
10 and responsibility of the register of probate shall be to assist parties with probate court filings and
11 probate process governed under state statute.

12 548:1-b Deputy Registers of Probate. The county commissioners may appoint a deputy to
13 perform the duties of the register of probate in case of sickness, temporary absence, disability, or
14 other cause. Such appointment shall be made in writing and shall be for a length of time not
15 exceeding the register of probate's remaining term of office. The deputy shall be qualified in the
16 same manner as the appointing officer and perform the duties of the register of probate under
17 statute, until such time as the appointment is no longer necessary. The appointed deputy shall be
18 compensated from the register of probate's salary or as otherwise directed by the county delegation.

19 8 Registers of Probate; Preservation of Files. Amend RSA 548:5 to read as follows:

20 548:5 Preservation of Files. The register of probate shall be responsible for coordinating with
21 the secretary of state and the administrative judge of the circuit court established in RSA 490-F the
22 preservation of any closed files having the potential for historical significance. The register may
23 recommend that these files be sent to the records center established under RSA 5. ***Beginning on***
24 ***July 1, 2022, all paper probate records older than 40 years shall be kept in the state***
25 ***archives unless such records are otherwise necessary for the operation of the probate***
26 ***division.*** The register of probate shall maintain a current index describing the location of any files
27 which have been removed from the court pursuant to this section. ***Except for records that***
28 ***contain personal information as defined by RSA 359-C:19, IV, the secretary of state,***
29 ***division of archives and records management shall make available on its website links to***
30 ***all available electronically scanned New Hampshire probate records, including those***
31 ***created or maintained by any nongovernmental entity until such time as the state has the***
32 ***capability to make all such records available through state resources.***

33 9 New Section; Record of Decedent's Real Estate. Amend RSA 548 by inserting after section 7-a
34 the following new section:

35 548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other
36 instrument pertaining to real estate filed with the probate court in connection with the
37 administration of any estate that the estate contains real estate located in another county within the

1 state, the probate court shall notify within 15 days the register of deeds of the county in which the
2 real estate lies of the name and date of death of the decedent. A register of deeds who receives such
3 a notice shall record in the grantor's index the name of the decedent, his or her date of death, and
4 the county in which the estate is being probated. The cost for filing said notice shall be assigned to
5 the estate.

6 10 Probate Courts and Decedents' Estates; Publication and Notice in Newspaper RSA 550:10 is
7 repealed and reenacted to read as follows:

8 550:10 Publication and Notice in Newspaper. Whenever notice is required to be published in a
9 newspaper by any provision of this title, the probate division of the circuit court shall cause such
10 notice to be made available to the public on the New Hampshire judicial branch website or by other
11 electronic media not less than 2 weeks before the date for which notice is given, unless otherwise
12 ordered by the judge.

13 11 County Officers; Vacancies; Registers of Probate. Amend RSA 661:9 to read as follows:

14 661:9 County Officers.

15 I. If a vacancy for a period of one year or longer occurs in the office of county sheriff, county
16 attorney, register of deeds, *register of probate*, or county treasurer, the members of the county
17 convention shall fill the vacancy for the unexpired term by a majority of the ballots cast. If a
18 vacancy for a period of less than a year occurs in any such office, the members of the county
19 convention shall, by majority vote of the county convention, vote to either fill the vacancy or to leave
20 the office vacant.

21 II.(a) If a vacancy occurs in the office of a county commissioner, the members of the county
22 convention, or, if the vacancy occurs in Hillsborough county, the members of the county convention
23 representing the cities and towns in the commissioner's district, shall fill the vacancy by a majority
24 of the ballots cast until the next biennial election of county officers. If the term filled is less than the
25 unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district
26 filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by
27 the voters of the county for a 2-year term.

28 (b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no
29 later than 30 days preceding the printing of the ballots for the primary election.

30 (c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate
31 party committees for vacancies in an office on a primary or general election ballot, respectively, shall
32 apply to vacancies to be filled under this paragraph.

33 III. If any person holding a county office enumerated in paragraph I or II becomes
34 temporarily absent or incapacitated, the county convention may, upon application of the county
35 attorney or county commissioners, declare a temporary absence and fill the same for a limited period
36 of time expressed in the appointment.

Amendment to SB 89

- Page 5 -

1 IV. Any officer of a county~~[, including the register of probate,]~~ may be removed by the county
2 convention for official misconduct. Any removal under this paragraph shall be initiated by petition
3 of a majority of the county commissioners, of the county attorney, or of a superior court judge. No
4 officer of a county may be removed without notice of the allegations supporting the petition for
5 removal and an opportunity to be heard by the county convention.

6 12 New Subparagraph; Application of Receipts; Probate. Amend RSA 6:12, I(b) by inserting
7 after subparagraph (364) the following new subparagraph:

8 (365) Moneys deposited into the county registers of probate fund established in RSA
9 23:8, III.

10 13 Repeal. The following are repealed:

11 I. RSA 548:28, relative to the penalty for registers of probate.

12 II. RSA 661:9-a, relative to vacancies in office of register of probate.

13 14 Effective Date. This act shall take effect January 1, 2023.

UNAPPROVED

Amendment to SB 89

1 Amend Part III of the bill by replacing section 2 with the following:

2

3 2 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as
4 follows:

5 659:49-b Opening Absentee Ballot Outer Envelopes.

6 I. The town and city clerks or their designee shall open outer envelope of all absentee ballots
7 received prior to 5:00 pm on the day prior to election day. The envelope containing the ballot shall
8 not be removed from the outer envelope at such time.

9 II. The clerk shall establish a policy identifying when the outer envelopes will be opened and
10 the review of the affidavit conducted. Such policy shall include posting the time and location of the
11 review at least 24 hours in advance. The policy shall allow the opening of the outer envelope and
12 review of the affidavit while the voter or voter's delivery agent as defined in RSA 657:17, II is
13 present. When election day is within 2 weeks the opening of the envelope and review of the affidavit
14 shall occur not later than the next business day after the clerks receive the returned absentee ballot.
15 The public shall have a right to attend and observe as the clerk opens the envelopes and reviews the
16 affidavits.

17 III. The affidavit shall be reviewed to determine if the affidavit is properly executed, such
18 as whether there is a missing signature or incorrect name.

19 IV. If during this review the affidavit does not appear to be properly executed, such as
20 having a missing signature or incorrect name, the town or city clerk or their designee shall attempt
21 to contact the voter to notify them of the errors and possible methods to correct the error using the
22 telephone, or email information, if provided, on the application. The clerk shall make a record that
23 notice was provided to the voter on the clerk's list of absentee ballots.

Amendment to SB 89

1 Amend Part III of the bill by replacing section 2 with the following:

2

3 2 Opening Absentee Ballot Outer Envelopes. RSA 659:49-b is repealed and reenacted to read as
4 follows:

5 659:49-b Opening Absentee Ballot Outer Envelopes.

6 I. The town and city clerks or their designee shall open outer envelope of all absentee ballots
7 received prior to 5:00 pm on the day prior to election day. The envelope containing the ballot shall
8 not be removed from the outer envelope at such time.

9 II. The clerk shall establish a policy identifying when the outer envelopes will be opened and
10 the review of the affidavit conducted. Such policy shall include posting the time and location of the
11 review at least 24 hours in advance. The policy shall allow the opening of the outer envelope and
12 review of the affidavit while the voter or voter's delivery agent as defined in RSA 657:17, II is
13 present. When election day is within 2 weeks the opening of the envelope and review of the affidavit
14 shall occur not later than the next business day after the clerks receive the returned absentee ballot.
15 The public shall have a right to attend and observe as the clerk opens the envelopes and reviews the
16 affidavits.

17 III. The affidavit shall be reviewed to determine if the affidavit is properly executed, such as
18 whether there is a missing signature or incorrect name.

19 IV. If during this review the affidavit does not appear to be properly executed, such as
20 having a missing signature or incorrect name, the town or city clerk or their designee shall attempt
21 to contact the voter to notify them of the errors and possible methods to correct the error using the
22 telephone or email information, if provided, on the application. The clerk shall make a record that
23 notice was provided to the voter on the clerk's list of absentee ballots.

24

25 Amend the bill by replacing Part IV with the following:

26

27

PART IV

28 Establishing a Committee to Study Post Election Audit Counting Devices and Authorizing the
29 Attorney General to Count Ballots as Part of an Investigation into Recount Discrepancies.

30 1 Committee Established.

31 I. There is established a committee to study post election audit counting devices.

32 II. The members of the committee shall be as follows:

Amendment to SB 89

- Page 2 -

1 (a) Two members of the senate, appointed by the president of the senate.

2 (b) Three members of the house of representatives, appointed by the speaker of the
3 house of representatives.

4 III. Members of the committee shall receive mileage at the legislative rate when attending
5 to the duties of the committee.

6 IV. Duties. The committee shall determine what ballot counting equipment is available
7 which would support a post election audit in New Hampshire, and shall study the feasibility, time
8 constraints, and cost of conducting a post election audit using any vote counting equipment
9 identified. The committee may use ballots cast in prior elections to test ballot counting equipment,
10 provided that such use is in conjunction with the secretary of state and with the approval of the
11 ballot law commission.

12 V. Chairperson; Quorum. The members of the study committee shall elect a chairperson
13 from among the members. The first meeting of the committee shall be called by the first-named
14 senate member. The first meeting of the committee shall be held within 45 days of the effective date
15 of this section. Three members of the committee shall constitute a quorum.

16 VI. Report. The committee shall report its findings and any recommendations for proposed
17 legislation to the president of the senate, the speaker of the house of representatives, the senate
18 clerk, the house clerk, the governor, the secretary of state, the attorney general, and the state library
19 on or before November 30, 2021.

20 2 State General Election Recounts; Conduct of Recount. Amend RSA 660:5 to read as follows:

21 660:5 Conduct of Recount. If directed by the secretary of state, the state police shall collect all
22 ballots requested from the town or city clerks having custody of them and shall deliver them to the
23 public facility designated by the secretary of state. At the time and place so appointed, the ballots
24 cast for such office *or question, including votes cast for the candidates or question on the*
25 *ballot, write-in votes, and not voted (resulting from overvotes or undervotes)*, shall be
26 counted by the secretary of state and such assistants as the secretary of state may require. When
27 counting the ballots, the secretary of state or his or her assistants shall visually inspect each ballot.
28 No mechanical, optical, or electronic device shall be used for the counting of ballots. The candidates,
29 their counsel, and assistants shall have the right to inspect the ballots and participate in the recount
30 under such suitable rules as the secretary of state may adopt. If the candidate requesting the
31 recount cannot attend the recount, the candidate shall designate, in writing, to the secretary of state
32 the name of an individual who will attend the recount and who will be authorized to make decisions
33 on the candidate's behalf. Each candidate or his or her counsel or designee shall have the right to
34 protest the counting of or failure to count any ballot. The secretary of state shall thereupon rule on
35 said ballot and shall attach thereto a memorandum stating such ruling and the name of the
36 candidate making the protest. If, at any time during the counting of the ballots, a discrepancy
37 appears in any ballot for any reason, the secretary of state shall suspend the recount until the

1 discrepancy is resolved, at which time the secretary of state shall continue the recount. In no event
2 shall a discrepancy result in a second recount for the same candidate, as provided in RSA 660:3.

3 3 Ballot Law Commission; General Duties. Amend RSA 665:6, III to read as follows:

4 **III. When the ballot law commission finds by a majority vote of members present**
5 **and voting that a significant and unexplained discrepancy exists between the election**
6 **results reported by moderators and the recount conducted pursuant to RSA 660, the results**
7 **of any audit conducted by the secretary of state, or any other credible information that the**
8 **commission believes, if not resolved, could undermine public confidence in the accuracy of**
9 **election results, the commission shall request the attorney general to investigate.**

10 **IV.** The jurisdiction vested in the ballot law commission under paragraphs I and II of this
11 section shall be exclusive of all other remedies.

12 4 Attorney General; Enforcement of Election Laws. Amend RSA 7:6-c, II to read as follows:

13 **II. Without limiting the authority granted pursuant to paragraph I, whenever the**
14 **ballot law commission requests an investigation to be conducted pursuant to RSA 665, or**
15 **upon his or her own motion, the attorney general may unseal and reseal ballot boxes,**
16 **examine or cause to be examined for that purpose any equipment, books, records, papers,**
17 **ballots, or other documentary materials, or may examine any person under oath and**
18 **subject to the pains and penalties of perjury that the attorney general thinks may have**
19 **knowledge of any violation of election laws.**

20 **III.(a)** Beginning January 31, 2013, the attorney general shall, at least once during every 6-
21 month period, provide a rolling report to the general court on the status of all complaints of alleged
22 violations of the election laws received. The attorney general shall submit the report to the standing
23 committees of the senate and house of representatives with jurisdiction over election law.

24 (b) The report shall include, but not be limited to the following:

25 (1) A summary of complaints received during the preceding 6 months, or during the
26 period since the previous report if such period is less than 6 months, including the number of
27 complaints categorized by type of complaint and month received.

28 (2) For each complaint investigated, the results of the investigation and a
29 description of actions taken following the investigation.

30 (3) For each complaint not investigated, an explanation of why the complaint was
31 not investigated.

32 (c) The requirements of subparagraph (b)(2) or (b)(3) may be satisfied by including with
33 the report, for the complaint described, a closure letter, settlement agreement, cease and desist
34 order, or complaint filed with a court, or any other official communication.

35 5 Enforcement of the Election Laws; Impounding Ballots. Amend RSA 666:13 to read as follows:

36 666:13 Impounding Ballots. If directed by the attorney general as part of his enforcement of the
37 election laws **pursuant to RSA 7:6-c**, the state police which he designates shall collect all ballots

1 requested from *secretary of state* or the town and city clerks who have custody of the ballots. The
2 state police shall deliver the ballots to the public facility which is designated by the attorney general
3 *and may conduct inspections of the ballots as the investigation requires.*

4 6 Effective Date. Part IV of this act shall take effect upon its passage.
5

6 Amend the bill by replacing Part V with the following:
7

8 PART V

9 Relative to the Duties of the Registers of Probate.

10 1 Establishing Compensation; Register of Probate. Amend RSA 23:7 to read as follows:

11 23:7 Establishing Compensation. Every county convention shall have the power to establish
12 salaries, benefits, and other compensation paid to elected county officers including the county
13 attorney, sheriff, register of deeds, *register of probate*, treasurer, and county commissioners. For
14 the purposes of this section, *except for the register of probate*, "compensation" shall include
15 salary, longevity pay, vacation and sick pay, allowances, and all other payments made by the county
16 to its officers, plus the fair market value of any compensation paid in kind if reportable as income for
17 federal income tax purposes, plus all fringe benefits that may be provided including health insurance
18 and retirement, and may also include an upper limit on the amount of mileage and out-of-pocket
19 expenditures reimbursable to each officer. Said compensation shall be established biennially by the
20 county convention prior to the filing date required under RSA 655:14 for the elected offices listed in
21 this section, upon recommendation of the executive committee which shall remain in effect during
22 their term of office. Notwithstanding any other provision of law to the contrary, in counties in which
23 any of the officers listed in this section receive fees or mileage, or both, for services performed by
24 them as part of their compensation, the county convention may put such officer on a salary and
25 expenses basis. Such officer may be required to continue to collect the usual fees and mileage for the
26 service performed and to pay over all such fees and mileage to the county treasurer for the use of the
27 county. In such event, the amount such officer received in fees and mileage, less expenses, shall be
28 included in determining the minimum at which his *or her* salary may be established unless a lesser
29 amount is agreed upon by the incumbent officer at that time. In no case, *except for the register of*
30 *probate*, shall the salary or other compensation of any of such officers be established at a lesser
31 amount than that which was in effect December 31, 1972.

32 2 Salaries for Counties; Register of Probate. Amend RSA 23:8 to read as follows:

33 23:8 Salaries for Counties.

34 *I.* Every county shall establish the salary for its register of deeds at a fixed dollar value.
35 Said salaries may not be established either in part or in total as a percentage of fees or other charges
36 or payments collected by said register. Said salaries shall be established not less than biennially by
37 the county convention, upon recommendation of the executive committee. In no case shall the salary

1 of any of said registers of deeds be a lesser amount than the salary which said register was receiving
2 on January 1, 1974.

3 **II. Every county shall establish the salary for its register of probate at a fixed dollar**
4 **value. Said salaries may be established either in part or in total as a percentage of fees or**
5 **other charges or payments collected by the county treasurer or the state and consistent**
6 **with RSA 548:17. Said salaries shall be established not less than biennially by the county**
7 **convention, upon recommendation of the executive committee.**

8 **III. There is hereby established in the state treasury a separate fund to be known as**
9 **the county registers of probate fund, which shall be used to help fund salaries, benefits and**
10 **other compensation paid by counties to registers of probate. The fund shall consist of all**
11 **moneys collected pursuant to RSA 490:24, III and RSA 490:27, III. Payment to the counties**
12 **shall be limited to the extent funds are available in the county registers of probate fund.**

13 **IV. Moneys in the county registers of probate fund shall be nonlapsing and**
14 **continually appropriated to the counties for the purposes stated in RSA 23:8, III.**

15 **V. Counties shall report to the state treasurer each year on or before the 15th of**
16 **March, June, September, and December the total salary and benefits paid to registers of**
17 **probate in each county since the last report. The administrative judge of the circuit court**
18 **shall provide by the same dates a summary of the number of probate court filings by county**
19 **since the last report. The state treasurer shall pay to the counties on or before the 30th of**
20 **March, June, September, and December of each year a distribution from the county**
21 **registers of probate fund an amount up to the total salary paid by each county in the**
22 **previous reporting period. The distribution to the counties shall be calculated on a pro-**
23 **rata allocation based on the number of probate court cases filed in each county.**

24 3 New Paragraph; Supreme Court; Costs; Entry Fees. Amend RSA 490:24 by inserting after
25 paragraph II the following new paragraph:

26 **III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of**
27 **the circuit courts and shall be deposited into the county register of probate fund established under**
28 **RSA 23:8, III.**

29 4 New Paragraph; Probate Court Fees. Amend RSA 490:27 by inserting after paragraph II the
30 following new paragraph:

31 **III. The sum of \$20.00 shall be added to each entry fee collected in the probate division of**
32 **the circuit courts and shall be deposited in the county registers of probate fund established under**
33 **RSA 23:8, III.**

34 5 Judicial Conduct Commission; Definitions; Clerk. Amend RSA 494-A:2, I to read as follows:

35 **I. "Clerk" means a clerk of court or a deputy clerk, [a register of probate or deputy register,]**
36 **a court stenographer or reporter, and any person performing the duties of a clerk[register,] or**
37 **reporter.**

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1 6 Registers of Probate; Residence. Amend RSA 548:1 to read as follows:

2 548:1 Residence, Etc. The register of probate shall ~~[dwell]~~ **reside** in the county in which ~~[the~~
3 ~~probate records are required to be kept]~~ **he or she is elected**. If a register shall ~~[dwell]~~ **reside** in
4 any other county and continue so ~~[dwelling]~~ **residing** for 30 consecutive days, the office shall be
5 deemed vacant.

6 7 New Sections; Registers of Probate; Authority; Deputy Registers of Probate. Amend RSA 548
7 by inserting after section 1 the following new sections:

8 548:1-a Authority. The register of probate shall have an office collocated with the county
9 resister of deeds or such other location as determined by the county commissioners. The authority
10 and responsibility of the register of probate shall be to assist parties with probate court filings and
11 probate process governed under state statute.

12 548:1-b Deputy Registers of Probate. The county commissioners may appoint a deputy to
13 perform the duties of the register of probate in case of sickness, temporary absence, disability, or
14 other cause. Such appointment shall be made in writing and shall be for a length of time not
15 exceeding the register of probate's remaining term of office. The deputy shall be qualified in the
16 same manner as the appointing officer and perform the duties of the register of probate under
17 statute, until such time as the appointment is no longer necessary. The appointed deputy shall be
18 compensated from the register of probate's salary or as otherwise directed by the county delegation.

19 8 Registers of Probate; Preservation of Files. Amend RSA 548:5 to read as follows:

20 548:5 Preservation of Files. The register of probate shall be responsible for coordinating with
21 the secretary of state and the administrative judge of the circuit court established in RSA 490-F the
22 preservation of any closed files having the potential for historical significance. The register may
23 recommend that these files be sent to the records center established under RSA 5. ***Beginning on***
24 ***July 1, 2022, all paper probate records older than 40 years shall be kept in the state***
25 ***archives unless such records are otherwise necessary for the operation of the probate***
26 ***division***. The register of probate shall maintain a current index describing the location of any files
27 which have been removed from the court pursuant to this section. ***Except for records that***
28 ***contain personal information as defined by RSA 359-C:19, IV, the secretary of state,***
29 ***division of archives and records management shall make available on its website links to***
30 ***all available electronically scanned New Hampshire probate records, including those***
31 ***created or maintained by any nongovernmental entity until such time as the state has the***
32 ***capability to make all such records available through state resources.***

33 9 New Section; Record of Decedent's Real Estate. Amend RSA 548 by inserting after section 7-a
34 the following new section:

35 548:7-b Record of Decedent's Real Estate. Whenever it appears from the inventory or any other
36 instrument pertaining to real estate filed with the probate court in connection with the
37 administration of any estate that the estate contains real estate located in another county within the

Amendment to SB 89

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1 state, the probate court shall notify within 15 days the register of deeds of the county in which the
2 real estate lies of the name and date of death of the decedent. A register of deeds who receives such
3 a notice shall record in the grantor's index the name of the decedent, his or her date of death, and
4 the county in which the estate is being probated. The cost for filing said notice shall be assigned to
5 the estate.

6 10 Probate Courts and Decedents' Estates; Publication and Notice in Newspaper RSA 550:10 is
7 repealed and reenacted to read as follows:

8 550:10 Publication and Notice in Newspaper. Whenever notice is required to be published in a
9 newspaper by any provision of this title, the probate division of the circuit court shall cause such
10 notice to be made available to the public on the New Hampshire judicial branch website or by other
11 electronic media not less than 2 weeks before the date for which notice is given, unless otherwise
12 ordered by the judge.

13 11 County Officers; Vacancies; Registers of Probate. Amend RSA 661:9 to read as follows:

14 661:9 County Officers.

15 I. If a vacancy for a period of one year or longer occurs in the office of county sheriff, county
16 attorney, register of deeds, *register of probate*, or county treasurer, the members of the county
17 convention shall fill the vacancy for the unexpired term by a majority of the ballots cast. If a
18 vacancy for a period of less than a year occurs in any such office, the members of the county
19 convention shall, by majority vote of the county convention, vote to either fill the vacancy or to leave
20 the office vacant.

21 II.(a) If a vacancy occurs in the office of a county commissioner, the members of the county
22 convention, or, if the vacancy occurs in Hillsborough county, the members of the county convention
23 representing the cities and towns in the commissioner's district, shall fill the vacancy by a majority
24 of the ballots cast until the next biennial election of county officers. If the term filled is less than the
25 unexpired term, then notwithstanding any provisions of RSA 653:1, VI, the commissioner district
26 filled pursuant to this paragraph shall be added to the next biennial election ballot to be chosen by
27 the voters of the county for a 2-year term.

28 (b) The provisions of subparagraph (a) shall apply only where the vacancy occurred no
29 later than 30 days preceding the printing of the ballots for the primary election.

30 (c) The provisions of RSA 655:32 and RSA 655:37 relating to nominations by appropriate
31 party committees for vacancies in an office on a primary or general election ballot, respectively, shall
32 apply to vacancies to be filled under this paragraph.

33 III. If any person holding a county office enumerated in paragraph I or II becomes
34 temporarily absent or incapacitated, the county convention may, upon application of the county
35 attorney or county commissioners, declare a temporary absence and fill the same for a limited period
36 of time expressed in the appointment.

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1 IV. Any officer of a county~~[-including the register of probate,]~~ may be removed by the county
2 convention for official misconduct. Any removal under this paragraph shall be initiated by petition
3 of a majority of the county commissioners, of the county attorney, or of a superior court judge. No
4 officer of a county may be removed without notice of the allegations supporting the petition for
5 removal and an opportunity to be heard by the county convention.

6 12 New Subparagraph; Application of Receipts; Probate. Amend RSA 6:12, I(b) by inserting
7 after subparagraph (364) the following new subparagraph:

8 (365) Moneys deposited into the county registers of probate fund established in RSA
9 23:8, III.

10 13 Repeal. The following are repealed:

11 I. RSA 548:28, relative to the penalty for registers of probate.

12 II. RSA 661:9-a, relative to vacancies in office of register of probate.

13 14 Effective Date. Part V of this act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE

Election Law and Municipal Affairs

Sen James Gray, Chair
Sen Regina Birdsell, Vice Chair
Sen Ruth Ward, Member
Sen Donna Soucy, Member
Sen Rebecca Perkins Kwoka, Member.

Date: March 3, 2021

HEARINGS

Monday

03/08/2021

Election Law and Municipal Affairs	REMOTE 000	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m.	SB 89	adopting omnibus legislation relative to election procedures and registers of probate.
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Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/92540268061>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: 16465588656, 92540268061# or 13017158592, 92540268061#
4. Webinar ID: [925 4026 8061](https://www.zoom.us/j/92540268061)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 89
Sen. Gray

Tricia Melillo 271-3077

James P. Gray
Chairman

Senate Election Law and Municipal Affairs Committee
Tricia Melillo 271-3077

SB 89, adopting omnibus legislation relative to election procedures and registers of probate.

Hearing Date: March 8, 2021

Members of the Committee Present: Senators Gray, Birdsell, Ward, Soucy and Perkins Kwoka

Members of the Committee Absent : None

Bill Analysis: This bill adopts legislation relative to:

- I. The city chief elections officer.
 - II. Prohibiting the taking of certain photographs within the guardrail.
 - III. Allowing the opening of the absentee ballot outer envelopes and the preprocessing of absentee ballots.
 - IV. Establishing a committee to study post election audit counting devices.
 - V. The duties of the registers of probate.
-

Sponsors:
Sen. Gray

Who supports the bill: Request Sign In Sheet From Committee Aide

Who opposes the bill: Request Sign In Sheet From Committee Aide

Who is neutral on the bill: None

Summary of testimony presented in support:

Senator James Gray

- This bill has five separate Parts that have all been requests of either agencies or constituents.
- Part I deals with the conflict regarding who the Chief Election Officer is.
- Every town in the State of New Hampshire has a Town Clerk and that Clerk has to be a resident or voter in that town.
- For cities in New Hampshire, there is a provision, due to the number of duties he/she is responsible for, that they also have the title of Chief Elections Officer.
- This causes a problem because in other parts of statute the Moderator is in charge of the polls.
- This legislation will only take away the title to resolve the confusion and conflict between the City Clerk and the Moderator. It does not take away any of the duties.
- There is no statutory requirement for a City Clerk to be an inhabitant of the city in which they are the Chief Election Official which causes concern on many levels.
- This happens quite often and sometimes (in the border cities) the Clerk does not even reside in New Hampshire.
- Part II of the bill prohibits taking certain photos within the guardrail during an election.

- The courts have found that a person who wants to take a photo of their ballot is permitted.
- We will honor that, but when inside the guardrail voters should not be taking photos that may have other voters or ballots in them.
- During the last election, races were printed on both sides of the ballot and while the voter walked from the booth to the ballot box it would be easy to capture their ballot information in a photo.
- Part III addresses preprocessing of the absentee ballots.
- This was popular during the last election and was successful.
- Many of the Moderators wanted to broaden the preprocessing by marking the checklist.
- In these times with municipalities having large numbers of absentee ballots, being able to preprocess is a big help.
- It allows election officials the ability to move voters through on Election Day much more efficiently.
- He does not have a problem with this as long as removing the ballot from the inner envelope and marking the checklist with the red AV do not happen until Election Day.
- Opening the outer envelope before Election Day, gave an opportunity for people who did not complete the affidavit correctly a chance to correct it and have their vote count.
- If a person somehow destroyed the outer envelope that the Clerk had sent them and used another one, they would still accept that ballot when it got to the clerk.
- This portion of the bill that addresses preprocessing, opening of the outer envelope, will ensure that voters who made a simple error on the affidavit will not be disenfranchised.
- In the last election, the Clerks only had a few days before Election Day to notify a voter of an error, this bill will allow them to preprocess as soon as they receive the absentee ballot and contact the voter if corrections are needed.
- Part IV establishes a committee to study post-election audits and counting devices.
- In light of the Windham situation, voter confidence is at an all-time low and they do not trust the voting machines.
- There are voters that want to go back to a complete hand count and not use the ballot machines at all.
- As a Moderator for over twenty years, he can say that it takes a considerable amount of time and people, even in a small Ward, to be able to do hand counts efficiently and quickly.
- The accuracy of hand counts on election night, by people who have been at the polls all day, is not 100 percent. Unintentional errors are made.
- If you are recounting a race that is a hand count town instead of a machine count town, you expect there to be a higher difference in the hand count town.
- This needs to be pursued. The Commission on Elections in Washington D.C had two findings against New Hampshire.
- One, was that NH did not have an audit procedure for checking the machines and the other was that NH did not use a device that was certified by their organization.
- The machine we use was certified by NH's Ballot Law Commission after a rigorous review process.
- This happened before the Commission on Elections came into existence.
- In the future NH is going to have to replace the AcuVote 2000 machines because they are no longer manufactured, and parts are no longer available.
- Part V is legislation that deals with the Registers of Probate.
- There will be several people that are going to speak to this Part.
- They are not trying to go back to way the Registers of Probate were pre-2011.
- In the budget that year, many changes were made in the Court System to balance the budget.
- They have heard that there are a lot of people that normally would be able to conduct a probate process without an attorney but because of the complicated nature and the lack of a person that knows what the process is, are forced to pay a substantial fee to the Court and an attorney.
- Mr. Head has submitted that in 2019 there were 7,319 estate cases and the number of phone calls regarding probate cases was 46,396. That is over six calls per probate case. In 2020 there was 35,291 calls.

- He is concerned that NH should be treating people who have just lost a loved one the way they would want to be treated.
- It is a long process, and this bill is not trying to take away any of the duties that were given to the Clerk of the Circuit Court.
- They are trying to provide assistance to the people involved in these cases by having someone available that can answer their questions.
- They have dropped the request for a new computer system.
- The intent is just to provide service and Counties have contacted him to say they want to provide that service.
- This bill will give them the compensation needed to provide the service.
- Senator Soucy asked if in Part III, regarding the opening of the ballots, it means that the Clerk can open the outer envelopes every day leading up to the election. She added that her concern is that there will not be a consistent process for each town and that transparency will be more difficult.
 - Senator Gray replied that the intent is to have the Clerks be able to open the outer envelope with enough time to have corrections made by the voter if need be. The inner envelope will not be opened and will be checked to make sure that they are not opened. The Moderator will have the list from Election Net of people who requested and returned an absentee ballot. The challenge process that was in HB 1166 has been moved to Election Day instead of having it at the preprocessing to safeguard the information of those that will not be home on Election Day.

Daniel Healey

- He asked Senator Gray if requiring the City Clerk live in the city where they work is in this legislation.
 - Senator Gray replied that it is not mandated in this bill.

Margaret Byrnes – NH Municipal Association

- They are in support of Part III.
- It creates more efficiency in the absentee ballot preprocessing process.
- It allows the clerk to open the outer envelopes as absentee ballots are received.
- Additionally, it will allow the Moderator to authorize preprocessing by making notations on the checklist to help facilitate processing on election day.
- SB 89 will provide incremental efficiencies for officials by allowing some level of preprocessing to occur before Election Day.
- Signature matching is an improper practice and has been deemed unconstitutional and illegal by the Federal District Court.
- The Secretary of State's Office makes it very clear that it is not an allowable practice.
- She does not see a reason why Part III would create a problem or allow election officials to use a process that has already been deemed illegal by the Court.

William Gardner – NH Secretary of State

- His office supports all five Parts of this legislation.
- In regards to Part V, his office has a connection with the Registers of Probate because of the archives division.
- The Registers work with them to make sure probate records in the archives are protected for longevity.
- This past election, 633 thousand NH voters, voted for a Register of Probate.
- They run in each County and after the election they met to discuss this legislation and the idea of retaining some of the duties that historically the Registers have had.
- At the first meeting, they chose Jane Bradstreet to speak on their behalf.

Jane Bradstreet – Register of Probate

- The records that the probate division now create and has been created over the years by the court, works with the Registry of Deeds to prove all of the land in all of New Hampshire.
- This is a very important historic record and the Registers have not been allowed to perform this duty.
- They still have the duty and is a misdemeanor if they do not perform the duty, but they have no cooperation from the courts to perform this.
- This bill may rectify some of that.
- The second issue is a customer service issue.
- She was involved in creating the call center in 2011 to help people as efficiently as they could.
- It is difficult with all the calls coming into the call center for people to interact with a computer system and get the answers they need.
- In the past when there was a Register of Probate at the Courthouse you could go in and get guidance in person.
- Currently, there is a computer in the lobby that people are directed to if they have questions and if they have trouble with that there is an 855 number they can call.
- The issues that people need help with are private and sometimes emotional issues and there is no privacy in the lobby to discuss them.
- NH has supervised probate which is a little harder to for residents to get the help they need compared to Maine which has unsupervised probate.
- She believes people deserve to have the help they need, especially with emotional family matters.
- This bill uses the Court Filing Fees for funding, and she understands that the Court will not welcome this as they are careful with their budget.
- NH has some of the lowest filing fees in the Country and she believes this is money that has to be spent to provide people the help that they need.
- She believes it will hamper the job of the Registers not to have at least view only access to the Court's computer records.

Paul Mirski

- He was in the Legislature in 2011-2012 when the Register of Probate office disappeared.
- He was unaware that the Court, during the budget process, had convinced the leadership of the House and Senate, to statutorily gut a constitutional provision for the Register of Probate.
- This office existed primarily for transparency with regard to probate proceedings.
- For the Court to have engineered the destruction of this provision is astonishing.
- He is very supportive of seeing this role restored.
- The writers of the Constitution did not provide for the Judicial Branch to be equal with the Legislative Branch. The Legislative Branch oversees the Judicial Branch.
- Oversight is essential, especially over probate which produces a lot of money for the state.
- He believes that the Registers of Probate can fulfill this role and make sure that individuals that are going through probate will not be taken advantage of.

Raymond Tweedie – Register of Probate, Rockingham County

- He supports this Part of SB 89 which restores duties to the office of Register of Probate.
- Before them today is a group of 9 of the 10 Registers of Probate, 6 Republicans and 3 Democrats who believe in this Bill.
- They are not only a bipartisan group they represent 90% of the NH's Counties in this process.
- Over all Granite Staters cast 633,279 thousand votes for someone to represent them as Registers of Probate.

- In 2010 the state faced a budget crisis which was an 865 million dollar deficit and cuts had to be made.
- The Registers of Probate were cut, and a hot line and kiosks were added to the courts for probate issues.
- These solutions did not work well for the majority of probate issues.
- The Courts did well in light of the tremendous budget cuts, probate however, is a different animal.
- Most people do not plan to be in probate, and it can be a sad, traumatic and emotional time.
- The biggest issue involves literacy. Clerks have had to help people that cannot read or write, do not have computer literacy or financial literacy.
- This creates a huge burden when having to use the hot line or the kiosk.
- Hiring an attorney to help can be a solution but is a costly one.
- Sometimes constituents need help just filling out a form or getting generic advice on how to piece things together during a time that can be emotionally trying.
- He has heard complaints from many that they cannot go to the County Courthouse and sit in a private space and have a private conversation about a lost loved one and their estate.
- He believes that the bill is incredibly well written as it provides flexibility for the Counties to work on their own solutions to problems, based on the needs of their communities.
- The group of 10 Registers of Probate believe that this bill will give more local control and transparency and more than 600 thousand Granite Staters agree with them.
- They are sure that the Judicial Branch can work to resolve the issues they have with the Bill.

Jane Bradstreet – Response

- She wanted to clarify that all information regarding estates in probate is public and you would have to get a court order to make it confidential.
- The confidential records in the Court system are clearly identified as such.
- She believe that training is key to the success of this new system.
- There is organized training for all Court employees, and she knows that the Court can provide that to new Registers of Probate.

Paul Mirski – Response

- He believes that Judges overseeing their own activities does not serve the legislative intent.
- One of the benefits of restoring the Register of Probate roles is that they will be more divorced from the Court rather than being captured by it, which is in the public interest.

Summary of testimony presented in opposition:

Gilles Bissonnette

- They have one concern with Part III of the bill.
- On page 2, lines 24-29 could be interpreted to mean that reinstating signature matching is allowed.
- The court struck down the process of poll workers comparing signatures from the absentee application and the signed affidavit due to voters ballots being thrown out in error.
- It would be problematic to re institute that process and it would add burdens and errors for the Clerks as well as the Voters.
- They did not find any evidence in past elections of voters who were disenfranchised were ineligible to vote or were engaged in voter fraud.
- Signature matching is unreliable especially when the election officials do not have training in handwriting analysis.
- Their last concern is that signature matching is very uneven in how it will be implemented.
- In the 2016 election all of the signature mismatches rejections came from 26% of NH's 318 polling places. The last 74% did not reject any absentee ballots due to signature mismatching.

- The standards are not uniform, a voter who submits his/her two weeks before the election will have more time to correct errors than someone who submits it two days before.
- He appreciates Senator Gray trying to codify preprocessing in statute.
- Senator Birdsell asked what page and lines he was referring to.
 - Mr. Bissonnette stated that he was on Part III and page 2, lines 24 – 29.
- Senator Birdsell commented that she does not see anything in there that refers to signature matching.
 - Mr. Bissonnette replied that she is correct, it is not explicitly in there but if she could look at line 24, it states “the affidavit shall be reviewed pursuant to RSA 659:50.” That statute is the one that goes through and codifies the signature matching process. The way they read the statute is that now when you look at paragraph four, those signatures would be subject to the signature mismatch process.

Maureen Heard

- She is opposed to restarting the signature matching of absentee applications and affidavit envelopes.
- She was one of the plaintiffs in the court case.
- She was disenfranchised in a past election by a town election official who was not a handwriting expert and was not using consistent guidance to do the matching.
- She had no notice that her ballot was disqualified until well after the election.
- If she had been notified before the election she is not sure she would have been able to prove it was her signature as she was out of town on Election Day.
- Without a consistent approach to contacting voters and allowing time for a voter to respond she believes a cure in this instance is not possible
- Her daughter is a registered NH voter serving the military in Germany.
- There is a high probability that she would be disenfranchised with these changes because of the inability to contact her if there was a problem with her ballot.

Janice Kelble

- Her husband was diagnosed with Parkinson’s and his handwriting changed due to the constant movement of his hands.
- She had to start signing for him on documents that were not legal.
- On legal documents she had to bring him multiple copies so he could practice his signature until it was legible.
- If they were trying to match his signature, which would look different every time, he would lose his ability to vote.
- She is worried about people losing their voice because of a signature mismatch.

Daniel Healey – Part III

- In his town they have about 23,000 registered voters and about 6,500 absentee ballots.
- They preprocessed over two days about 2,000 ballots each day and it did help them on Election Day.
- He has some suggestions for the language of Part III, line 17.
- The opening of the absentee ballots and outer envelopes is the responsibility of the Moderator, not the Clerk.
- A Town or City Clerk should have the option to preprocess the absentee ballots or not, so he suggests they change the word from shall, to may.
- For a town election they only have about 80 absentee ballots and they do not see the need to preprocess.
- It should be an option for the Moderator to choose to preprocess or not.
- Another concern they have is that there is not procedure for what to do with the ballots after they have been preprocessed.

- In Derry, they put them in a box and sealed them with tamper proof tape until Election Day.

Richard Head – Government Affairs Director, NH Court

- He is thankful to Senator Gray for discussing the intent of Part V of this bill with him but feels it goes beyond what is intended and may cause some problems.
- His recommendation is that SB 89 be amended to strike Part V.
- They would be happy to work with Senator Gray over the summer to see if there is a role relative to having Registers of Probate assist with getting people through the electronic filing process that they can agree on.
- In sections I and II of Part V, they have no particular issues with the salaries, but are not clear how the payment of those salaries will occur.
- As written it is not clear if the Counties are paying the salaries and then the Counties are being reimbursed by the Court Fees.
- Sections 3 through 6, require the Court to adjust the fees to account for those salaries.
- It is also unclear as to who has the liability if there is not enough money in the fund to pay the salaries.
- In sections 7, 8, and 12 of Part III, it talks about the role of the Circuit Court Clerks and it seems to strike their role over the Probate Court.
- This makes it unclear as to who has a role over the Circuit Court Probate Division.
- Also, in section 12 it states that the Registers of Probate shall oversee the filings of the Probate Division, which he believes is a much more significant role than what Senator Gray described.
- They have concern about giving access of the court records due to the confidential nature of the information within them.
- The result of allowing the Registers of Probate to have essentially, a managerial role, with access to the records, is an elected official from a specific county who is not subject to the Courts policies, discipline, or reviews.
- This gives a great deal of access to someone who has not had a background check with the Court.
- Registers of Probate have no criteria to be eligible for that position.
- Another concern is how to be sure the Register of Probate is not straying into giving advice to the people they are trying to help which would be a liability to either the County or the State.
- These are concerns that need to be thought through and discussed and he is happy to work with Senator Gray to resolve them if possible
- He believe this Part is creating a greater role for the Registers of Probate than the Senator was intending.

Richard Head -- Response

- In regards to training, Registers of Probate are not Court employees or State employees, so they do not have the ability to review and determine qualifications for them.
- There would be access to the confidential records and the Court would have no way to review if the Registers of Probate had opened those records.
- The voters elected the current Registers of Probate based on the roles that they now have.
- Those roles are not in the Constitution but defined legislatively.

Speakers

Senate Remote Testify

Election Law and Municipal Affairs Committee Testify List for Bill SB89 on 2021-
Support: 7 Oppose: 328 Neutral: 0 Total to Testify: 8

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Bissonnette, Gilles	gilles@aclu-nh.org	617-272-0384	A Lobbyist	ACLU of New Hampshire	Oppose	Yes
Heard, Maureen	reenie61b@outlook.com	603.216.1886	A Member of the Public	Myself	Oppose	Yes
Bay, Luz	luzbay@comcast.net	603.781.5313	An Elected Official	Myself	Support	Yes
bradstreet, jane	jdwbroadstreet@gmail.com	603.568.8755	An Elected Official	Myself and 8 other registers of probate	Support	Yes
Byrnes, Margaret	mbyrnes@nhmunicipal.org	603.224.7447	A Lobbyist	NH Municipal Association	Support	Yes
Head, Richard	rhead@courts.state.nh.us	603-716-8235	State Agency Staff	Myself	Oppose	Yes
Gray, Senator James	Not Given	Not Given	An Elected Official	Senate District 8	Support	Yes
Kelble, Janice	jkreflection@gmail.com	603.513.8176	A Member of the Public	Myself	Oppose	Yes
Long, Julian	julianleelong@yahoo.com	603.767.1953	A Member of the Public	Myself	Oppose	No
Taing, Elizabeth	et0012@outlook.com	Not Given	A Member of the Public	Myself	Oppose	No
Zavgren, John	john@zavgren.com	603.801.2094	A Member of the Public	Myself	Oppose	No
Oxenham, Ian	ian.r.a.oxenham@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Ellis, Jeffrey	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Michelson, Barbara	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Hinkel, Robert	r.hinkel@gmail.com	413.478.8701	A Member of the Public	Myself	Oppose	No
Leavitt, Richard	revlev79@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Clafin, Kyri	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Oxenham, Evan	evan.oxenham@gmail.com	603.727.9368	A Member of the Public	Myself	Oppose	No
Leavitt, Deborah	daleavitt77@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
O'Neill, Faye	Nhfaye@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Campbell, Michelle	m65.nh@outlook.com	16036208412	A Member of the Public	Myself	Oppose	No
Reed, Barbara	moragmcp83@outlook.com	603.352.5015	A Member of the Public	Myself	Oppose	No
Dodge, Corinne	corinnedodge@hotmail.com	16034325759	A Member of the Public	Myself	Oppose	No
Insolia, Janet	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Verschuereen, Jim	jd.verschuereen@gmail.com	603.978.0398	A Member of the Public	Myself	Oppose	No
Laker-Phelps, Gail	lpsart@tds.net	603.798.5394	A Member of the Public	Myself	Oppose	No
Bundy, Linda	n_bundy@mcttelecom.com	603 588 2254	A Member of the Public	Myself	Oppose	No
Pietrovento, Janet	jpietrovento@me.com	Not Given	A Member of the Public	Myself	Oppose	No
Huberman, Anne	Anne.Huberman@gmail.com	603.924.0842	A Member of the Public	Myself	Oppose	No
Wheeler, Selena	selenawheeler07@gmail.com	16037724683	A Member of the Public	Myself	Oppose	No
Sweeney-Blaise, Robyn	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
McShane, James	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Kusch, Dan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Wheeler, Robert	selenawheeler07@gmail.com	16037724683	A Member of the Public	Myself	Oppose	No
Holtz, Anthony	awave28@live.com	412.737.9812	A Member of the Public	Myself	Oppose	No
Phillips, margery	margeryphillips@gmail.com	16032772991	A Member of the Public	Myself	Oppose	No
Carey, Gina	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Kaplan, Susan	sskaplan01@aol.com	Not Given	A Member of the Public	Myself	Oppose	No
Hiller, Mary	ehiller@tds.net	603755690	A Member of the Public	Myself	Oppose	No
Daly, Katharine	dalyk8@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Wade, William	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Wimberly, Joanne	jmdwimberly@gmail.com	603.394.0171	A Member of the Public	Myself	Oppose	No
Dalal, Lael	Laeldalal@gmail.com	603.866.9077	A Member of the Public	Myself	Oppose	No
Minihan, Jeremiah	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
O'Leary, Margaret	Not Given	Not Given	A Member of the Public	Myself	Oppose	No

Clyde, Watson	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
DeCoste, Michelle	michelle.decoste@gmail.com	603.738.2426	A Member of the Public	Myself	Oppose	No
Baber, Kristine	kmbaber@gmail.com	603.781.7743	A Member of the Public	Myself	Oppose	No
Walter, Cynthia	cawalter22@gmail.com	412-610-4327	A Member of the Public	Myself	Oppose	No
McShane, Judy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Witkin, Ronald	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Poisson, Renee	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Falk, Cheri	Falk.cj@gmail.com	603.654.2777	A Member of the Public	Myself	Oppose	No
Rafter, Hal	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Neville, Betsey	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
blakeney, rob	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Blanchard, Sandra	sandyblanchard3@gmail.com	603.724.3768	A Member of the Public	Myself	Oppose	No
French, Rob	ref.design@gmail.com	603.703.2551	A Member of the Public	Myself	Oppose	No
Weber, Frank	frank@frazilfarms.com	603.673.8041	A Member of the Public	Myself	Oppose	No
Lewandowski, Jean	jlewando@hotmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Hampe, Junc	Not Given	603-778-7223	A Member of the Public	Myself	Oppose	No
Rosenthal, Carl	croenthal789@msn.com	Not Given	A Member of the Public	Myself	Oppose	No
Fessenden, Kathryn	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Fordey, Nicole	nikkif610@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Ginter, Eric	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
King, Walter	genedocwk@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Woods, Renia	woods.gary@comcast.net	603.228.3827	A Member of the Public	Myself	Oppose	No
Home, Stacy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Fajardo, Christine	christine_fajardo@yahoo.com	215.287.8022	A Member of the Public	Myself	Oppose	No
BOSWORTH, WELDON	wbosworth@outlook.com	603.524.1822	A Member of the Public	Myself	Oppose	No
ellermann, maureen	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Antman, Alyssa	alyssa.antman2@gmail.com	603.973.5133	A Member of the Public	Myself	Oppose	No
Mott-Smith, Wiltrud	wmottsm@worldpath.net	Not Given	A Member of the Public	Myself	Oppose	No
Kolar, Catherine	catkolar@gmail.com	603.233.8773	A Member of the Public	Myself	Oppose	No
Hatcher, Phil	phil.hatcher@gmail.com	603.988.8034	A Member of the Public	Myself	Oppose	No
HOUGH, LINDA	lmhough93@gmail.com	603.707.2396	A Member of the Public	Myself	Oppose	No
Kosa, Jade	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Kilpatrick, Jessica	jessickilpatrick@gmail.com	860.428.3039	A Member of the Public	Myself	Oppose	No
Hackmann, Kent	hackmann@uidaho.edu	16039343225	A Member of the Public	Myself	Oppose	No
Mulligan, Ellen	ellen@ellenmulligan.com	603-387-0369	A Member of the Public	Myself	Oppose	No
Blaine, William	william.blaine@metrocast.net	603-387-0369	A Member of the Public	Myself	Oppose	No
Uicker, William	wuicker@gmail.com	603-496-8702	A Member of the Public	Myself	Oppose	No
Uicker, Rosemary	Not Given	603-496-7801	A Member of the Public	Myself	Oppose	No
Reynolds, Deidre	dede40@comcast.net	603.236.9616	A Member of the Public	Myself	Oppose	No
Pugh, Barbara	barbara.pugh@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Poor, Daniel	dpoor45@gmail.com	Not Given	An Elected Official	Myself	Oppose	No
Thomas, William	nhvfp@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Abdinoor, Claudia	Tatsal@yahoo.com	Not Given	A Member of the Public	Myself	Oppose	No
Edwin, Hiller	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Mattlage, Linda	l.mattlage@gmail.com	16034960172	A Member of the Public	Myself	Oppose	No
Kaufman, Amy	Fitark@comcast.net	603.580.2616	A Member of the Public	Myself	Oppose	No
Atherton, John	JMAtherton.3@gmail.com	412.610.0134	A Member of the Public	Myself	Oppose	No
Brown, Angela	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Kelly, Fran	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
van der Bijl, Dana	dana@vanderb.com	Not Given	A Member of the Public	Myself	Oppose	No
Savage, Lauren	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Torpey, Jeanne	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Schwartz, Nancy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Courchesne, Sandra	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Rich, Martha	martha.rich@thet.net	802.338.0777	A Member of the Public	Myself	Oppose	No
Haarlander, Tara	Not Given	Not Given	A Member of the Public	Myself	Oppose	No

Taylor, Susan	susant47@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Clark, Denise	denise.m.clark03055@gmail.com	603.213.1692	A Member of the Public	Myself	Oppose	No	:
Devlin, Denis	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Stone, Jay	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Dvorak, Kaley	kaley.a.dvorak@gmail.com	603.289.8664	An Elccted Official	Myself	Oppose	No	:
Schissel, Mary	schissell@comcast.net	603.863.7323	A Member of the Public	Myself	Oppose	No	:
Billingham, Carla	billingham2@comcast.net	603.893.4472	A Member of the Public	Myself	Oppose	No	:
Lamphier, Regan	ReganBurkeLamphier@gmail.com	603.264.9391	A Member of the Public	Myself	Oppose	No	:
Milliken, Walter	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Legge, Megan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Callahan, Elizabeth	ccwho50@gmail.com	413.858.7300	A Member of the Public	Myself	Oppose	No	:
Bshueff, Catherine	agawamdesigns@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
GINGRAS, JULIE	julietgingras73@gmail.com	(603) 233-14	A Member of the Public	Myself	Oppose	No	:
Boyle, Mary	mary.n.boyle@gmail.com	603.252.7898	A Member of the Public	Myself - Cornish NH	Oppose	No	:
Brown, Vicki	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Madore, Raymond	rmadore864@aol.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Baber, Bill	wsbaber@gmail.com	603.749.5969	A Member of the Public	Myself	Oppose	No	:
Murphy, Joseph	jem3nh@yahoo.com	603.321.7977	A Member of the Public	Myself	Oppose	No	:
Jacome, Jan	janjake22@gmail.com	603.234.3910	A Member of the Public	Myself	Oppose	No	:
Jachim, Nancy	Not Given	Not Given	State Agency Staff	Myself	Oppose	No	:
Morris, Kristen	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Lynch, Nancy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Wilke, Mary	wilke.mary@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Campbell, Karen	klynncampbell50@gmail.com	310.707.8572	A Member of the Public	Myself	Oppose	No	:
Frey, Gina	ginagfrey@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Frey, Kevin	kevfrey@gmail.com	603.554.8850	A Member of the Public	Myself	Oppose	No	:
Moyer, Herbert	herb.moyer@comcast.net	603-772-6910	A Member of the Public	Myself	Oppose	No	:
Mooney, Bridget	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Wood, David	cadawood@comcast.net	603.865.7473	A Member of the Public	Myself	Oppose	No	:
Edry, Derek	derekedry@gmail.com	603.548.1270	A Member of the Public	Myself	Oppose	No	:
Oldak, Brenda	brendaoldak@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Till, Mary	maryforderry@yahoo.com	603.203.1961	A Member of the Public	Myself	Oppose	No	:
Weber, Jill	jill@frazilfarms.com	603.978.1263	A Member of the Public	Myself	Oppose	No	:
Istel, Claudia	claudia@sover.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Platt, Elizabeth-Anne	lizanneplatt09@gmail.com	603-715-8191	A Member of the Public	Myself	Oppose	No	:
MacGregor, Leslie	lsmacgregor@gmail.com	603.398.6837	A Member of the Public	Myself	Oppose	No	:
FRIEDRICH, ED	erfriedrich@yahoo.com	781.775.9397	A Member of the Public	Myself	Oppose	No	:
Picrog, Jake	Picrogjake@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Koch, Laurie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Roff, Jennifer	jmroff@gmail.com	781.454.6449	A Member of the Public	Myself	Oppose	No	:
Ellis, James	jfc831@gmail.com	781.910.5156	A Member of the Public	Myself	Oppose	No	:
Diamond, Jim	jiminoregon@gmail.com	503.984.2775	A Member of the Public	Myself	Oppose	No	:
Krohn, Matthew	makrohn@gmail.com	603.851.1478	A Member of the Public	Myself	Oppose	No	:
Thompson, Laura	nicnmom@hotmail.com	603.553.0100	A Member of the Public	Myself	Oppose	No	:
Faulconer, Rick	rickfaulconer@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Greenwood, Nancy	nancgreenwood@yahoo.com	603.226.2471	A Member of the Public	Myself	Oppose	No	:
Briggs, Ronald	Rongb1950@gmail.com	603.226.2471	A Member of the Public	Myself	Oppose	No	:
Yeatts, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Pham, Jacqueline	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Jakubowski, Deborah	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Richman, Susan	susan7richman@gmail.com	603.343.6314	A Member of the Public	Myself	Oppose	No	:
Destefano, Kim	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Lindpaintner, Lyn	lynlin@bluewin.ch	Not Given	A Member of the Public	Myself	Oppose	No	:
Eames, Kathleen	kzetaeames@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Damon, Claudia	cordsdamon@gmail.com	603.226.4561	A Member of the Public	Myself	Oppose	No	:
Polz, Jessica	jessicapolz@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:

Mills, Stevcn	minnow1776@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Tuthill, John	jtuthill@sover.net	603.863.6366	A Member of the Public	Myself	Oppose	No	:
Nastasi, Sue	ctcoastmetro@gmail.com	603.842.4523	A Member of the Public	Myself	Oppose	No	:
Zavgren, Sadie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Brentrup, maureen	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Davidson, Geri	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
James, Eben	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Hill, Conor	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Warburton, Jennifer	jennwarburt@gmail.com	603.856.3443	A Member of the Public	Myself	Oppose	No	:
Glassman, Barbara	barbara.glassman@gmail.com	215-378-5356	A Member of the Public	Myself	Oppose	No	:
Clark, Martha	mctraveler1@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Wild, Gail	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Hayes, Randy	rcompostr@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Wiggins, Frank	Frankwigginsconstruction@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Nardino, Marie	mdnardino@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Lake, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Rettew, Annie	abrettew@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Waterman, Raymond	prwaterman@aol.com	16034243692	A Member of the Public	Myself	Oppose	No	:
Waterman, Patricia	prwaterman@aol.com	16033450644	A Member of the Public	Myself	Oppose	No	:
Radzelovage, William	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Corbett, Erik	Erik.corbett79@gmail.com	978.771.2675	A Member of the Public	Myself	Oppose	No	:
Higgins, Patricia	phiggins47@gmail.com	603.277.0674	A Member of the Public	Myself	Oppose	No	:
Smith, Sara	sara.rose.ssmith@gmail.com	603.738.6264	A Member of the Public	Myself	Oppose	No	:
Zink, olivia	olivia@opendemocracy.me	603.661.8621	A Lobbyist	Open Democracy Action	Oppose	No	:
Lamb, Ashley	campioa@gmail.com	603.722.0304	A Member of the Public	Myself	Oppose	No	:
Hinebauch, Mel	melhinebauch@gmail.com	603.224.4866	A Member of the Public	Myself	Oppose	No	:
Perencevich, Ruth	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Weinberg, Jonathan	Not Given	Not Given	An Elected Official	Myself	Oppose	No	:
QUISUMBING-KING, Cora	coraq@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Campbell, Kay	kkcampbell43@yahoo.com	603-818-3919	A Member of the Public	Myself	Oppose	No	:
Kaufman, Judith	jpk52@aol.com	603.542.7322	A Member of the Public	Myself	Oppose	No	:
Fauver, Scribner	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Von Karls, Claire	cvonkarls1@gmail.com	603.823.5948	A Member of the Public	Myself	Oppose	No	:
Pelz, Carol	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Montminy, Sandra	S-l-robinson@hotmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Doyle, Sean	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Gilbert, Allison	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Fontaine, William	wfon55@gmail.com	603.643.6507	A Member of the Public	Myself	Oppose	No	:
Hope, Lucinda	lmhope46@gmail.com	Not Given	A Member of the Public	Myself	Support	No	:
Garber, Marcia	mag1022rn@comcast.net	16032183611	A Member of the Public	Myself	Oppose	No	:
Oldak, Peter	jewelvin@rcn.com	603.770.9313	A Member of the Public	Myself	Oppose	No	:
Peterson, Susan	susanrp@aol.com	603.702.0480	A Member of the Public	Myself	Oppose	No	:
Orkin, Susan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Dalton, Lee Ann	dalton.leeann@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Bond, Heather	habnews@live.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Kelley, Mary	midgekelly1@gmail.com	603.320.7237	A Member of the Public	Myself	Oppose	No	:
Gordon, Valerie	zta.vlg@gmail.com	603.438.7995	A Member of the Public	Myself	Oppose	No	:
Atkinson, Richard	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Skewes, Joan	joan.skewes@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Osborne, Stephanie	Not Given	603.238.3141	A Member of the Public	Myself	Oppose	No	:
Filson, Anne	a_filson@yahoo.com	16039861475	A Member of the Public	Myself	Oppose	No	:
borofsky, bruce	bboro@yahoo.com	914.456.4146	A Member of the Public	Myself	Oppose	No	:
Selig, Loren	zltselig@gmail.com	603.868.1000	A Member of the Public	Myself	Oppose	No	:
Goddard, Jeffrey	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Quiroga, Lara	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:

Orifici, Frank	frankorifici@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Kudlik, Cindy	cindykudlik@protonmail.com	780-4511	An Elected Official	Myself	Oppose	No
McNair, Sydney	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Spelman, Kathy	jspielman@comcast.net	603.397.7879	A Member of the Public	Myself	Oppose	No
Spielman, James	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Rossachacj, Marie	mariercj@msn.com	603.748.0985	A Member of the Public	Myself	Oppose	No
Haralambic, Ann	HaralambicLaw@gmail.com	603.367.4372	A Member of the Public	Myself	Oppose	No
Dickie, Katherine	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Snow, Matthew	mrfrsty@hotmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Wade, Joan	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Melo, April	april.melo@gmail.com	617.880.4487	A Member of the Public	Myself	Oppose	No
Feder, Marsha	marshafeder@gmail.com	603.860.8743	A Member of the Public	Myself	Oppose	No
Hadley, Sylvia	sylvia_hadley@yahoo.com	Not Given	A Member of the Public	Myself	Oppose	No
Pomeroy, Robert	mbpomeroy@gmail.com	603.524.0496	A Member of the Public	Myself	Oppose	No
Pomeroy, Mary	mbpomeroy@gmail.com	603.524.0496	A Member of the Public	Myself	Oppose	No
Ford, Suc	sucford06@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Pool, F	fliisnh@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Griesinger, Andrew	griesingers@metrocast.net	Not Given	A Member of the Public	Myself	Oppose	No
Wesson, Victoria	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Bruce, Susan	susanb.red@mac.com	603.730.7078	A Member of the Public	Myself	Oppose	No
Murphy, Mary-Margaret	mmurphy141@gmail.com	207.449.7652	A Member of the Public	Myself	Oppose	No
Berend, Cynthia	crbdesign@charter.net	Not Given	A Member of the Public	Myself	Oppose	No
Sumner, Deborah	dsumner@myfairpoint.net	Not Given	A Member of the Public	Myself	Oppose	No
Horrihan, Timothy	timothy.horrihan@leg.state.nh.us	603.969.3823	An Elected Official	Strafford 6	Support	No
Poor, HERRIKA	hwpoor@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Strohm, Brian	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Moran, Dr. Daniel T	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Elhuni, Asma	asma@radnh.org	Not Given	A Member of the Public	Myself	Oppose	No
Frost, Sherry	sherry.frost@leg.state.nh.us	Not Given	An Elected Official	Myself	Oppose	No
Courchesne, Robert	chezcour@comcast.net	603.347.5488	A Member of the Public	Myself	Oppose	No
Finadore, Hilary	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Pugh, Stephen	miaferal@comcast.net	603.329.1593	A Member of the Public	Myself	Oppose	No
Baker, Alan Robert	abobbaker@aol.com	16039225571	A Member of the Public	Myself	Oppose	No
Lossman, Rhys	rhyslossman@yahoo.com	603.661.1681	A Member of the Public	Myself	Oppose	No
Gilbert, Linda	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Cahill-Yeaton, Miriam	nmyeaton.mims@yahoo.com	16037311810	A Member of the Public	Myself	Oppose	No
Maskwa, Donna	donna.maskwa@gmail.com	603.502.8606	A Member of the Public	Myself	Oppose	No
RHOADES, CHARLES	chuckrhoades@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No
Savage, Craig	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Burcalow, Sarah	sarah.burcalow@gmail.com	603.391.2821	A Member of the Public	Myself	Oppose	No
Lanchester, Cynthia	cjlanchester@gmail.com	603.823.8770	A Member of the Public	Myself	Oppose	No
Spence, Richard	rtssds2@gmail.com	603-842-5139	A Member of the Public	Myself	Oppose	No
Thompson, Julie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Southland, Samantha	mccaigsc@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No
Oakes, Jacqueline	jsoakes@gmail.com	860.212.2359	A Member of the Public	Myself	Oppose	No
Hurley, John	jrhurjd@aol.com	603.287.8913	A Member of the Public	Myself	Oppose	No
Colgan, Nora	colgannora@gmail.com	203.598.9521	A Member of the Public	Myself	Oppose	No
Van Etten, William	williamvanetten@mac.com	617.921.3358	A Member of the Public	Myself	Oppose	No
Streeter, Faith	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Field, Bryan	bryguy350@yahoo.com	603.924.7225	A Member of the Public	Myself	Oppose	No
Cohen, Ken	Kenhcohen@comcast.net	603 772-2909	A Member of the Public	Myself	Oppose	No
Tishkevich, Felicia	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Davison, Kate	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Morrow, Sophie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No

Carpentri, Barbara	Razzini@comcast.net	16032926662	A Member of the Public	Myself	Oppose	No	:
Sanchez, Ruth	ruthmaria29@yahoo.com	Not Given	A Member of the Public	Myself	Oppose	No	:
GODDARD, Sydnee	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Sharf, Joanna	josharf@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Chisholm, Townley	tchisholm@exeter.edu	603.772.9220	A Member of the Public	Myself	Oppose	No	:
Bunker, Lisa	lisabunkernh@gmail.com	207.985.2053	An Elected Official	Myself and the town of Exeter	Oppose	No	:
Shamel, Roger	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Moccia, Lianne	lianne.moccia@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Englund, Alfrida	ditaenglund43@gmail.com	603.847.9727	A Member of the Public	Myself	Oppose	No	:
Cotton, Bev	bevcott@gmail.com	16037145160	A Member of the Public	Myself	Oppose	No	:
Roman, Valerie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Whitney, Patricia	Pjwhitney8@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Mulligan, Mary Jane	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Simm, Linnea	lcsimm28@gmail.com	603.475.4900	A Member of the Public	Myself	Oppose	No	:
Erhard, Liv	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
St.Germain, Kindred	kstgermain@fordham.edu	603.340.6017	A Member of the Public	Myself	Oppose	No	:
Almy, Susan	susan.almy@comcast.net	603.448.4769	An Elected Official	Myself	Oppose	No	:
Carter, Marissa	marissac974@yahoo.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Daley, Janine	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Cunningham, Tim	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Larson, Ruth	ruthlarson@msn.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Mariotta, Elizabeth	elizmarietta@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Friese, Richard	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Perry, Brenda	bmperry65@msn.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Wood, Jacqueline	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Stamm, Karl	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Miller, Mary-Kay	marykaymiller@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Austin, Suzanne	suzanne321@comcast.net	978.273.2621	A Member of the Public	Myself	Oppose	No	:
Stamm, Carol	nanastamm@yahoo.com	603.883.9452	A Member of the Public	Myself	Oppose	No	:
Brickett, Jane	silofarm@gmail.com	603.788.2220	A Member of the Public	Myself	Oppose	No	:
Moore, Susan	susan.moore.franconia@gmail.com	603.823.8050	A Member of the Public	Myself	Oppose	No	:
Smiley, Julie	Smilesjusa@yahoo.com	508.918.6353	A Member of the Public	Myself	Oppose	No	:
Spencer, Donnie	donniespencer@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Paulin, Cynthia	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Warnock, Laurie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Cloutier, John	jocloutier@comcast.net	16034773690	An Elected Official	Myself	Oppose	No	:
Sundquist, Carolyn	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Starmer, Nancy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Phillips, Charles	chuckpnh@gmail.com	603.869.0127	A Member of the Public	Myself	Oppose	No	:
Lasky, Bette	brl1647@aol.com	603.315.1924	A Member of the Public	Myself	Oppose	No	:
Lanchester, Henry	roblanchester@gmail.com	609.577.7300	A Member of the Public	Myself	Oppose	No	:
Frayse, Michael	mikefrayse@gmail.com	310.218.7349	A Member of the Public	Myself	Oppose	No	:
Robins, Jean	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Horgan, Kate	khorgan@dupontgroup.com	Not Given	A Lobbyist	NH Association of Counties	Oppose	No	:
Schechter, Ari	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Torricc, Alyce	alycemarie@gmail.com	207.752.2909	A Member of the Public	Myself	Oppose	No	:
c, m	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Hatt, Juanita	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Crandell-Glass, Jane	Bostonjanc@me.com	603.675.2037	A Member of the Public	Myself	Oppose	No	:
Glass, Jonathan	Jglass1063@gmail.com	603.559.4223	A Member of the Public	Myself	Oppose	No	:
Milonas, Abby	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Daly, Virginia	Vjdaly@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	:
Plumlee, Danielle	Plumlee.danielle@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
Larson, Wendy	wglarson@comcast.net	603.502.3841	A Member of the Public	Myself	Oppose	No	:
Levine, Robert	roblevine603@gmail.com	603-702-1733	A Member of the Public	Myself	Oppose	No	:
Cohen, Helen	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:

3/8/2021

Senate Remote Testify

Ball, Maggie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
SMith, Leslie	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Carr, Sandra	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Joyce, Ellen	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Blair, Linda	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Lenz, Elaine	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Michaels, Kathryn	Not Given	Not Given	An Elected Official	Myself	Oppose	No	:
Sara, Hamilton	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Farnum, Ellen	Ellenlynnfarnum@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:
English, Wendy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	:
Graham, Nancy	nancygraham806@gmail.com	425.765.6921	A Member of the Public	Myself	Oppose	No	:
McDonald, Sarah	mcdsarah@googlemail.com	650.906.4013	A Member of the Public	Myself	Oppose	No	:
Lowen, Rosalind	roz.lowen@gmail.com	Not Given	A Member of the Public	Myself	Oppose	No	:

Testimony

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Saucedo v. Gardner

United States District Court for the District of New Hampshire

August 14, 2018, Decided; August 14, 2018, Filed

Civil No. 17-cv-183-LM

Reporter

335 F. Supp. 3d 202 *; 2018 U.S. Dist. LEXIS 136895 **; 2018 DNH 160; 2018 WL 3862704

Mary **Saucedo**, et al. v. William Gardner, Secretary of State of the State of New Hampshire, in his official capacity, et al.

not harm the interests of preventing voter fraud and protecting public confidence in elections, and the current process for rejecting voters due to a signature mismatch failed to guarantee basic fairness, and was unconstitutional under the Fourteenth Amendment of the U.S. Constitution.

Prior History: Saucedo v. Gardner, 2018 U.S. Dist. LEXIS 35175 (D.N.H., Mar. 3, 2018)

Core Terms

signature, voter, moderators, absentee ballot, election, ballot, envelope, notice, general election, plaintiffs', mismatch, training, voting, signature-match, disability, variations, procedural due process, extrinsic evidence, summary judgment, absentee voter, counted, match, election official, election day, marks, rates, moot, facial challenge, absentee-ballot, styles

Case Summary

Overview

HOLDINGS: [1]-State officials were permanently enjoined from enforcing RSA 659:50 III since, having induced voters to vote by absentee ballot, the State had to provide adequate process to ensure that voters' ballots are fairly considered and, if eligible, counted, based on the undisputed facts in the record, it was apparent that the risk of erroneous deprivation of the protected interest in absentee voting was not enormous, but the probable value of an additional procedure was likewise great in that it served to protect the fundamental right to vote, additional procedures would

Outcome

Request for permanent injunctive relief granted.

LexisNexis® Headnotes

Governments > State & Territorial
Governments > Elections

HN1 [📄] State & Territorial Governments, Elections

The signature-match requirement in RSA 659:50, III requires every local election moderator to compare the signature on a voter's absentee-ballot application to the signature on an affidavit that the voter sends with the absentee ballot. If the signature on the affidavit does not appear to be executed by the same person who signed the application, the moderator must reject the voter's ballot. RSA 659:50, III. The purpose of the requirement is to ensure that the same person executes both the absentee-ballot application and the affidavit. In recent elections, however, the signature-match requirement has disenfranchised hundreds of absentee voters.

requirement. RSA 659:50, III. In her deposition, Ms. **Saucedo** testified that she will "definitely" rely on her husband's assistance when she votes in the future. Doc. no. 49-5 at 7 (brackets omitted). Therefore, Ms. **Saucedo**—the only plaintiff with a disability—is and will be exempt from RSA 659:50, III, and consequently no longer has a legally cognizable interest in the outcome of the ADA claim. See Horizon Bank & Trust Co. v. Massachusetts, 391 F.3d 48, 53 (1st Cir. 2004) (HN23[↑] "A case is moot when the issues are no longer live or the parties no longer have a legally cognizable interest in the outcome."). Put differently, because the court can no longer give any effectual relief to Ms. **Saucedo** on this claim, the claim is moot and the court may not entertain it. See id.; cf. Steir v. Girl Scouts of the USA, 383 F.3d 7, 16 (1st Cir. 2004) ("A federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of officials are unlawful." (internal brackets omitted)).

August 14, 2018

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For these reasons, the court does not address Counts [**49] II, III, and IV.

CONCLUSION

For the reasons stated herein, plaintiffs' motion for summary judgment (doc. no. 48) is granted with respect to Count I, and is otherwise denied. Summary judgment [**224] on Counts II and III is denied in light of the complete relief afforded to plaintiffs on Count I, and summary judgment on Count IV is denied because the claim is moot. Counts II, III, and IV are therefore dismissed without prejudice. Defendants' cross-motion for summary judgment (doc. no. 52) is granted on Count IV to the extent that Count IV is dismissed without prejudice as moot, and is otherwise denied. Plaintiffs' motion to strike (doc. no. 56) is denied.

As to relief under Count I, the court grants plaintiffs' request for declaratory relief insofar as RSA 659:50, III is unconstitutional under the Fourteenth Amendment of the United States Constitution. The court also grants plaintiffs' request for permanent injunctive relief, and defendants are hereby permanently enjoined from enforcing RSA 659:50, III.

SO ORDERED.

/s/ Landya McCafferty

Landya McCafferty

United States District Judge



Report on Election Auditing
by the
Election Audits Task Force
of the
League of Women Voters of the United States
January 2009

Members of the Election Audits Task Force

Judy Duffy, Task Force co-chair; LWVUS second vice president
Norman Turrill, Task Force co-chair; LWVUS Board member; retired software engineer
Ed Gracely, LWV of New Jersey; statistician, Drexel University College of Medicine
Mark Halvorson, LWV of Minnesota; director, Citizens for Election Integrity Minnesota
Barbara Hankins, LWV of Montgomery County, Maryland; former auditor, Texas State
Auditor's Office
Kurt Miller, LWV of Shaker Heights, Ohio
Lu Pierson, President, LWV of Maryland; Maryland Attorney General's Task Force on
Election Irregularities
Barbara Simons, LWV of Los Altos/Mountain View, California; former president,
Association for Computing Machinery

The committee received staff support from Lloyd Leonard, senior director of Advocacy

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Report on Election Auditing

Introduction

A fair and accurate election process is essential to any democracy. After the 2000 election, in which voters experienced significant problems, many people came to doubt that the process was either fair or accurate. Consequently, significant changes in voting technology and in election laws and procedures were introduced. The results have been mixed. For example, numerous reputable reports have documented security, reliability and verifiability issues with electronic voting machines. Voters and advocates have questioned both the validity of specific election results and the integrity of the entire election process. Strengthening requirements for reviews of election procedures, testing voting equipment and auditing vote results can go a long way to restoring confidence in the fairness of the voting process and accuracy of election results.

The field of election auditing is fairly new and evolving. About half of all states have laws or regulations and procedures relating to recounts of contested elections, and about one third of the states currently require election audits. Post-election audits differ from recounts. Post-election audits routinely check voting system performance in contests, regardless of how close margins of victory appear to be. Recounts repeat ballot counting in special circumstances, such as when preliminary results show a close margin of victory. Anyone designing an audit system should be fully cognizant of the relationship between audit and recount procedures. It is important that recount procedures and audit procedures complement each other, rather than duplicate or contradict each other. However, to distinguish these two important procedures in this document, we will strictly separate the use of the terms “audit,” “auditing,” “audit count” or “audit counting,” and “recount” or “recounting.”

In 2006, delegates to the 2006 LWVUS Convention clarified their “Citizens’ Right to Vote” position with a resolution that affirmed that the LWVUS only supports voting systems that are designed so that:

- They employ a voter-verifiable paper ballot or other paper record, said paper being the official record of the voter’s intent; and
- The voter can verify, either by eye or with the aid of suitable devices for those who have impaired vision, that the paper ballot/record accurately reflects his or her intent; and
- Such verification takes place while the voter is still in the process of voting; and
- The vote totals can be verified by an independent hand count of the paper ballot/record; and
- Routine audits of the paper ballot/record in randomly selected audit units can be conducted in every election, and the results published by the jurisdiction.

As League members across the country researched potential local implementation of the League’s position, it became clear that requirements for election audits vary greatly among the states. Indeed, many states have no requirement for post-election review of

election results. In early 2008, League President Mary Wilson appointed an LWVUS Election Audits Task Force to provide guidance to League leaders and members about appropriate requirements for election audits. The work of the Task Force resulted in the preparation of Recommended Guidelines for Election Audits and Criteria for an Election Auditing Law. The Task Force members recognize that recounting votes may not identify problems that could affect the outcome of an election, so these Recommended Guidelines include guidelines for auditing election procedures and processes, as well as for auditing election results.

The documents produced by the Task Force represent high standards. Although fully implementing the recommendations of the Task Force should be the goal, resource limitations may necessitate prioritizing the recommended guidelines. In that case, informed judgments about the degree of risk entailed by failing to follow one or more of the recommendations will need to be made. Priorities should be set after assessing the importance of each guideline in terms of the potential risk of not performing the recommended review of procedures or verification of vote results.

This report consists of four key parts: Recommended Guidelines for Election Audits, Criteria for an Election Auditing Law, Glossary of Election Audits Terminology, and Election Audits Resources. These sections are intended to be used together in their entirety.

Recommended Guidelines for Election Audits

An election audit is a set of procedures designed to investigate whether an election was conducted properly, the voting equipment counted votes accurately, only qualified voters cast ballots in the election, and the rights of eligible citizens to vote and to experience an efficient and fair voting process were respected.

Defined in this way, the full audit process includes:

- (1) Activities typically undertaken before or between elections, such as evaluation of the following: the voter registration process, the voting machines to be used, the electronic poll books, and all procedures for running the election;
- (2) Evaluation of procedural aspects of the election, such as wait times, polling place worker performance and whether there were appropriate controls on the chain of custody for all election equipment, materials, and ballots; and
- (3) Procedures to determine the accuracy of the reported election results themselves. Properly performed audits will guard against both deliberate manipulation of the election and software, hardware or programming problems, since any of these factors could alter the election outcome.

Generally, audits can be divided into two categories: (1) reviews of processes and procedures that contribute to an orderly and fair election and (2) verification of the vote counts. The former can be conducted periodically with follow up examinations implemented to assure that flaws in the process have been corrected, or when there are significant changes in personnel, equipment or election law. Verification of vote counts should occur after every election.

This document is written from the perspective of someone reviewing the existing electoral system, such as a League member or other auditor, not from the perspective of an elections official per se. Thus, many of the procedures described below (such as appropriate monitoring of sensitive election procedures or appropriate training for poll workers) should be done in all elections and races. But auditing of these procedures can be conducted periodically with follow up examinations as needed, rather than for every election and race. The goal of the procedural part of the audit is to ensure that the election is being conducted and verified appropriately.

Many of the procedural and process guidelines have been taken from “Safeguarding the Vote” published by the League of Women Voters of the United States Education Fund in July 2004, <http://www.lwv.org/AM/Template.cfm?Section=VoterInformation2&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=10509>.

Many of the guidelines for post-election audits to check the accuracy of reported election results were developed by an ad hoc group comprising many stakeholders including elections officials, public advocates, computer scientists, statisticians and political scientists. The document developed by this ad hoc group can be found here: <http://www.electionaudits.org/principles>.

Guidelines for Auditing of Election Procedures and Processes

A. Transparency

1. Verify that public, bipartisan or third-party monitoring of sensitive election procedures has occurred. Examples of such procedures would be loading software, conducting logic and accuracy tests, preparing machines for delivery to polling places, and mailing and receiving absentee ballots. Determine which procedures are to be monitored. Attend some of the sessions to assure that they are open or examine sign-in sheets for sessions. Review documentation of the procedures to determine if all were open.

Goals: All sensitive procedures should be open to monitoring as described.

Performance measure: Percentage of sensitive election procedures open to public, bipartisan and third party monitoring.

2. Verify tracking and documentation of all procedures, from the testing of machines to the handling of ballots, by reviewing tracking and documentation reports. Such tracking is essential to proper election monitoring.

Performance measure: Percentage of process documentation that is available to the public and easily accessible.

3. Verify that there is transparency in the operation and management of voting systems from the highest levels of government down to the polling place. Elections officials should take steps to assure voters that not just the voting systems, but also the procedures leading up to Election Day, are fully open and accountable. This would at least involve public testing of voting and tabulating systems, the use of open bidding for procurement, and a clear chain of custody for all ballots through the completion of the election and audit. Review tracking and documentation reports for openness of operation and management of voting systems. Examine chain of custody for all ballots. All contracts and agreements between state or locality and voting system vendors should be open to the public and easily accessible. The public should be informed of initial costs for machines and other voting related materials, maintenance costs, warranties and vendor liability.

Goals: All elections should be conducted in a way that is open and transparent. Chain of custody procedures should be clearly documented and demonstrably followed. Any questionable outcomes, such as evidence of missing ballots, should be investigated immediately. Elections officials and vendors should be held accountable for serious election-related problems.

Performance measures: Percentage of processes open to the public. Percentage of processes documented. Percentage of ballots accounted for.

B. Testing

1. Verify that there is uniform, public testing of all elements of the voting systems by observing the testing process and by examining testing records for completeness of the testing procedures. Every voting machine and poll book should be tested. The tests should include logic and accuracy testing for electronic poll books and electronic and optical scan voting systems, testing to ensure that the proper ballot has been printed or correctly loaded into the system, and verification that the ballot definition file is correct. Verify that a sufficient number of paper and optical scan ballots have been correctly distributed to polling places. Review records of paper ballot distribution to polling places.

Performance measures: Percentage of voting machine tests for logic and accuracy and for mechanical and technical problems performed in public. Verification that every observed voting system problem has been dealt with, either by fixing the problem prior to any voting or by replacing the failed component with one that has passed all of the logic and accuracy tests. Verify that appropriate tests were applied. (For a description of appropriate tests, see the resource list). Verify that all polling places have received a sufficient number of correct paper ballots.

2. Verify that the electronic and optical scan machines (hardware and software) used are the same as the systems that were certified by observing the verification process or by examining documentation for the verification process. This can be done using a

digital signature, or other specific technical methods such as "cryptographic hash," or complete binary images. The details are beyond the scope of this report.

Goal: Only machines that have been demonstrated to contain certified software should be used in any election.

Performance measure: Percentage of machines validation-tested before and after the election.

3. Verify that all voting systems, including machines and electronic poll books, have been tested for usability by average voters, voters with disabilities and poll workers. Some tests, especially those of electronic poll books, should be conducted under Election Day type conditions to check for system overload.

Goals: The design of all voting systems, electronic poll book systems and general ballot layouts should be usability tested far ahead of any use in an election. All systems should be easily usable by all poll workers and voters, including voters with disabilities. There should be no confusion about how to set up or vote on the machines. The ballots should be easily understandable. If average voters require a long time to vote, either because of the system or the ballot, then elections officials should compensate by providing back-up paper ballots.

C. Physical Protection of Voting Systems

1. Determine that there is restricted physical access to all components of voting systems prior to, during and after the election. "Components of voting systems" include ballots, optical scanners, voting machines, electronic poll books, and precinct registers or physically vulnerable records. Review and observe controls over physical access to voting system components, including the manner in which voting systems and ballots are secured when they are stored prior to the election, manner in which they are secured during delivery to the poll worker's home or the polling place, and manner in which they are secured at the polling place prior to and during the election. All physical components should be inventoried and accounted for. Access to voting systems and poll books should be restricted prior to the election. Audit trails should be maintained that record who has had access to ballots and election related systems, as well as why that access was required. Machines and ballots that are delivered to a poll worker's home or to a polling place prior to an election or that are used for early voting should be securely stored when they are not being used. Access throughout the entire process – including storage, delivery to the poll worker's home or the polling place, storage at those locations, early voting and Election Day voting – should be carefully documented.

Goal: 100 percent compliance with all stated requirements above: Anything less than 100 percent of components restricted, documented and accounted for creates the risk of interference or fraud.

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Performance measures: Percentage of voting system components with restricted physical access. Percentage of physical components inventoried and accounted for. Percentage of machines and/or ballots delivered in advance that are securely stored and accounted for.

2. Verify that voting systems are maintained and operated in isolation from networks and the Internet by reviewing system components to assure that they are isolated from networks and the Internet. Electronic poll books may be an exception to this rule.

Goal: There should be no wireless component in any voting system, so that Internet access is not a possibility. Testing agencies should examine the physical components of the voting systems to determine that Internet access is impossible.

Performance measure: Percentage of voting system components that is isolated from networks and the Internet.

D. Education and Training

1. Verify that there is an adequate program to educate voters on the use of all voting equipment both in advance of the election and in the polling place on Election Day, by reviewing documentation of educational activities prior to Election Day and availability of assistance on Election Day. Educational materials should be tested using inexperienced voters. If the voters appear confused after exposure to the educational material, the material should be modified and retested until novice voters are able to understand the voting process after exposure to the educational materials.

Performance measures: Number of educational sessions, news articles and other educational activities prior to Election Day. Percentage of polling places with voter assistance available. Number and percentage of tested voters able to vote correctly after the final training session.

2. Verify that adequate training has been provided for all Election Day workers and election monitors and auditors by reviewing manuals and class outlines to assure that training is consistent with state and federal law, as well as with local procedures. Review requirements for election workers to attend training. Calculate the percentage of workers who actually received training prior to Election Day. Attend sufficient classes to determine that classes are consistent with manuals and class outlines. Evaluate quality of training. Test poll workers after training session to see how well they understood the material.

Goal: All workers, monitors and auditors should be well-trained and able to demonstrate their knowledge of the relevant aspects of the election system.

Performance measures: Percentage of Election Day workers who received training prior to Election Day. Include polling place workers (election judges), central election location workers, employed or contracted technical workers, election monitors and *auditors*. (If possible, calculate percentage for each group)

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separately.) Percentage of poll workers who attain an acceptable level of understanding after training.

E. Polling Place Procedures Prior to Voting

1. Determine that there are sufficient poll workers, voting machines, poll books, privacy booths, paper ballots, provisional ballots and other supplies in each polling place, by calculating their ratios to registered voters. Determine reasons for significant deviations from the average and from state established norms. If the number of voting machines or ballots appears to be inadequate, determine that emergency backup paper ballots are available. Verify that procedures are in place to also provide emergency backup paper ballots in the event of a machine failure, long waits because of the time required to vote, or an unusually large turnout.

Goals: No polling place should run out of paper ballots, and no voter should be required to wait in line longer than a reasonable period of time to vote, say thirty minutes.

Performance measures: Ratios of poll workers, poll books, voting machines, privacy booths, paper ballots, provisional ballots and other supplies to registered voters. Percentage of precincts that reported sufficient machines or paper ballots. Length of time to check in to vote and length of time to reach voting machines - measurement could be taken at prescribed intervals or exiting voters could be asked to record times.

2. Determine that there is adequate technical support for poll workers on Election Day, as well as an adequate number of back-up machines, poll books, and emergency paper ballots in the case of machine failures or bottlenecks.
3. **Early voting** (that is, voting at a polling place on days before the actual Election Day, sometimes in special locations to facilitate voting): If a jurisdiction has early voting, it should test machines and procedures in operation before each day of early voting.

Goals: Procedures should be carefully and thoroughly checked before early voting, as they would be before Election Day itself. Any errors or problems uncovered prior to or during early voting should be documented, investigated, reported publicly and corrected.

Performance measures: Percentage of systems that functioned correctly without the need for technical assistance during early voting. Percentage of systems that were backed up overnight and the adequacy of back-up options.

F. Polling Place Procedures During Voting

1. Every polling place should maintain a log for each voting machine on which notations are made of problems reported; problems confirmed; amount of time, if any, machine is out of service; and maintenance actions taken. Election judge incident reports and reports of technicians should be examined, and corrective action taken to

prevent repeated failures. Precinct judge incident reports should be examined to determine if any precincts ran out of ballots during the day or if voters had to wait an excessively long time to vote. If either occurred, an immediate investigation should be conducted.

Performance measures: The average and longest amount of time that voters have to wait in order to vote, number of systems that required technical assistance, adequacy of backup options and speed with which information about failures is made public.

Guidelines for Conducting an Audit of Election Results

After an election has taken place, an important component of the audit is to check the election results; uncover and report discrepancies due to error, malfunction or fraud; and provide data to inform continuous process improvement. The post-election audit process should cover selected races and ballot questions in all elections - primary, general and special; federal, state, county and local.

Although the actual verification takes place after the election, major aspects of the process need to be set up in advance. Thus, there are two phases of "post-election audits," as described below:

A. In advance of the election

The entire audit process should be set up to be transparent and publicly observable with clear written procedures.

1. Selecting Audit Units

The method for randomly selecting the audit units and the assumptions behind that method should be clearly defined well in advance of each election.

Audit units may be precincts, machines or batches of votes (as in absentee ballots). Decisions about what constitutes an audit unit should be made in advance of an election.

Some considerations concerning that decision:

- The total number of audit units to sample will be similar, whether machines or precincts are used. If there is more than one machine per precinct, then the number of votes to count in an audit for equivalent precision may be considerably lower if audit units are defined as machines.
- The statistical process of deciding how many audit units to audit is simpler if the number of votes is similar between audit units. In many jurisdictions, machines may be fairly similar in vote count, but precincts may differ more widely due to varying numbers of machines per precinct.
- On the other hand, much election data is recorded and officially tallied by precinct. Keeping track of votes by machine may add a layer of complexity, and a potential for error, to the reporting process.

- Note that whichever method is chosen, all votes should be included, even if this means that some, like absentee ballots and provisional ballots, are included in separate audit units of their own.

The process of determining these methods should be public, and there should be public opportunities for comment on the methodology.

2. "Risk Limiting" Audits and Statistical Considerations

Statistical principles must play a key role in deciding how many audit units are chosen. Best practices say to use a "risk-limiting" approach in which all decisions are made in such a way as to minimize the risk of confirming an outcome that is, in fact, wrong.

Key to economical and effective auditing is a focus on statistical accuracy. Very close results (for example, within 0.5 percent) are the most easily affected by small problems or manipulation and, in some jurisdictions, will automatically trigger a complete recount. Audits should be designed and implemented so that there is great confidence that any significant error would be detected. There should be only a small, predetermined chance of confirming an incorrect outcome, typically somewhere between 1 percent and 5 percent. With all else being equal, the probability of detecting a significant error increases with the number of audit units sampled.

The number of units to audit should be a function of the margin of victory, the distribution of votes between audit units (for example whether there are large and small audit units in the same race) and the total number of audit units in the race. Fixed percentage audits include insufficient audit units for the desired accuracy in small or close races and unnecessarily many audit units for landslide or large races. (See - "Statistics Can Help Ensure Accurate Elections." AMSTAT NEWS, Copyright 2008, American Statistical Association.

<http://www.amstat.org/publications/amstat/index.cfm?fuseaction=pres062007>).

Tiered audits, in which a specific percentage of audit units are chosen based on the margin, represent an improvement over fixed audits, but are still not efficient statistically. Note that it may be necessary to use a less than maximally efficient statistical method in order to ensure that the method used is understandable and transparent to officials and the public.

It will sometimes be necessary to perform the audit in phases, since absentee ballots and provisional ballots may not be in hand and ready to count until several days after the election. If results from later phases decrease the overall reported margin of victory, then additional audit units may need to be selected and counted to satisfy the statistical model and ensure a small enough chance of error.

Note that "outcome" refers to which candidates or ballot measures have won or lost, not necessarily a specific vote tally. By "correct," we mean that the outcome

from a complete recount would match the preliminary reported outcome for a particular contest.

3. Escalation Protocols

Escalation protocols (that is, what actions to take when discrepancies are found between an audit count and preliminary announced results) must be clearly defined in advance and developed to be consistent with the risk-limiting principle.

Some considerations:

- Since minor discrepancies are almost inevitable, deciding to escalate the audit to a higher level because of very small and explainable discrepancies (such as a mark not made properly on an Optical Scan ballot) will escalate many audits, even though the election outcome is not in doubt.
- It is possible to set criteria for how big a discrepancy should be before escalation takes place. Although this can prevent needless escalation, it adds a layer of complexity and may be difficult to explain to the public, especially if statistical criteria, rather than a simple rule, determines the decision.
- Simple rules are easy to explain and follow, but not maximally efficient. For example, one could decide to take further samples anytime a discrepancy in any audit unit would, if found in most audit units, overturn the election. A rule like this is easy to explain and follow, but is actually quite liberal: A discrepancy found in, say, one of 50 audit units is very unlikely to be found in the majority of the remaining units.
- When non-trivial discrepancies are found, should the escalation be by selecting additional samples or by recounting the entire race? If the criterion for escalation is set high enough that it would not be attained by minor errors, one might opt for a full recount when significant discrepancies (hopefully rare) are found. This is, again, a simple rule that is easy to explain and follow.
- On the other hand, there are statistical guidelines using risk-limiting principles for escalating the audit in steps that can reduce the burden of counting (while adding complexity and sampling steps).

Whatever decision is made, the protocol should specify the method to determine how many additional audit units will be selected and under what circumstances a full recount will be conducted. Follow up should be required to determine the causes of all discrepancies between audit counts and the original ballot counts. If the causes are learned, then they may also influence the decision as to how to proceed.

While difficult to define fully in advance, consideration should also be given to the kinds of discrepancies that would lead to an audit of the processes involved in the entire system. If fraud is suspected, all evidence should be referred to law enforcement.

B. After the Election

1. Basic Checks at All Polling Places

Basic checks of totals, problem ballots and provisional ballots should routinely be performed at all polling places.

Every polling place should report the machine count and check the total number of ballots cast against the number of registered voters who signed in at the polls. In addition, every polling place should report the number of spoiled ballots (or spoiled voter verifiable paper audit trails (VVPATs) in the case of electronic voting) as well as the number of provisional ballots and the number of absentee ballots that were hand delivered to the polling place. All of this information should be made publicly available on Election Night. If Voter Authority Cards are issued for each voter, these cards should be retained and counted as well. This includes comparing the total number of ballots cast with the number of voters processed on an electronic or paper poll book. Any discrepancies between the number of voters processed and the number of ballots cast should be made publicly available and investigated immediately (starting the next day).

Performance measure: The percentage of polling places in which the number of normal plus provisional ballots cast equals the number of voters.

2. Accounting for Provisional Ballots

Assure that all provisional ballots are accounted for by comparing the number of provisional ballots sent to a polling place with the number of provisional ballots voted by voters and the number of spoiled provisional ballots. The sum of the number of used, spoiled and remaining ballots should equal the total sent to the polling place. Publicly issue report of discrepancies.

Performance measure: The percentage of polling places in which the number of provisional ballots voted plus the number spoiled plus the number remaining equals the number of provisional ballots sent to the polling place.

3. Approval or Disapproval of Provisional Ballots

Assure that all provisional ballots are approved or disapproved for statutorily acceptable reasons by reviewing the report of the number of provisional ballots accepted and number of provisional ballots not accepted and reasons for non-acceptance for compliance with state and federal law after the canvass of provisional ballots has been completed.

Performance measure: The percentage of provisional ballots that were correctly approved or disapproved.

4. Accounting for Absentee Ballots

Ensure that all absentee ballots are accounted for by comparing the number of absentee ballots issued with the number of absentee ballots received and the number

of provisional ballots voted because the voter came to the polls but the official records indicated that an absentee ballot had been sent. Because absentee ballots are issued from the central election office, the comparison should take place at the central election office. State laws vary greatly on this subject, but ensure that no voter had his or her vote counted twice. If double voting is found, law enforcement may need to be brought in. The comparison may be made in batches representing precincts or election districts. Determine that a report of discrepancies has been publicly issued.

Goal: The number of absentee ballots returned should not be greater than the number sent out; all signatures should match the signatures in registration records; and all signatures that do not match are followed up. There should be no instances of double voting: any that is found should be properly investigated.

5. Starting and Completing Audits

The audit process should begin as soon as possible after the initial tallies recorded by the voting system are reported. The audit should be completed prior to declaration of the final official results, and the audit should confirm the outcome or lead to a recount that determines the outcome.

For each contest, an audit unit normally should be counted only once, even if it is included in both an audit and a recount. If a recount procedure confirms the original election results, no additional audit counting is necessary. If there are unexplained discrepancies in the vote count, however, an audit count may need to be repeated to reduce the likelihood of a counting error. In other words, one cannot simply take the first audit count as being "correct." An unexplained discrepancy suggests that one of the compared counts is wrong, but does not demonstrate which one. Note that a well-conducted, transparent hand count of paper ballots almost always uncovers a few additional votes where the voter intent is clear, but the votes were not detected by a machine count. This is to be expected.

6. Using Paper Records

Audits must use voter verifiable paper audit trails (VVPATs), paper ballots that have been hand counted, and/or optical scan ballots. Even without paper records, an audit of procedures should still be conducted.

Ideally, post-election audits use hand-to-eye counts of voter-marked optical scan ballots or VVPATs, including those produced by ballot generating devices or ballot marking devices. Where such paper ballots are not available, other forms of voter-verifiable paper records should be used.

- a. The paper records should be easy to read and handle.
- b. The paper records should reliably reflect the intent of the voters. Care should be taken to urge voters to confirm the record of their votes and to make sure that the paper records are properly printed.

The count based on paper ballots/records verifiable by the voter will determine the outcome, except in special circumstances when there is persuasive evidence that the paper ballots/records were compromised. One example of compromised paper records are DRE machine VVPAT print outs that are defective, blank, torn or unreadable for some other reason. Examples of problems with paper ballots include ballots that are included in the original vote count but are destroyed after the close of the election, or ballots that are missing from election materials transported from precinct to central office and cannot be located as securely intact. In such instances, to avoid disenfranchising voters who have cast legitimate ballots, electronic ballot totals may be included in the overall vote totals, but those precincts should not be selected for audit. The decision about which person or entity has the authority to make such a determination about compromised ballots/records should be included in audit legislation or regulations.

7. Including All Ballots

Audits should incorporate totals from all jurisdictions and all ballot types including those cast at early voting sites and on Election Day at the polls, absentee, mail-in and accepted provisional ballots.

Ballots from different jurisdictions and ballot types can be grouped and audited in separate phases. But, for each group, the selection of units to count should not commence until preliminary results for all units in that group are reported to the public.

Although the randomly selected audit units are often naturally defined, like audit units for individual machines or precincts, sometimes audit units must be defined as a "batch" or group of ballots. Auditing using batches is necessary both for early voting using DREs and central counting using optical scanners. The reason to use batches for DREs is that the ballots cannot be sorted into precincts without cutting the VVPAT tapes. The reason to use batches for central count optical scanners is that, in many cases, it is impractical to sort by precinct, especially when a large portion of the vote is received by mail or through early voting.

In early voting or voting in vote centers, many precincts and different contests may be recorded on a single DRE and run together on a single VVPAT printout, with other votes in the same contests on other DREs and VVPAT rolls. The same would be true for optical scan machines used in early voting or vote centers, when the machines print vote total receipts. In these situations the ballots should not be sorted into precincts because that would require cutting the VVPAT or vote total receipt printout into unmanageable pieces. Likewise, in some jurisdictions mail-in ballots and early voting may be counted and read centrally, without being sorted by precinct.

It is critically important that each such batch correspond to a distinct reported total from the counting machines. If, for example, the DRE can report vote totals

in sets of 200 votes, and if those same 200-vote batches can be identified in the paper record and physically grouped, this would be an appropriate audit unit. Unfortunately, many voting systems currently only report tallies by precinct, making it difficult to audit by batch.

It is important to remember that only some races (usually specified in state law) will be subject to audit, so that not all votes on every ballot will be counted in an audit. For example, if the Governor's race is audited, only the ballots cast for that contest will be counted in the audit. Therefore, the multiple ballots that are configured for different races can all be counted together, since the Governor's race is on every ballot.

A significant barrier for conducting audits today is getting accurate, timely preliminary results with the necessary details for conducting an audit. Because the voting machines have no consistent, comprehensive, easy to extract data format, preliminary election results for conducting audits are typically extracted with ad-hoc software or even by hand from printouts -- a costly, time consuming process subject to error. Improved support in voting systems for reporting in standard machine-readable formats such as EML (Election Markup Language) would make auditing significantly easier and cheaper.

8. Random Selection of Audit Units

There should be a statistically based random selection of audit units (precincts, machines, batches of paper records), and the selected units should be fully counted for an audit.

The audit units should be chosen on the basis of a statistical method that considers such factors as the number of ballots in each audit unit, the number of audit units from which the sample is to be taken, and the margin of victory in the audited contest.

9. Transparency

The process of counting and comparing should be done publicly, and should begin as soon as possible after the random selection of audit units.

The time and the place of the audit counting and the random selection of units should be announced before either begins. The random selection process and the audit counting should be publicly observable.

Qualitative measures: Determine the specific process and time line used. Did the audit process get under way promptly after random selection? How was access by the public ensured? Did the public or candidate representatives actually observe? (It is not necessarily a failure of the process if the public does not choose to observe).

10. Selective Audits

In addition to the random audits described in these guidelines, selective auditing could be conducted: Candidates, parties, issue committees, election administrators or others as provided by regulation should be allowed to select a limited number of additional audit units or a limited number of total ballots to supplement the randomly chosen audit units.

Such selective auditing draws on the detailed political knowledge of candidates and others to detect discrepancies from normal voting patterns. This can increase audit effectiveness and public confidence.

- a. This type of sample can be used either in conjunction with a random audit, or by itself for a contest not required by regulation to be audited using a random method.
- b. Selective audit units might be chosen based on such factors as major Election Day problems or preliminary results that deviate significantly from historical voting patterns. It would especially help prevent malicious behavior that manipulates a small number of large precincts in the hope of not being caught by the random audit.

As with any vote verification audit step, there should be specific guidelines as to what will happen if a discrepancy is found. The cause of the discrepancy should be sought, and unless explained fully in a way that ensures the integrity of the rest of the votes, additional auditing of votes will generally be necessary.

Some considerations in selective auditing:

- One way to contain the cost of selective auditing is to require that the requesting candidate or group pay for the additional ballots to be audited. If discrepancies are found that lead to the initial result being overturned, then the requester would be reimbursed. Such a law was passed in Minnesota in the 2008 legislative session. This method could sometimes lead to a likely problem audit unit not being investigated because the candidate was unable to pay for an audit count and elections officials didn't choose to investigate on their own. It also sets a fairly high standard for reimbursement.
- A variant would be to reimburse the requester if a significant discrepancy (as defined in advance) was detected in any of the audit units requested. This seems fairer -- after all, identification of a significant discrepancy in a single audit unit is an important contribution, even if it does not eventually lead to the election being overturned. A third option is to allow the candidates or parties to select a small number of units to audit without charge. This option is subject to abuse, because there is no cost to candidates, but may pay off by ensuring that any discrepancies are properly investigated.
- If there is a fixed number of such discretionary audits, it is important to specify in advance who has the right to request them. You don't want to have a party leader request three, only to have the candidate complaining that the wrong ones were audited.

11. Regulation of Audits

The authority and regulation of post-election audits should be independent of officials who conduct the elections. The actual work of post-election audits may be/is best performed by the officials who conduct the elections, with appropriate oversight.

"Authority and regulation" includes all of the decision-making and procedural components of the audit other than the mechanical processes of audit counting *per se*. An independent body or board should, for example, decide how many units to sample, and take charge of making the selections. In the event of any discrepancy between counts, that same board will decide how to proceed. Election officials perform only the mechanical side of the audit, under the oversight of the independent board.

The independent board should consist of professionals (auditors, statisticians, etc.) who do not have official ties to political parties or candidates. It should be responsible for establishing rules and procedures for audits.

12. Ballot Secrecy

The secrecy of the ballot must be preserved; the order of the votes cast should never be compared to the order in which the voters signed in.

13. Maintenance of Records

A public archive of the audit documents, reports and results should be maintained for at least 22 months (the current Federal requirement for retention of election records) and, in the case of electronic records, indefinitely. Consideration should be given to placing the software, all types of firmware, and ballot definition files used in each election into escrow so that they will be available for post-election audits.

C. How to Do the Audit Counting

Manual counts, properly done with carefully designed protocols and transparency, are currently the preferred and accepted procedure for election audit counts. Benefits of hand audit counts include full transparency (the public can observe the entire process) and the ability to identify voter intent on improperly marked ballots. A manual audit count can also detect programming errors or other problems such as incorrectly calibrated voting equipment or poorly printed ballots that may distort the results. Furthermore, manual audit counts, which detect a large number of ballots marked incorrectly by voters, could identify a need for better voter education on how to correctly mark a paper ballot.

An audit count that simply repeated the original counting procedure, whether electronically or by hand, would add little value to the election-validation process. There are important differences between an audit count and an original Election Day count, whatever the voting method. Certainly, a manual count of VVPATs is entirely different from the electronic tallying done by DRE machines. But even where voters create original ballots, such as optically scanned ballots, manual audit counting procedures deploy different protocols from Election Day electronic tallies. Visual

inspection of each optically scanned ballot can result in a more accurate determination of voter intent than an electronic tally. When an optical scanner is unable to interpret marks outside the valid marking area, the scanner will determine that the ballot contains an “undervote.” However, in the vast majority of cases voter intent is clear to the human eye. As a result, vote totals typically rise when there is a hand recount of an optical scan machine generated tally.

A manual audit count also satisfies the important computer science principle of “software independence,” so that as part of a risk-limiting audit, it should prevent an undetected error in the software from changing the outcome of an election.

Some researchers are exploring the possibility of using machine-assisted audits, combined with manual audit counts that check on the accuracy and reliability of the machines.¹ In theory, such audit counts would best be done with different machines and more rigorous procedures from those used for Election Day counts. The advantage of such an approach would be the ability to rapidly check a larger number of audit units than could be tested for a given amount of funding with a hand audit count. There may be times when available resources allow one of two things: (1) a small hand count, probably inadequate for the precision needed or (2) a somewhat larger, quicker count done by machine (with appropriate double checks as noted above). In such cases, it would be necessary to weigh the risk of undetected machine errors and the known problem of mismarked ballots that are likely to be missed in a machine-assisted count against the value of being able to review a larger number of ballots.

If it is contemplated that the audit process could cause a delay in the certification of election results, particularly in instances of legislatively mandated deadlines for certifying election results, states should recognize the potential conflict and adjust election calendars accordingly.

Because the cost of an adequate hand audit count is ordinarily a small part of the cost of running an election, we do not recommend any alternative method at this time.

Some very good and specific manual methods for counting ballots exist, such as having counters from different parties each count without knowing the total. If they agree with each other and the total, the result is certified. If not, they count again. Alternatively, ballots can be counted into piles, which are counted by at least two people with the results being totaled at the end. See the Resources list for some links to specific methods in current use.

¹ Machine-Assisted Election Auditing, Calandrino, Halderman, and Felten, Proc. of the 2007 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT’07), August 2007.

D. Reporting Guidelines

1. Audit Report

After the audit, the probability that fraud or error of sufficient magnitude to alter the electoral outcome would have been detected in each contest should be calculated and publicized to promote continuous improvement.

2. Audit Results

All final results, along with a disclosure of all discrepancies, should be reported to the public and available indefinitely in a public archive.

Criteria for an Election Auditing Law

An election audit is a set of procedures designed to demonstrate to candidates and the public that the election was conducted accurately, that voting equipment counted votes properly, that only qualified voters cast ballots in the election, and that the right of eligible citizens to vote and to experience an efficient and fair voting process, were respected.

Defined in this way, the full audit process includes:

- (1) Activities typically undertaken before or between elections, such as evaluation of the following: the voter registration process, the voting machines to be used, the electronic poll books and all procedures for running the election;
- (2) Evaluation of procedural aspects of the election, such as wait times, polling place worker performance and whether there were appropriate controls on the chain of custody for all election equipment, materials and ballots; and
- (3) Procedures to determine the accuracy of the reported election results themselves. Properly performed audits will guard against both deliberate manipulation of the election and software or programming problems, since any of these factors could alter an outcome.

The following are criteria that can be used to analyze proposed legislation or to help in the development of new legislation. A well-formulated election auditing law will include as many as possible of these provisions. Further detail, guidelines and explanations are cross-referenced to this report's section on "Recommended Guidelines for Election Audits".

A. Process Audits

1. **There should be periodic reviews or audits of election processes and procedures.** These audits should relate to such topics as voting systems security and testing, allocation of voting machines and personnel, training of election personnel, procedures for early voting, provisional voting and absentee voting, and chain of custody for all types of ballots. Ballots should be laid out or produced in such a way that voters can easily verify them. (See page 5, section on Guidelines for Auditing of Election Procedures and Processes.)
2. All processes and procedures must be documented in order to maintain audit trails. (See page 5, section A-2.)

B. Post-Election Audits

1. **Paper ballots or voter verifiable paper audit trails (VVPATs) must be used in the audit.** These would include ballots produced by DREs, ballot marking devices, optical scanning machines and hand marking. Even without paper records, an audit of procedures should still be conducted. (See page 14, section B-6.)
2. **The post-election audit process should cover selected races and ballot measures in all elections** – primary, general and special elections; federal, state, county and

local. (See page 10, introduction to section on Guidelines for Conducting an Audit of Election Results.)

3. **Audits should be completed prior to certification of the vote counts.** The count, based on paper ballots/records that are verifiable by the voter or directly created by the voter, will determine the outcome except in special circumstances where there is persuasive evidence that the paper ballots/records were compromised. (See page 14, section B-5.)
4. **There should be an independent audit board that is appointed by state official(s) not involved in the administration or conduct of elections.** (See page 18, section B-11.) The audit board should:
 - a) Consist of professionals (auditors, statisticians, etc.) who do not have official ties to political parties or candidates;
 - b) Be responsible for establishing rules and procedures for audits;
 - c) Be responsible for general oversight of audits; and
 - d) Make decisions regarding the need for expansion of certain audits to larger samples and the need to adjust vote counts as a result of audit.The actual work of post-election audits may be best performed by the officials who conduct the elections under the supervision of the independent audit board.
5. **Audits and development of audit protocols should be open to the public at both state and local levels.** Results of audits should be announced publicly and should contain reconciliations with original tallies, over and under votes, blank ballots, spoiled ballots, etc. (See page 5, section A; page 10, section A; page 16, section B-9; and page 20, section D.)
6. **Statistical principles must play a key role in deciding how many audit units are selected for audit.** The number of units to audit should be chosen so as to ensure there is only a small predetermined chance of confirming an incorrect outcome. To accomplish this aim, it is critical that the number of units audited be tied to the closeness of the race (closer races calling for a larger number of units to be audited). Also, best practices emphasize the *number*, not the percentage, of units to be audited. There should then be a random selection of units and the selected units should be fully recounted. (See page 11, section A-2, and page 16, section B-8.)
7. **Escalation protocols (i.e., what actions to take when discrepancies are found between an audit count and the announced preliminary results) must be clearly defined in advance.** In general, these must be statistically based, and should be designed to ensure that a sufficient number of audit units are counted so as to have only a small predetermined chance that the process will confirm an incorrect outcome. In some cases this will require a complete recount of the entire race – election procedures should be clear in advance about the conditions under which this will occur. (See page 11, section A-2.)

8. **Making available a Discretionary Partial Audit (in which a losing candidate chooses a limited number of audit units to be manually audited) may increase public confidence in the election result.** Requesting candidates may be required to pay for the additional units to be audited unless the initial results are overturned. (See page 17, section B-10.)
9. **Audit procedures should cover absentee, overseas and provisional ballots as well as those cast in person.** Where early voting is allowed, special procedures should be developed for auditing ballots cast at early voting centers. (See page 15, section B-7.)
10. **Follow up should be required to determine the causes of all discrepancies between audit counts and the original ballot counts.** (See page 12, section A-3.)
11. **All voting system software, including all types of firmware, should be available for post-election audit if other causes of discrepancies have not been found.** (See page 18, section B-13.)
12. **The secrecy of the ballot must be preserved.** It should never be possible to determine the identity of the voter for any vote cast. (See page 18, section B-12.)
13. **Election records for all elections should be maintained for at least as long as required by Federal law (22 months at the present time).** (See page 18, section B-13.)

Glossary of Election Audits Terminology

Absentee ballots: Originally this term referred to ballots submitted by individuals who were unable to go to the polls on election day, due to travel, business, illness or other reasons. Today, in some jurisdictions, no reason for voting "absentee" is required, and *absentee ballots* have come to mean ballots submitted outside of the polling place, often days in advance of the *election*, without respect to whether or not the individual could have voted at the polls.

Accessibility: In the context of voting, *accessibility* is a measure of the ease of use of a *voting system* for people with disabilities.

Audit unit: In order to conduct a proper audit, votes must be recorded and organized in sets that can be sampled. In many jurisdictions, votes are recorded and organized by precinct or by individual machine. Either of these could be an "*audit unit*." In other settings, or where *absentee ballots* are involved, some method of batching votes into groups that can be handled and verified as a "unit" is required as well.

Ballot definition file: In order to interpret an *optical scan* ballot or properly categorize touches on the screen of a *direct electronic recording* device, the machine has to have a complete set of information about what every place on the ballot or screen means, and exactly how to tally it. This kind of information constitutes the *ballot definition file*. If mistakes are made in the *ballot definition files*, votes could be incorrectly attributed to the wrong candidates or *race* results.

Ballot Generating and Ballot Marking Devices: These devices generate or mark paper ballots. They differ from *voter verifiable paper audit trails (VVPATs)* in that a *VVPAT* is intended only as an auditable ballot or record of the vote. A *VVPAT* is not generally counted except as part of an audit. Note the distinction between a ballot (actually counted in the *election*) and an audit trail (available to count but not necessarily used unless selected for audit). Both *ballot generating* and *ballot marking devices* are intended to allow people with disabilities, especially voters with vision impairment or significant physical limitations, to produce paper ballots that can be counted and audited. Thus:

Ballot generating device: A *ballot generating device* allows a voter to make selections electronically and then prints a paper ballot (typically one that can be read by a scanner) that represents those selections.

Ballot marking device: A *ballot marking device* allows a voter to make selections electronically, after which a paper ballot (typically one that can be read by a scanner) that has been inserted into the machine is marked to represent those selections.

Ballot measure: A question for public vote other than for a candidate for office.

Chain of custody: The procedure by which public records, documents or other items (like vote counts or ballots) are recorded and passed along from the point of origin until final destination. There must be records and protocols for transferring these records from one official to another.

Direct recording electronic (DRE) device: A computerized voting machine that records votes in its computer's memory.

Discretionary partial audit: This refers to the option for a candidate or party (usually on the losing side) to have *audit units* of their choice counted. The idea is to take advantage of the awareness of candidates of typical voting patterns to help identify

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possible problems or *audit units* with unusual voting patterns. Also called challenge audit, selective audit and free audit.

Election: As used in this context, an "*election*" refers to the entire set of *races* and *ballot measures* that are decided together during one period of voting. Thus, even if every *election* is audited, not every *race* may be included.

Election audit: The general term for all aspects of an election review, from "*process audit*" activities to check the process, to "*post-election audit*" activities to verify the actual results.

Escalation protocol: A set of guidelines for further actions to take when discrepancies are found between an audit count and preliminary announced results. These protocols should be guided by valid statistical methods, which may allow an election *outcome* to be confirmed without a full *recount*.

Executable files: The computer files that contain the computer readable program instructions, usually in a form not easily readable or modifiable by people.

Firmware: Defined in two different ways. Sometimes refers to programs embedded in read-only memory, hence not able to be modified, or otherwise requiring special procedures to modify. In elections contexts, the term has come to be used for all software run at the precinct level, as distinct from "software," which is any program run centrally. At one time the precinct level programs were read-only and unalterable, but this has changed, and the concept of *firmware* as not being subject to modification has been lost.

Fixed percentage audit: In a *fixed percentage audit*, the number of *audit units* to sample is a percentage of the total number, sometimes determined by the margin of victory. Generally this is not as effective as a statistically based *risk limiting audit*.

Metadata: Information that facilitates use or interpretation of other data. For example, in order to interpret the marks on an *optical scan* ballot or the electronic choices made on a *direct electronic recording* device, the machine needs information about where and how each *race* and candidate is coded (the *ballot definition file*). In this context, a *ballot definition file* is thus an example of *metadata* that enables interpretation and tallying of the actual physical or electronic entries by the voter.

Optical scan system: A method of voting in which the voter marks the ballot to fill in a small area or connects a broken arrow on the ballot to indicate a selection. The selections are then read optically and counted electronically by a computer-based system.

Central-count: Some optically scanned ballots are delivered to a central location and read there. Precinct information may not be retained. Typically, the voter is not provided with feedback on possible *overvotes* or *undervotes*.

Precinct-based: Optically scanned ballots may be read directly at the precinct, and a record of the results determined at that level. Typically, precinct based *optical scan* machines provide feedback to the voter, warning of *overvotes* and *undervotes*, though the undervote warning is frequently disabled. (The federal Help America Vote Act (HAVA) requires that voting machines give notice of *overvotes*.)

Outcome: As used in this context, the *outcome* of an election *race* is, "Who won?" Thus, a statement that an audit is designed to verify the *outcome* does *not* mean that the exact counts, which may be wrong, have been verified. As long as the correct winner

is declared, the "*outcome*" is said to be correct.

Overvote: Selection by the voter of more candidates in a given *race* than he or she is allowed to vote for. An example would be if the voter chooses two candidates for President. A computerized voting machine can be programmed to alert the voter to this problem in time to correct it. Since ballots with *overvotes* will necessarily be excluded from the *races* in which the *overvote* occurs, it is important that they be avoided.

Performance measure: A system of objective measurement of governmental activities to allow for benchmarking and/or for observing changes over time.

Post-election audits: An audit of the actual election results to either confirm the accuracy of the *election* or lead (perhaps through an intermediary *escalation protocol*) to a complete *recount* of the *race* being audited.

Post-election software review (audit): Review of all the computer programs that generate the *voting system* software, together with *metadata*, including *ballot definition files*. A post-election software audit is often part of a full *post-election systems review* (audit).

Post-election systems review (audit): Review of all components of election voting and tallying systems that could influence the results of an *election*, including hardware, operating system files, software *source code* files, *executable files*, *firmware* and *metadata* such as *ballot definition files*. A post-election software audit tends to be deployed when discrepancies between an audit count and a machine count cannot be explained by other auditing methods.

Process audit: A term sometimes used for audits that are not time sensitive and can take place between *elections*. This may include an analysis of the distribution of voting machines, lengths of lines at the polling places, appropriateness of the *chain of custody* for ballots and much more. The entire electoral process can be inspected top to bottom in a *process audit*.

Provisional ballot: If a voter is not on the list at the polls or otherwise not allowed to vote, but the voter believes this to be an error, federal law requires that he or she be offered a "*provisional ballot*." This allows the voter to indicate his or her choices. Later, when there is time for investigation, it will be determined if the voter indeed had the right to vote (in which case the *provisional ballot* is treated as a valid ballot) or not.

Race: A specific contest within an *election*, such as a *race* for legislator, or a *ballot measure*.

Random selection: A process for choosing a sample (as of *audit units*) by chance, that is "randomly," as opposed to selecting them according to a criterion or an individual's judgment. Randomness is used so that anyone wishing to subvert the *election* cannot know beforehand which units will be audited. Therefore, in the voting context it is crucial that the *random selection* be made after the initial tabulation.

Recount (as distinguished from an audit): As used in this context, a "*recount*" refers to the entire *race*, rather than to a selected set of *audit units*, which are merely "counted," not "recounted". A *recount* is typically used when a *race* has some specified narrow margin of votes, or when some problem is found, such that there is doubt about the *outcome*. *Recounts* determine the results of an *election*, while an audit checks *voting system* performance.

Risk limiting audit: As opposed to a *fix percentage audit*, a *risk limiting audit* attempts to determine the number of *audit units* to sample in such a way as to hold the probability of missing a problem to a small pre-determined level. Typically this involves estimating the number of units to sample, rather than the percentage of them, and will use statistical principles.

Source code: Computer programming written in a language that people can read, such as Visual Basic, Fortran, or C++. A computer program (called a compiler) translates the human-readable *source code* into the *executable files* that a computer can read directly.

Top-to-bottom review: A review of all aspects of a *voting system*, including hardware, software, documentation, usability, *accessibility*, reliability, accuracy and security.

Undervotes: The opposite of *overvotes*. The voter has not voted for the permitted number of candidates in a particular *race*. For example, suppose there are three open seats on the County Commission, but the voter only selects two. Undervoting is valid and will not invalidate any part of the ballot, but will reduce the impact of the voter's intent if he or she has not voted for all candidates of interest.

Vote center: A polling place that combines multiple precincts, sometimes called a super precinct. In some cases a *vote center* may replace traditional precinct level polling places. In other cases, *vote centers* may supplement precinct level polling places by offering voters the opportunity to vote at either a centralized location or at their regular polling place.

Voter access cards: In some jurisdictions, voters are given a generic card that can be inserted into a voting machine to allow them to vote. This is a voter access card. Typically they are not unique, and many voters use each one.

Voter authority cards: In many jurisdictions, a voter is given a card with his or her name on it after his or her name is verified as being in the official list. This card allows the individual to vote. Typically these cards are unique to the voter and can be counted after the *election* and compared with the number of voters checked in and the number of votes cast.

Voter verifiable paper audit trail (VVPAT): In a *DRE* device, the voters' choices are stored electronically, making it impossible to conduct a manual audit or *recount*. To facilitate such audits or *recounts*, the *DRE* often has a printer attached that produces a paper copy (or *voter verifiable paper audit trail*) of the voter's choices for the voter to verify, which some voters do and others do not.

Voting system: The total combination of mechanical, electromechanical or electronic equipment (including the software, *firmware* and documentation required to program, control and support the equipment) that is used to define ballots, cast and count votes, report election results and produce any audit trail, as well as any materials provided to voters.

Election Audits Resources

A. Reports

Safeguarding the Vote (July 2004). This LWVUS publication makes recommendations for election officials about the security of voting systems and about voter registration systems.

http://www.lwv.org/AM/Template.cfm?Section=Voter_Information2&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=10509

B. Post-Election Audits

Restoring Trust in Elections (August 2007), Lawrence Norden, Aaron Burstein, Joseph Lorenzo Hall and Margaret Chen, for the Brennan Center for Justice at New York University School of Law and the Samuelson Law, Technology & Public Policy Clinics at the University of California, Berkley School of Law. The researchers convened a blue ribbon panel of statisticians, voting experts, computer scientists and several of the nation's leading election officials to develop the report. This report is limited to post-election audits of voter-verifiable paper records and includes a review of current and proposed audit models, audit best practices and directions for future work.

Executive summary:
http://www.brennancenter.org/content/resource/post_election_audits_restoring_trust_in_elections_executive_summary/

Full report: http://brennan.3cdn.net/f1867ccc368442335b_8em6bso3r.pdf

Principles and Best Practices for Post Election Audits (July 2008). This is the most current draft; the document was developed with input from persons with experience conducting and observing post-election audits, statisticians, political scientists and elections officials. It details the principles considered central to the conduct of meaningful post-election audits and provides examples of best practices for carrying out those principles.

<http://electionaudits.org/node/18>

Evaluation of Audit Sampling Models - Final Report, Post-Election Audit Standards Working Group, California (July 2007). The Working Group was composed of experts in the fields of computer science, financial auditing, statistical analysis, election reform advocacy, and city and county government. Their charge was to examine California's four-decades-old manual audit requirement and assess how it could be strengthened and made more effective.

www.sos.ca.gov/elections/peas/final_peaswg_report.pdf

State audit laws -- key provisions and map: A summary of state audit provisions including key language from each, compiled by Verified Voting Foundation.

<http://verifiedvoting.org/audits>

Searchable database of state audit laws: An excellent resource for comparing state audit provisions, compiled by Citizens for Election Integrity Minnesota.

<http://www.ceimn.org/state-audit-legislation-reference-guide>

Report and Analysis of the 2006 Post-Election Audit of Minnesota's Voting Systems (April 2007), Citizens for Election Integrity Minnesota. This reports on Minnesota's first post-election audit includes a review of MN's Post-Election Review Law and procedural recommendations for future audits. It also includes the text of the audit law and the law describing the counting method, known as the "piling method."
<http://www.ceimn.org/files/CEIMNAuditReport2006.pdf>

Percentage-Based vs. SAFE Vote Tabulation Auditing (Feb. 2008). Explains the benefits of a statistical alternative to percentage-based sampling in post-election audits. Prepared by experts in statistics, computer science, political science and election reform.
<http://www.verifiedvotingfoundation.org/article.php?id=6483>

New Jersey Audit Law (January 2008). This law is currently the best audit provision in state statute.
http://www.njleg.state.nj.us/2006/Bills/PL07/349_.PDF

Government Auditing Standards, July, 2007 Revision. Government Accountability Office, Washington DC. This document lays out the standards for all government audits and is used by governmental audit agencies throughout the country. It covers ethical and independence issues as well as requirements for various kinds of governmental audits.
<http://www.gao.gov/htext/d07731g.html>

Connecticut Citizen Election Audit Coalition report summarizes observations of 46 citizen observers of the August 2008 primary.
<http://www.ctelectionaudit.org/PressReleaseD.htm>

C. Government Service Efforts and Performance Reports

A Guide to Understanding, Governmental Accounting Standards Board, CT, August 2003. A handbook that explains the use of performance measures and gives examples of how to use them.
www.seagov.org/sea_gasb_project/suggested_criteria_report.pdf

D. Sample Procedures for Hand Counting Ballots:

Minnesota: <https://www.revisor.leg.state.mn.us/statutes/?id=204C.21>

California: http://josephhall.org/procedures/ca_tally_procedures-2008.pdf

New Hampshire: http://www.sos.nh.gov/FINAL_percent20EPM_percent208-30-2006.pdf
(beginning on page 144)

E. Websites

ElectionAudits.org: Sponsored by the Brennan Center for Justice, Citizens for Election Integrity Minnesota, Common Cause, Florida Voters Coalition and Verified Voting Foundation, this site is the clearinghouse for election audit information. Created after the nation's first summit conference on election audits in Minnesota in 2007, this site

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contains video presentations from speakers and panels at that conference, a searchable database of state-based audit laws and numerous resources about post-election auditing.
<http://www.electionaudits.org>

Verified Voting: Users can find a guide to state audit provisions and legislation. Research papers and news articles of interest to the audit community are also regularly posted at the site.
<http://www.verifiedvoting.org>

2008 USENIX/ACCURATE Electronic Voting Technology Workshop: Some interesting papers related to auditing and auditability.
<http://www.usenix.org/events/evt08/tech/>

Humboldt County Election Transparency Project: The basic idea behind the first-of-its-kind transparency project is fairly simple: Every ballot cast in an election is passed through an optical scanner after being officially counted and the images are then placed online and available for download. This effort uncovered two counting errors in the November 2008 county election tallies, one involving nearly 200 ballots caused by a software glitch and another involving 57 twice-counted ballots.
<http://www.humtp.com/index.html>

F. Other Resources

Developing an Audit Trail. This is one of the U.S. Election Assistance Commission's Best Practices guides; it includes sample checklists and details of documentation required to develop an audit trail.
http://www.eac.gov/election/quick-start-management-guides/election/quick-start-management-guides/docs/developing-an-audit-trail/attachment_download/file

The Election Center. Election Preparation Checklists. Detailed checklists for various aspects of election management, including Ballot Security, Polling Place Operations, Voting Systems and Recount Procedures.
<http://www.electioncenter.org/checklists.html>

Collaborative Public Audit of the November 2006 General Election in Cuyahoga County, Ohio.
http://urban.csuohio.edu/cei/public_monitor/cuyahoga_2006_audit_rpt.pdf

Statement of the New Hampshire Judicial Branch

Senate Bill 89, Part V (Duties of Registers of Probate)

In 2011, the Legislature eliminated the duties of Registers of Probate related to oversight and management of the probate courts as part of the comprehensive court restructuring in 2011. See Laws 2011, ch. 88 (HB 609). Senate Bill 89, Part V, would not return Registers of Probate to their pre-2011 positions because the court system that exists today is much different than what existed before 2011. The only way to return Registers of Probate to their pre-2011 duties would be by unravelling the work done over the last decade to centralize and modernize the probate system.

This bill seeks to create a dual county/state probate system by providing that counties would establish the salary and benefits of elected Registers of Probate; have the Judicial Branch reimburse counties for those salaries and benefits by transferring to the counties fees used to fund essential court needs; transfer powers currently given to court clerks to county Registers of Probate; and require the Judicial Branch to provide Registers of Probate with view-only access to confidential Probate Division records. Under the bill, Circuit Court clerks would no longer have any role over Probate Court filings.

The New Hampshire Judicial Branch does not support passage of Senate Bill 89, Part V. Since 2011, the Circuit Court has streamlined its case management systems by simplifying case processing and introducing e-filing to further increase efficiencies to the Court and provide easier access for citizens. The 2011 changes were approved by the Legislature with bipartisan support and with full knowledge of the impact it would have on Registers of Probate. The Probate Division of the Circuit Court began the roll out of electronic estate filing in May-June of 2017, which has allowed for more efficient and timely consideration of estate matters filed with it each year, with no paper and virtually no work by staff in the local courts. Probate e-filing has since been expanded to include guardianships, wills and estates, and name changes and work is ongoing to bring all probate filings within the e-filing system. The e-file system of guided interviews, along with the establishment of kiosks at court locations with trained court staff to offer advice, has made the process of opening and managing the estate of a loved-one or family-member easier for the citizens of this state.

More specifically, the cases handled by the Probate Division in 2019 can be broken down as follows:

Estates: 7,319 cases, 100% of which are handled centrally at the Administrative Office of the Courts (“AOC”). Only 3% of those cases require a hearing.

Guardianships: 945 cases, 100% of which are handled initially at the AOC before final disposition at the Circuit Court where the case is filed.

Name changes: 1,726 cases, 100% of which are handled centrally at the AOC by referees and reviewed by Circuit Court judges.

Trusts: 56 cases, 100% of which are managed on the Trust Docket in Concord.

Involuntary admissions: 571 cases which are handled at the New Hampshire State Hospital.

Adoptions/surrender: 713 cases, which are handled in Circuit Courts around the State.

Unlike pre-2011, when probate matters were filed and heard in probate courts throughout the state, the current efficient and centralized process does not rely upon county or local personnel. SB 89, Part V, would superimpose a county system of elected Registers of Probate, who would collectively be responsible to oversee the filings in the probate division. As is described below, probate filings now happen electronically and are handled almost exclusively in Concord.

In addition to how the cases themselves are handled, the Probate Division receives thousands of calls annually. The data for 2019 and 2020 can be summarized as follows:

2019 Probate Queue Report – Call Information Center

- The yearly average length of all calls answered: 3 minutes 24 seconds.
- Yearly total number of Probate calls received in Probate Queue: 46,396.
- Yearly average length of Probate call: 4 minutes 39 seconds.
- Yearly average length of Probate handle of call¹: 5 minutes and 20 seconds.

2019 report –E-filing Assistance²

- Yearly total number of calls received in Electronic Filing Queue: 16,669
- Yearly average length of Electronic Filing call: 6 minutes 05 seconds
- Yearly average length of Electronic handle of call: 6 minutes and 59 seconds

2020³ Probate Queue Report – Call Information Center

- 3 minutes 22 seconds
- Yearly total number of Probate calls received in Probate Queue: 35,951
- Yearly average length of Probate call: 4 minutes 06 seconds
- Yearly average length of Probate handle of call¹: 4 minutes and 53 seconds

2020 Report –E-filing Assistance²

- Yearly total number of calls received in Electronic Filing Queue: 18,363

¹ Handle of calls includes the classification and quick e-mailing of information. If something required research or to be printed and mailed this is not reflected in the time.

² E-filing assistance includes estates, guardianship of incapacitated persons and minors, and name changes, all of which are handled in the Probate Division. It also includes small claims, name change and civil filings in District Division and Superior Court.

³ 2020 data may have been impacted by the pandemic.

- Yearly average length of Electronic Filing call: 5 minutes 13 seconds
- Yearly average length of Electronic handle of call: 5 minutes and 58 seconds

By removing probate division from the duties of circuit court clerks and giving Registers of Probate oversight duties, the duty to respond to public inquiries would fall on the Registers of Probate. The NHJB is concerned that the registers would not have the capacity, experience or direct knowledge of cases to be able to provide timely and accurate responses to the public.

Reinstatement of the pre-Circuit Court duties of Registers of Probate as county officers will decrease efficient processing of estate matters, and increase the overall cost each year by adding unnecessary layers of management, training and processing. In order to return the Probate Division to a county-by-county probate court system, the institution of e-filing would likely need to be eliminated, or substantially modified to account for the new county-based system. It will also increase the burden on citizens who must manage an estate of a loved-one or family-member by adding a layer of bureaucracy without any discernable benefit to them. In order to fully implement what is proposed by SB 89, Section V, the Probate Division would need to be carved out of the State’s Circuit Courts and made into a county institution of ten county-run courts.

Reinstatement of the Registers of Probate under the bill would also redirect Circuit Court funds to reimburse counties for the salaries and benefits of Registers of Probate. Section 3 would require the Judicial Branch to “[s]et aside 10% of each probate entry fee paid do the probate division for allocation to the counties for the salary, benefits and other compensation costs of the registers of probate as set forth in 490:27.” In doing so, the 10% of fees would be redirected from two existing dedicated funds⁴ and the General Fund. Using FY 2020 data, the reduction would be approximately \$130,000 as reflected in the following table:

SB 89 Establishing Compensation for Registers of Probate - Version 21-0999

Summary of Affected NHJB Revenue per SB 89 - Using Actual FY2020 Revenue Collected

<i>Current Funds Distribution</i>		<i>Funds Distribution per SB 89</i>	<i>Variance Current vs SB 89</i>	
Facilities Escrow	\$78,502	Facilities Escrow	\$70,652	-\$7,850
IT Dedicated Fund	\$392,509	IT Dedicated Fund	\$353,258	-\$39,251
General Fund	\$837,353	General Fund	\$753,618	-\$83,735
DOJ/Victim's Assistance Fund	\$0	DOJ/Victim's Assistance Fund	\$0	\$0
Ct Pub Revolving Fund	\$0	Ct Pub Revolving Fund	\$0	\$0
Alternative Dispute Resolution	\$0	Alternative Dispute Resolution	\$0	\$0
Law Library Revolving Fund - Probate Division	\$0	Law Library Revolving Fund - Probate Division	\$0	\$0
Law Library Revolving Fund - All Other Courts	\$0	Law Library Revolving Fund - All Other Courts	\$0	\$0
Set Aside for County	\$0	Set Aside for County	\$130,836	\$130,836
Total - Current Funds Distribution	\$1,308,364	Total - Funds Distribution After SB 89	\$1,308,364	\$0

In addition, since FY 2020, the information technology fund was insufficient to keep up with the needs of the Judicial Branch, and the shortfall has been incorporated into the Judicial Branch’s budget request. In essence, while the funds needed to support county Registers of Probate would initially be reduced from the information technology fund, the additional shortfall would be covered by additional General Funds.

⁴ The court facility improvements fund and the Judicial Branch information technology fund.

The bill also creates a role for Registers of Probate that is outside the Judicial Branch. As such, they are not subject to the oversight of the Judicial Branch or the Circuit Court Administrative Judge. Furthermore, they would not be subject to the Judicial Branch's policies and practices. For example, the Judicial Branch has controls to ensure the confidentiality, integrity and availability of information on the Judicial Branch's case management system. The Judicial Branch follows administrative orders and policies that define appropriate and acceptable use and access to the case management system, and Judicial Branch employees with access are subject to the Judicial Branch's personnel rules. The County is not subject to those policies, and non-compliance cannot be enforced by the Judicial Branch against an elected county official. The Judicial Branch also perform background checks and verify skill and ability before being granted access to the system and the confidential records contained in those records. Elected county Registers of Probate are not subject to these requirements.

The Circuit Court-Probate Division has endeavored to prepare for challenges it will face by the aging of New Hampshire's population.⁵ The constitutional office of Register of Probate was created in the 19th Century to remedy conditions that no longer exist in the 21st Century. Reinstatement of its duties will hamper progress made and efficiencies to be gained in managing the "Silver Tsunami" facing New Hampshire.

HISTORY OF THE CONSTITUTIONAL PROVISION

In 1877, Part II, Article 71 of the New Hampshire Constitution was amended to provide for the election of Registers of Probate, county solicitors (now called county attorneys) and sheriffs. Recent attempts at a much needed Constitutional amendment have fallen short of the necessary super-majority necessary for such change.

The office of the Register of Probate was established in 1694.⁶ One register was appointed for each county. From all available accounts, it appears that their role was to keep the probate records and to keep track of probate matters for the judge.⁷ This role remained about the same up until 2011.⁸ Before creation of the Circuit Court, the job of the register was essentially the same as that of a clerk of superior court, district court or the family division.⁹ The register managed the day to day operations of the court office. It was an administrative position, not a political one.

During the political and economic turmoil of the early 1800s that followed the birth of the nation, there were frequent shifts in power in our government.¹⁰ On several occasions during

⁵ See Gretchen M. Grosky, *The Changing Face of NH: What it Means to Have the Second Oldest Population in the Nation*. N.H. Union Leader, August 13, 2016.

⁶ MANUSCRIPT TREATISE ON PROBATE LAW, SMITH'S REPORTS, p.514 (1879).

⁷ See e.g. 10 DeGrandpre and Treat, *New Hampshire Practice, Probate Law and Procedure* §3-3 at 15-17 (2001) and MANUSCRIPT TREATISE ON PROBATE LAW, SMITH'S REPORTS, pp.513-15 (1879).

⁸ *Id.*

⁹ REPORT OF THE NEW HAMPSHIRE SUPREME COURT LONG-RANGE PLANNING TASK FORCE AS NEW HAMPSHIRE APPROACHES THE TWENTY-FIRST CENTURY, July 19, 1990 at p. 27.

¹⁰ See e.g. Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 28-35.

the 1800s, when a new political party came into power, the new legislature would abolish the then current court system and create new courts.¹¹ The new governor would then appoint new judges and new Registers of Probate, among others.¹² In 1855, when the “Know Nothing” party swept the elections, those voted in removed several officials from office, including some popular probate judges and registers, and appointed new officials.¹³ Over the next twenty-two years, there appears to have been a strong undercurrent of dissatisfaction with this practice.¹⁴ There were several attempts to convene a constitutional convention to remedy this and other ills not related to this issue, but there were not enough votes to convene a convention until 1876, when finally enough people voted in favor of holding another constitutional convention (which was set for 1877).

While there is little in the records of this convention about the change from appointed to elected officials, the record does reveal concern by the representatives at the convention about the fact that when a judge or register was appointed, that appointment should be made based on the individual’s skill to perform the job and should not be subject to partisan politics.¹⁵ Articles published at the time, albeit less supportive of the notion that registers be elected, also reflect this sentiment. For example:

The election of a large number of officers provided for by the amendments [of 1877], such as sheriffs, county solicitors, and Registers of Probate, is generally conceded to be a sacrifice of efficiency and capability on some of these offices to a popular clamor mis-named “the rights of the people.

When however all public officers are considered, as of right they are, as servants of the people, and as holding their public positions as trusts for the common welfare, and that that method of election or appointment which brings from such servants the *best* service, is the best, this evil will correct itself.¹⁶

As the bitter feelings from the Civil War subsided and this country began to move into the industrial revolution, political retaliation seemed to subside.¹⁷ Despite shifts in government, the number of public officials appointed to perform civil service based solely on their politics reduced dramatically.¹⁸

PROBATE REGISTERS IN THE 21ST CENTURY

¹¹ *Id.*

¹² *Id.* See also New Hampshire Constitution, Part II, Article 46 (as amended 1792).

¹³ See e.g. *Id.*; Daniel Barnard, *Address of Daniel Barnard*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 90; and Hon. James W. Weeks, *The Probate Courts of Coos County*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 251.

¹⁴ Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 33.

¹⁵ Journal of the Constitutional Convention, 1876, pp. 95-97.

¹⁶ Daniel Barnard, *Address of Daniel Barnard*, JOURNAL OF THE GRAFTON AND COOS COUNTIES BAR ASSOCIATION, No. 1, (1882-1889) p. 90.

¹⁷ Richard F. Upton, *The Independence of the Judiciary in New Hampshire*, N.H.B.J. 1959 Vol. 1. No. 4 at pp. 35.

¹⁸ *Id.*

In 1877 and indeed up until 1984, Registers of Probate were county employees. Thus, when this amendment was first adopted, the addition of Registers of Probate to the roster of county employees that would be elected made sense given that other county employees, such as registers of deeds, were already in this group. Indeed to this day, county treasurers, sheriffs, registers of deeds and county attorneys are still county employees. However, in 1984, Registers of Probate were no longer county employees, and, at least through 2011, were the only elected non-county officials to run on a county-wide ballot.

In 1984, New Hampshire created a unified court system in order to make justice more predictable and consistent. The Registers of Probate became state employees within the Judicial Branch. Because of the enormity of the change from a county/town based court system to a unified state court system, the Legislature did not tackle the Constitutional amendment that would have been necessary to convert the elected register positions to appointed clerks. In the context of Part II, Article 71, dealing with the constitutional provisions for the county level of government, having elected Registers of Probate simply has not made sense since 1984.

As the only elected employees, it had become obvious that Registers of Probate did not enhance or promote increased efficiency and customer service within the Judicial Branch administrative offices. As our present system of court administration evolved, it brought the responsibility for the internal fiscal control, personnel administration, purchasing, and auditing management under the supervision of the Supreme Court. As the management of the courts became unified however, there remained a single aspect of this supervision that was continually left hanging – how does the Register of Probate fit into this new unified system? The short answer to this question was, and remains, that they do not.

Before adoption of HB 609 in 2011, see 2011 Laws, ch. 88, the Judicial Branch faced numerous administrative problems as it lacked the authority to appoint the person who performs the functions of a clerk of court for the probate courts, namely the register. There were some instances of unacceptable abuse of this dual system of accountability. Court staff work for the Judicial Branch, which sets salaries, benefits and hours to be consistent with all of the other courts. Registers of Probate, however, could not be held accountable as were every other Judicial Branch employee. As elected officials, some Registers of Probate, even though they supervised other Judicial Branch employees, stated that they worked for “the people” and took the position that they were not accountable or responsible to the Judicial Branch. Some Registers set their own hours, and did not work full time. One Register began a project to “strip files” to save file space and shredded what she believed to be non-essential paper from files which initially included the inventories from estates that recorded the volume and page information for real estate. Another newly elected Register refused to issue statutorily required default and citation notices because she didn’t think it was fair. This obviously made it difficult to initiate change or institute new programs or procedures or have any degree of control over court functions.

Elections also became disruptive to court staffing. While historically there were few contests for register positions that was not true in the recent years leading up to the creation of the circuit court. When an election was contested, dedicated and knowledgeable employees faced losing their jobs every two years, at the whim of the voters in partisan elections. In one county, the first term incumbent was challenged by her two deputies, in a court with a total of four

employees. The fall saw these three co-workers campaigning against each other, getting interviewed by local papers discussing how things could be improved. When the incumbent was re-elected for a second term, the two deputies, with 33 combined years of experience, found themselves stripped of their titles of Deputy Register.

Newly elected Registers often came to the job with little or no experience. It takes a minimum of two years to learn the basics of the job of Register, which is coincidentally the length of their term. This could result in someone getting elected to the position and just getting to know the job, at great expense to the taxpayers, and then getting voted out of office, perhaps to be replaced by another inexperienced Register. Imagine the situation that would result from the incumbent being voted out of office in a court with one court assistant in the probate division. In that situation, the court could virtually come to a halt, during the long training process in which ironically, the staff is left to train their boss.

Following unification of the court system, a crisis would unfold and be discovered in the Sullivan County Probate Court, which became known as “The Fairbanks Matter.” John Fairbanks was a Newport attorney and part time district court judge who embezzled large sums of money from clients, many involving cases being overseen by the local probate court and Register of Probate. A legislative committee was established to investigate the matter. See Laws 1996, ch. 254 (HB 1593). Among its findings, the Legislative committee concluded that in November 1976 “Sullivan County Register of Probate, Bernice M. MacWilliams, in her eighties and confined to a nursing home, wins re-election overwhelmingly as Sullivan County Register of Probate. Ms. MacWilliams was first elected to this position some 35 years before, in 1941. In more recent years, she came into the register’s office only occasionally, for just a few hours at a time.”¹⁹ The report also reflected the fact that Ms. McWilliams “was very political. She knew the people of influence, and the ones to whom favors would be given, and she ran the Registry of Probate on a very personal basis.”²⁰ When this Register of Probate retired, it was discovered that files had not been kept up to date. Various filings made by parties were lying in piles in the Probate Court vault. Notice of various filings to other interested persons had not been sent. Hearings had not been conducted in a timely fashion. It literally took years and untold resources to sort out everything in Sullivan County.

A few years later, the New Hampshire Supreme Court appointed a Long-Range Planning Task Force to “enable the Supreme Court to establish a clear focus and to better allocate resources in meeting the mission of the Judicial Branch of Government...” The Task Force issued its comprehensive report, *The Report of the New Hampshire Supreme Court Long-Range Planning Task Force; As New Hampshire Approaches the Twenty-First Century* on July 19, 1990. One of the findings of this report is as follows: “[t]he task force concludes that election of Probate Registers is anachronistic and recommends that such officers should be approved by and subject to Probate Court supervision in the same manner a Superior Court Clerks are appointed and supervised by the Superior Court. The Constitution should be amended to eliminate Registers as constitutional officers.”²¹

¹⁹ *Report of the House Committee to Study the State Investigation of the John C. Fairbanks Matter, January 1997*, p.1.

²⁰ *Id.* at p. 4.

²¹ *Id.* at 27, 298.

Several bills to amend the Constitution have been introduced over the years. See CACR 9 (2007), CACR 6 (2009), and CACR 8 (2017). CACR 9 was filed in the House and came out of the Municipal and County Government Committee with a 13-1 ought to pass vote. The committee report reflected that “the majority of the registers in the state approve of being appointed” and went on to conclude that “[t]he committee strongly believes that the clerks of probate be an appointed position. The latter would ensure accountability for the public.”²² While the bill received more than 60% of those voting in the full House (198Y, 128N), it fell short of the necessary numbers for passage of a Constitutional amendment. The bill was reintroduced as CACR 6 in 2009. That bill remained in committee by a 3-2 vote. The majority of the then elected Registers of Probate supported these proposed constitutional amendments, and several testified or submitted written testimony in favor of amending the Constitution to provide that their position would no longer be subject to election.

DEVELOPMENT OF CIRCUIT COURT SYSTEM

Most of the concerns the Legislature sought to address in the constitutional amendments were addressed by the Legislature in 2011 when it enacted HB 609, a comprehensive bill overhauling the court system and creating what is now the Circuit Court system.²³ HB 609, which had bipartisan support, consolidated a system of local courts into a Circuit Court with three divisions: the Family Division, the Probate Division, and the District Division. Initially, this consolidation was to take place over ten years and save the courts \$29 million. The Legislature saw the value in speeding up the transition, and reduced the transition time to just three months.²⁴ Although such rapid change was difficult and painful, the Circuit Court instituted those changes as instructed, and has produced a leaner and more efficient court system. As part of the consolidation, it was recognized that certain duties performed by the Registers of Probate could more effectively be performed by court staff. The Legislature understood that having elected officials with supervisory duties in a bare bones management structure simply did not make sense. Consequently, the comprehensive bill concerning Circuit Court formation, HB 609, included provisions repealing tasks legislatively assigned to Registers of Probate included in RSA 548. See 2011 Laws, ch. 88:31-:42. None of the then elected Registers of Probate expressed opposition to the bill at either the House or Senate hearings.

The elimination of the duties of Registers of Probate in 2011 was widely openly discussed in legislative committee hearings. In the Senate Judiciary Committee, for example, Chief Justice Dalianis testified as follows:

We changed the definition of the duties of Registers of Probate in a way to, how to say it, make the system more rational, because, to this point, elected Registers are sort of court employees and not sort of court employees, and some of them didn't pay much attention to the way we wanted business to be done, and it seemed to us to make more sense to

²² *House Record*, 23 JANUARY 2008, p 708.

²³ See generally, Brian Wallstin, *A Look at NH Circuit Court after Two Years*, N.H. Bar News, December 13, 2013.

²⁴ *Id.*

have the people managing those courts be people who are accountable to us, and, for that reason, *the duties of the Registers were paired back to essentially nothing*

Judge King, who at the time was the Administrative Judge of the Probate Court and is now the Administrative Judge of the Circuit Court, testified:

So what we have done in House Bill 609 is we've changed the definition of Register, which you won't find in the Constitution. You will find it in House Bill 609. It's on page 8. The definition is found at RSA 548:5. Essentially, what it says is the Register of Probate will be a register; they will be responsible for the ancient record which is important and to ensure that the ancient record is kept and that at the appropriate time those records get transferred to archives, so that they are available for people who are doing real estate title searches and need the ancient record or genealogical research they'll be there. As the Chief Justice alluded to, if they don't show up for work, we'll be o.k. without them. But the duty is important, and we hope that people will run for Register at a much reduced salary and take that on, but they won't be the clerks. The reason that's crucial in House Bill 609 is because, Judge Kelly explained, we are going to go from 52 managers down to 21. We can't have half of our managers elected. If you were running a business, you wouldn't say the best way to pick the manager of this business is to have an election and have people elected. It just doesn't work. So the position has changed. I met with the current Registers last summer, and we explained exactly what we are doing.

The process was open, with complete and open disclosure as to what would happen with the position of Register of Probate. In 2011, there was no testimony in opposition to the bill.

The law, as passed in HB 609, retained the register's duty to preserve probate files, in particular those that may have "historical significance." 2011 Laws, ch. 88:14.²⁵ The Legislature recognized that the office of Register remained subject to election by the Constitution, however the Legislature retained the jurisdiction to establish the duties of the Registers of Probate. In 2017, the courts and the Secretary of State's office agreed on an amendment to RSA 548:5 to make it clear that the register duties would need to be coordinated with both the courts and the Secretary's office, making it also clear that the duties were more aligned with the Executive Branch, which is responsible for the archiving of court records, once the court process is complete and the court no longer needs access to the file.²⁶

Since 2011, the Circuit Court has continued to pursue efficiencies, as required of a system of courts that hear approximately 90% of all cases filed in New Hampshire. The Circuit Court opened an Information Center in 2012 that the Superior Court later joined, which processes tens of thousands of calls and allows for more efficient case processing. It has instituted e-filing of guardianship petitions, small claims complaints and all estate matters. The Circuit Court formed the Complex Trust Docket in 2014 to address the growing number of complex trust, estate, and guardianship cases that were taking up a large share of valuable court resources and impeding efficient management of a court's docket. The Complex Family Docket

²⁵ The language removing certain administrative duties was part of the comprehensive bill as introduced. Later legislation added to 2011 HB 2 reduced the registers' salary to \$100 per year.

²⁶ See 2017 Laws, ch. 15:1.

was formed shortly thereafter to address the growing number of complex family cases that were taxing the system as well.

The Circuit Court reduced its clerks and registers who previously served clerk functions from 52 down to 18 over between March and mid-June 2011. These 18 clerks supervise 35 locations and 72 divisions of the Circuit Court. Since the Circuit Court system was implemented in 2011, the Circuit Court has processed over 1.3 million new filings. Of those, approximately 8% were in the Probate Division.

By the end of 2019, virtually all cases filed in the Probate Division were being filed electronically. Many of the equity cases filed in Probate now go into the Complex Trust Docket, which is also a centralized process and often must quickly schedule proceedings as emergencies arise. Of the remaining case types in the Probate Division, the only significant volume is name changes, which in 2020 accounted for 1,552 cases. The bottom line is, by virtue of the changes that began in 2011 with the creation of the Circuit Court structure, the clerks and deputy clerks have virtually no supervision responsibilities for Probate Division cases.

If the Legislature chooses to now materially change the terms of this agreement, and reinstates the duties previously assigned to Registers of Probate, the benefits of the changes that began in 2011 will be reduced or lost. Reinstatement of the duties of county-based Registers of Probate may well halt electronic filing of estates, resulting in a loss of hundreds of thousands of taxpayer dollars and the resulting benefits that has been achieved. An additional layer of bureaucracy will make navigating estate filing more difficult for everyday citizens. The Legislature and courts have endeavored to better manage caseloads by consolidating the courts and streamlining case management. Progress made through e-filing, case processing, and the creation of a complex Trust Docket are not advanced by an expansion of the duties of elected Registers of Probate.

CONSTITUTIONAL ISSUES UNDER CURRENT SYSTEM

It will no doubt be suggested by the proponents of reinstating the duties of Registers of Probate will be that the current system of having elected registers, with limited duties and authority as spelled out by legislation passed in HB 609, is not constitutional. That issue was fully discussed during hearings held in the House and Senate before final decisions were made pass HB 609 and make sweeping changes to the Registers' duties.

First, it should be made clear that the duties of Register of Probate have always been established by the Legislature. Those that remain were initially enacted in the mid-to-late 19th Century. See e.g. RSA 548:5. There is no clear mandate in the Constitution concerning what those specific duties should be, see N.H. CONST. Pt. 2, art. 81; N.H. CONST. Pt. 2, art. 82; and thus it makes sense that the Legislature exercised its authority to modify the duties of the Registers of Probate when the realities of the modern court system directed that the former, antiquated, system no longer made sense. To the extent that the Registers of Probate resemble Registers of Deeds in a historic duty to maintain records, it should be noted that the Registers of Deeds do not schedule or act in a clerk capacity where there is a dispute concerning land,

including disputes involving title to land adjudicated in the Probate Division pursuant to its ancillary jurisdiction to resolve disputes involving trusts and estates.

In addition, although named in the Constitution,²⁷ the Probate Courts are not constitutional courts like the Supreme and Superior Courts. See N.H. CONST. pt. 2, arts. 4 & 72-a (power of the Legislature to establish courts; establishment of judicial power in the Supreme Court and Superior Court, and “such lower courts as the legislature may establish under Article 4th of Part 2”). It has long been recognized that: “[b]y the Constitution (Const. pt. 2, art. 80), probate courts have jurisdiction in granting administration, to be exercised in such manner as the Legislature may direct. Their jurisdiction is exclusive, but they have such powers and only such as the Legislature gives them.” Robinson v. Dana's Estate, 87 N.H. 114 (1934)(citations omitted). According to the Constitution, “[a]ll matters relating to the probate of wills, and granting letters of administration, shall be exercised by the *judges of probate*, in such manner as *the legislature* have directed.” N.H. CONST. pt. 2, art. 80. The operative constitutional language is “judges of probate” who “hold their courts at such place or places, on such fixed days, as the conveniency of the people may require; and the legislature from time to time appoint.” N.H. CONST. pt. 2, art. 80. In 2011, the Legislature exercised its appointment power to establish a “Probate Division” to replace the “Probate Court,” through which judges of probate exercise their jurisdiction over estates, guardianships, etc. See 2011 Laws, ch. 88 (HB 609); RSA 490-F:3. There is no requirement that there be a “clerk of the probate court” see N.H. CONST. pt. 2, art. 82, and in fact, the “Probate Court” no longer exists by operation of the Legislature. Consequently, there is no constitutional requirement that the Registers engage in clerk or administrative duties. Additionally, there is only one remaining non-retired judge who was appointed as a “judge of probate” in New Hampshire. While the term “judge of probate” can be found in the Constitution, the Legislature has seen fit to define such a judge as “any circuit court judge assigned to the probate division.” See RSA 490-F:6 III.

CONCLUSION

The question of what duties Registers of Probate should retain was openly discussed and addressed in 2011 when the Legislature concluded that they cannot, and should not, have a role in the operation of the Probate Division of the Circuit Court. Limiting the authority of Registers of Probate is well within the constitutional power of the Legislature. While it is also within the Legislature’s authority to expand their authority, to do so would be counter-productive and only serve to roll back the improvements that have been made since 2011. In fact, given the current centralization of virtually all probate court functions and the limited involvement of clerks in probate matters, the only service Registers of Probate could provide would be to respond to public inquiries. That, as is discussed above, would involve transferring that function which is currently centralized in Concord, and exporting it to the ten counties to develop systems that provide timely and accurate information to the more than roughly 50,000 callers to the Probate Division each year.

²⁷ Either in a provisional title, see N.H. CONST. pt. 2, art.80, or in the text as a “court of probate,” N.H. CONST. pt. 2, arts. 81 & 82, or indirectly through mention of “judges of probate.” See N.H. CONST. pt. 2, arts. 80, 81.

Testimony in Favor of SB 89:

“AN ACT adopting omnibus legislation relative to election procedures and registers of probate.”

March 8, 2021; Senate Election Law and Municipal Affairs Committee
Rep. Timothy Horrigan (Strafford 6)

I am probably going to be unable to “Zoom” in for the Monday, March 7th hearing on SB 89, “AN ACT adopting omnibus legislation relative to election procedures and registers of probate.” I am writing to express my general support for the whole bill as introduced. There are things which can (and probably will) be changed before SB 89 makes it to the House of Representatives, so I reserve the right to change my mind.

Parts II & V of this bill address topics which I myself have worked on in the past. I chose to leave both topics alone in 2021, because (amongst other reasons) the House is operating at much less than full capacity thanks to the pandemic and other recent events.

Part II covers the same ground as my now-legendary “ballot selfie” bill, HB 366 (2014), which frankly turned out to be a both a political and legal fiasco. No one ever wanted to post photos of their completed ballots online until we passed a law explicitly forbidding it. But suddenly, as soon as my bill passed, everyone wanted to do it. And, very soon after the 2014 election, my bill was challenged successfully in federal court.

In my opinion, ballot selfies were already illegal under the pre-2014 law, which is still in place. In retrospect, I see that my bill was probably unnecessary.

SB 89 proposes a blanket ban on all photos of completed ballots “inside the guardrail” at the polling place. This doesn't cover mail-in ballots, and it's not enforceable inside the voting booth, but it still adds a little more privacy and security to the voting process. I am not a judge or even an attorney, and I do not have a crystal ball— but I am confident the proposal in SB 89 would survive either a state or federal court challenge (or both.)

Part V restores the duties of the Registers of Probate. Over a decade ago, the lower courts were all merged into a single Circuit Court system. The duties of the 10 elected Registers of Probate were almost entirely eliminated, but the office itself could not be eliminated without a constitutional amendment. Since then, the Probate Division of the Circuit Court has streamlined its procedures and has continued to give excellent service, but eliminating the Registers of Probate was still a mistake. This bill brings them back, in a 21st century form.

Rep. Timothy Horrigan; 7A Faculty Rd; Durham, NH 03824
email: Timothy.Horrigan@leg.state.nh.us

Tricia Melillo

From: Ann M. Haralambie <haralambielaw@gmail.com>
Sent: Saturday, March 6, 2021 6:34 PM
To: Tricia Melillo
Subject: SB89

I write to oppose SB89. This bill is unnecessary and amounts to voter suppression. As a lawyer, I deal in facts and revere the rule of law. I look at evidence and the rulings of court decisions which addressed cases. There is no evidence of voter fraud warranting legislative action. What this bill really amounts to is an attempt at voter suppression. The RNC's attorney was candid before the U.S. Supreme Court in admitting that the RNC's opposition to one of Arizona's voter suppression laws was one of political disadvantage. Making it more difficult for people to vote is no substitute for convincing voters in the marketplace of ideas. Please reject this and any other attempt to disenfranchise NH voters or to make it more difficult for us to exercise our franchise.

Ann M. Haralambie, JD, CWLS
1261 East Shore Drive
Silver Lake, NH 03875

Tricia Melillo

From: Barbara Glassman <barbara.glassman@gmail.com>
Sent: Monday, March 8, 2021 8:17 AM
To: Tricia Melillo
Cc: James Gray; Cindy Rosenwald; Martin Jack; Linda Harriott-Gathright; Michael O'Brien; Liz Tentarelli; Jan Schmidt; Mark King
Subject: In opposition to Senate Bill 89, An act adopting omnibus legislation relative to election procedures and registers of probate.
Attachments: LWVUS_Report_ElectionAudits.pdf

Ms. Melillo: Would you please also add this to the legislative record or let me know whom to ask? Thanks!

March 8, 2021

To the Honorable Members of the Senate Election Law Committee:

My opposition to SB 89 is focused on Part IV: Establishing a Committee to Study Post Election Audit Counting Devices. My alarm bells first went off in 2019 with SB 283, when Secretary Gardner proposed using a new model of scanner to conduct audits, as opposed to hand counts.

No true election security expert endorses using a scanner to perform an audit, even if it's a new make or model. Manual/hand-counted audits in the days immediately following an election, and prior to certification, have been recommended since 2009 by both the SoS's own Electronic Ballot Counting Device Advisory Committee (formerly at <http://sos.nh.gov/ballotcountdev.aspx>) and the national League of Women Voters (pdf attached), as well as the three renowned election security experts Secretary Gardner invited to testify before the Kobach commission in Manchester in 2017: Andrew Appel of Princeton, Ron Rivest of MIT, and Harri Hursti (starting at 2'3" in the afternoon session: <https://youtu.be/XkPJbbKPJw>).

Verified Voting, the premier body of experts on election security, clearly states, "Audits require human examination of voter-marked paper ballots... Audits cannot rely on scanned images or machine interpretations of the ballots to accurately reflect voter intent" (p. 7, <https://verifiedvoting.org/wp-content/uploads/2020/05/Principles-and-Best-Practices-For-Post-Election-Tabulation-Audits.pdf>).

New scanners cannot overcome the fundamental problem that Secretary Gardner's own experts laid out: it is impossible to secure computerized voting equipment. Computer experts know this better than anyone, and they are unequivocal: our best defense is manual auditing of the original hand-marked paper ballots.

I started to watch the video of the Post Election Audit of Electronic Ballot Counting Machines at the State Archives on November 30, 2020 (meaningful audio begins at 21'35": <https://youtu.be/V1hED33Mdx4>). The idea was to compare the performance of a couple of new scanners using old ballots.

The flaw was the assumption that performance on that day predicts future accuracy, the same flawed assumption underlying pre- and post-election tests of voting machines. Computers know what day and time it is. They can be programmed to perform well when being tested, behave differently on election day, and even delete those instructions afterward. The VW cheating scandal is a perfect illustration. Barbara Simons, co-author of the LWV audit report, wrote, "[What if Volkswagen made Voting Machines?](#)" That is why manual audits are essential.

Suppose Secretary Gardner proposed abandoning New Hampshire's long tradition of meticulous hand recounts in favor of re-scanning the ballots with a different make or model of scanner. Resistance would be

immediate, the problem readily apparent: How would you know which scanners were accurate without a hand count?

Yet that is exactly what Secretary Gardner is proposing for audits, and, because audits are not among our long-held traditions, he is able to present this dangerous shortcut without widespread recognition of its flaws and what is being lost: the transparency and certainty that hand counting provides. What is being added is another layer of secrecy in the form of inscrutable proprietary software. It will do nothing to restore cratering public confidence in our elections, such as is currently on display in Windham.

Misleading audits are worse than no audits. Do not be led down this blind alley. Insist on manual audits, so long overdue.

The NH ACLU points out an additional reason to oppose this bill: "SB89 looks to start the process of signature matching for absentee ballots, which is not only notoriously flawed and unreliable, but is also unconstitutional."

Thank you very much for your attention.

Respectfully,

Barbara Glassman
50 Barrington Ave., Unit 504
Nashua, NH 03062-4224
215-378-5356
barbara.glassman@gmail.com

Attached pdf

Tricia Melillo

From: Dan Kusch <dan.kusch@gmail.com>
Sent: Sunday, March 7, 2021 1:10 PM
To: Donna Soucy; James Gray; Rebecca Perkins Kwoka; Regina.Birdsell@leg.state.nh; Ruth Ward; Tricia Melillo
Subject: Vote SB89 ITL

To the members of the Senate Election Law Committee:

I write today on the 56th anniversary of Bloody Sunday - the day when our brothers and sisters were beaten in Selma as they pushed to expand voting rights for all Americans.

SB89 is deeply disheartening as it would surely disenfranchise far far more people in NH than have ever been found to have cast fraudulent votes.

There are so many reasons why a person's signature may differ on two occasions - age, health, first language, and writing conditions. After all the ways generations fought to ensure the write to vote, this bill - instead of protecting democracy - will take away the precious gift of the vote from our neighbors.

Dan Kusch
1 Main St.
Center Sandwich, NH 03227

Tricia Melillo

From: Deborah Sumner <dsumner@myfairpoint.net>
Sent: Monday, March 8, 2021 10:51 AM
To: James Gray; Regina Birdsell; Donna Soucy; Rebecca Perkins Kwoka; Ruth Ward; Tricia Melillo
Cc: Santonastaso@cheshireliberty.com; Denise Ricciardi; Douglas Ley; Richard Ames
Subject: Opposition to Part IV of SB89
Attachments: 21-HB524Aud.docx

Dear Honorable Members of the Senate EL and MA Committee,

I STRONGLY second Barbara Glassman's opposition to Section IV of this bill and include for the legislative history, these suggestions given to the House Election Law Committee to improve HB 524 (post-election audits).

Federal legislation now under consideration emphasizes that only VISUAL inspection (no mechanical means) can be used to determine voter intent.

Our elections belong to the people, not the election industry who profits from taxpayer money and is not accountable to the public.

Thank you.

Sincerely,
Deborah Sumner
474A Great Rd.
Jaffrey, NH 03452
603-532-8010

Tricia Melillo

From: Denis Devlin <denisd@sassafras.com>
Sent: Sunday, March 7, 2021 9:39 PM
To: Tricia Melillo
Subject: opposed to SB89

In this day and age, we routinely scratch a piece of plastic with a plastic stylus as a "signature", and use a pdf signing utility for online documents.

Handwritten signatures, penmanship, and signature verification are a relic of the past. We no longer practice writing a signature each day with a quill pen. There is no muscle memory.

The idea that you can verify a persons identity based on a handwritten signature never was very certain, and nowadays, its simply a ludicrous.

-Denis

There are better more accurate (modern) ways to ensure voter integrity.

-Denis

Tricia Melillo

From: Elizabeth Marietta <elizmarietta@gmail.com>
Sent: Sunday, March 7, 2021 2:17 PM
To: Donna Soucy; James Gray; Rebecca Perkins Kwoka; Regina Birdsell; Ruth Ward; Tricia Melillo
Subject: SB89: Vote Inexpedient to Legislate

Please vote inexpedient to legislate SB89.

Signature matching is a flawed process that is unreliable and unnecessary to reinstate. Signatures may vary slightly due to age, health, native language, etc. Training of poll workers to detect extremely unlikely fraudulent votes is burdensome, unreliable, and the result could be bias in nature. Reinstatement of signature matching is not needed.

Thank you ,
Elizabeth Marietta
Meredith, NH

Testimony in favor of Senate Bill 89
Jane Bradstreet
Merrimack County Register of Probate

The register of probate has been included in the New Hampshire Constitution as an elected officer for over 130 years. Within the last 30 year there have been several attempts to take the register position out of the constitution, eliminate it as an elected position and have the Judicial Branch judges appoint a clerk of the Probate Court. All those attempts failed.

In 2011 a bill was passed that created the Circuit Court. This bill submerged the Probate Court under the Circuit Court and created a Probate Division. The Circuit Court clerk is appointed by the Judicial Branch Administrative Judge. The Probate register, still on the ballot and elected, was given the duty of the oversight of "files having the potential for historical significance" in coordination with the administrative judge. This gives an appointed official supervisory authority over an elected official. This position has a salary of \$100 per year. No training has been given to new registers and they are not included in any probate business.

There are two problems with what happened in 2011: one concerns the registry, the "historic record" and the other concerns the customer service for the constituents of each county.

Problem one:

The "files having the potential for historical significance" are about 25 percent of all probate files. Those are the files that contain real estate. The probate registry coordinates with the registry of deeds to prove the ownership of all the real estate in each county. Since 2011 the elected registers have not been allowed to work within the probate division to ensure the record is being accurately kept.

Problem two:

The consolidation of the Probate Court, District Court and Family Division into the Circuit Court has provided some synergies in administration but the service to the public has declined at the courthouse level. If you have a probate question and go to the circuit court you will be directed to a computer in the lobby. The computer will have some written instructions but if there are further questions you will be told to call the Court Information Center to get answers over the phone. Persons able to answer questions are no longer in the courthouse. Customers are frequently confused and frustrated. There is an issue with literacy, written and financial, that is not dealt with in this service model. There is no private space to speak with a knowledgeable person to get help.

Information about the Probate Division

The probate division handles civil matters. The citizens who are served by this division are families needing help with issues of:

- Estate and Trust matters
- Guardianship of Adults
- Adoption
- Name Changes

Equity Matters

These families need the division to provide documents such as certificates of appointment needed to handle a family issue, often during a time of stress and confusion. New Hampshire has a probate system known as “supervised” probate. That means the court provides supervision of all filings. It can be complicated and not easy to understand.

Most probate jurisdictions are now filed electronically. All the first electronic filings are handled centrally in Concord. All estates are filed electronically and handled in Concord. No local probate division handles any probate matters. The only original wills are kept in paper form. All questions are handled by the Court Information Center. It is impossible to sit down with a person to get assistances in the procedure which is frequently confusing. Many of the problems in probate are sensitive and private issues that need to be handled with empathy; not to be handled in the middle of a lobby, on the telephone.

How will this bill help?

This bill will restore a useful register to the business of probate for New Hampshire citizens in need.

1. This bill provides Registers with training to be able to answer questions.
2. Registers will be able to work with the registers of deeds to make sure the ownership of real estate in all counties is properly recorded.
3. Registers will be on site to personally help their constituents deal with their probate issues.
4. Registers will be paid in relation to the service they will perform.
5. Register will be there to provide oversight on how probate issues are being handled.

Funding this bill.

A portion of each probate filing fee will be provided to the county to pay for the register’s services.

Each county will be able to decide how much work is needed in their county and pay the register accordingly.

Tricia Melillo

From: laura <nicnmom@hotmail.com>
Sent: Monday, March 8, 2021 8:46 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: SB 89 Reasons to Oppose

I oppose this bill because signature matching is a useless way to monitor for voter fraud. A person's signature changes over time, and when different surfaces and types of pen are used, and when the angle of the surface being used varies. Personally, my signature looks different every time. Poll workers are not handwriting experts and should not be expected to be. See below for a detailed summary of reasons why this bill should be voted Inexpedient to Legislate:

- Signature matching is the flawed process wherein an election worker visually compares the signature on the affidavit envelope in which an absentee ballot is returned to the signature on the voter's absentee ballot request form.
- This bill would reinstate signature matching in our elections, a process that is inherently unreliable in detecting fraudulent votes. No voter should be disenfranchised or have to jump through hoops simply because of their penmanship. There are multiple reasons why a person's signature may differ on two occasions, including due to age, health, native language, and writing conditions. As a result, people with no handwriting-identification training are likely to erroneously conclude that two signatures from the same voter do not match.
- Moreover, signature matching is inherently uneven in how it is implemented, and public officials are not (and cannot be meaningfully be) trained in how to implement it. During the 2016 election, all of the ballot rejections due to signature mismatch statewide came from only 26% of New Hampshire's 318 polling places. The remaining 74% of polling places did not reject any absentee ballots due to a signature mismatch. Moreover, rejection rates differed wildly throughout New Hampshire.
- Signature matching creates more burdens for voters and more work for poll workers with no real benefit of catching voter fraud.

Thank you,
Laura Thompson
Voter in Chester, NH

Tricia Melillo

From: Luz Bay <luzbay@co.strafford.nh.us>
Sent: Wednesday, March 10, 2021 10:28 PM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Cc: luzbay@comcast.net
Subject: SB 89, Part V (Duties of Registers of Probate)
Attachments: OutlookEmoji-16154271057144baff3c1-a706-468f-ac2c-1aeba19a328e.png

Dear Senator Gray and members of the Election Law and Municipal Affairs Committee:

I am writing to you in support of SB 89, Part V (Duties of Registers of Probate).

My name is Luz Bay. I am a new Register of Probate. I was elected last November in Strafford County receiving 44,816 votes. It was my first time running for elected office.

I knew when I decided to run that my responsibility will be limited to oversight of "files having the potential for historical significance" should I win. I was also hoping that I was going to be able to advocate for citizens of Strafford County who need help when they bring their case to the Probate Court. I even applied and became a Justice of the Peace, naively thinking that I can at least help signing some paperwork. I realize now that it was all naivete on my part.

I was sworn in on January 6, 2021. It was then when I found out that the physical space assigned to my predecessor (according to the county website) did not even exist. In any case, as a new register I have not been given training to perform my duty. As a duly elected register, I would like to be able to serve the citizens of my county by performing my duty that will hopefully include aspects customer service and advocacy for those who have probate matters they have to bring to court.

Thank you for your time.

Luz Bay, Ph.D.

Register of Probate

Strafford County

[1615427105714]

Tricia Melillo

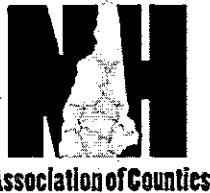
From: MarthaAlix PoppOlson <alixmartha22@gmail.com>
Sent: Sunday, March 7, 2021 9:24 AM
To: James Gray; Regina Birdsell; Ruth Ward; Donna Soucy; Rebecca Perkins Kwoka; Tricia Melillo
Subject: SB89

- Signature matching is the flawed process wherein an election worker visually compares the signature on the affidavit envelope in which an absentee ballot is returned to the signature on the voter's absentee ballot request form.
- This bill would reinstate signature matching in our elections, a process that is inherently unreliable in detecting fraudulent votes. No voter should be disenfranchised or have to jump through hoops simply because of their penmanship. There are multiple reasons why a person's signature may differ on two occasions, including due to age, health, native language, and writing conditions. As a result, people with no handwriting-identification training are likely to erroneously conclude that two signatures from the same voter do not match.
- Moreover, signature matching is inherently uneven in how it is implemented, and public officials are not (and cannot be meaningfully be) trained in how to implement it. During the 2016 election, all of the ballot rejections due to signature mismatch statewide came from only 26% of New Hampshire's 318 polling places. The remaining 74% of polling places did not reject any absentee ballots due to a signature mismatch. Moreover, rejection rates differed wildly throughout New Hampshire.
- Signature matching creates more burdens for voters and more work for poll workers with no real benefit of catching voter fraud.

WE RECOGNIZE THE ATTEMPT NATIONWIDE TO USE SPURIOUS EXCUSES LIKE THIS BILL TO DENY AMERICAN VOTERS THEIR CONSTITUTIONAL RIGHT TO VOTE. VOTER SUPPRESSION HAS BECOME THE GOP GO-TO TO RIG ELECTIONS THAT THEY CONTEND ARE BEING RIGGED AGAINST THEM, THUS CYNICALLY AND ILLEGALLY DEBASING OUR DEMOCRACY. THIS IS BILL IS 21ST JIM CROW ALL OVER AGAIN, AND NOT JUST FOR VOTERS OF COLOR, BUT FOR ALL AMERICANS WISHING TO EXERCISE THEIR RIGHT TO VOTE. PLEASE DO THE RIGHT THING AND VOTE AGAINST SB 89. STOP THE STEAL OF OUR LEGITIMATE VOTING RIGHTS!!!!

Thank you, Alix Olson and Martha Popp, Canaan

President
Wendy Piper
Grafton County Commissioner



Immediate Past President
Chuck Weed
Cheshire County Commissioner

Vice President
Tom Tombarello
Rockingham County Commissioner

Treasurer
Suzanne Collins
Coos County Treasurer

At Large Member
Toni Pappas
Hillsborough County Commissioner

29 School St., Ste. 200
Concord, NH 03301

Bylaws Chair
Chris Coates
Cheshire County Administrator

At Large Member
Cathy Stacey
Rockingham County Register of Deeds

info@nhcounties.org

www.nhcounties.org

Friday, March 5

Chairman James Gray
Election Law Committee
Concord, NH 03301

Chairman Gray and Members of the Election Law and Municipal Affairs Committee:

The NH Association of Counties would like to express its opposition to SB 89 section V, adopting omnibus legislation relative to election procedures and registers of probate.

This bill would return the Registers of Probate to the back to the jurisdiction of the Counties. While the Association remains divided on the matter of the registers of probate offices residing in the courts or in the county offices, with the COVID-19 pandemic counties are working under already burdensome circumstances both financially and with available staff thus preventing counties from taking on this responsibility at this point in time.

The Association would ask the committee rerefer the bill or vote it inexpedient to legislate.

Sincerely,

Wendy Piper
President
NH Association of Counties

Tricia Melillo

From: Sandra Robinson <s-l-robinson@hotmail.com>
Sent: Friday, March 5, 2021 9:05 PM
To: Tricia Melillo
Subject: SB89

I am opposed to SB89 because signature matching is notoriously flawed and unreliable, as well as unconstitutional. This is a ploy to decrease the number people utilizing absentee ballots and to be able to invalidate absentee ballots. This must be opposed. Thank you for your time.

Sandra Montminy

Sent from my iPhone



**Statement by Gilles Bissonnette, Legal Director of the ACLU-NH
Senate Election Law and Municipal Affairs Committee
Senate Bill 89
March 8, 2021**

I am the Legal Director of the American Civil Liberties Union of New Hampshire (ACLU-NH)—a non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. On behalf of the ACLU-NH, I appreciate the opportunity to testify today in opposition to one section of this bill that amends RSA 659:49-b (on Page 2, Line 24) in an effort to restart the process of comparing signatures on the absentee ballot application to the absentee ballot affidavit envelope before absentee ballots are counted. This provision of the bill restarts signature matching for those who do not receive assistance even though a judge declared unconstitutional a similar signature-matching scheme in *Saucedo v. Gardner*, No. 17-cv-183-LM (D.N.H.). In the *Saucedo* case, we represented a 95-year-old woman and two other persons who were disenfranchised as part of this process during the 2016 general election. The idea in this bill is problematic for the reasons explained below.

I. Signature Matching Is Inherently Unreliable and Needlessly Adds Burdens to the Voting Process for Voters and Election Officials.

We do not oppose the pre-processing of ballots, especially to correct errors. However, we do oppose the inclusion of the preprocessing procedure in this bill (*see* Page 2, Lines 25-29, Paragraph IV) as a justification to re-implement signature comparing for voters who did not obtain assistance, which this bill would do in Paragraph III (*see* Page 2, Line 24). Because so-called “signature matching” is unreliable and only adds unreasonable burdens, we believe that signature matching needs to be carved out of Paragraph III.

With or without “due process,” there is no need for any signature matching process—a process which, during the 2016 and 2012 general elections, disenfranchised an estimated 275 voters¹ and 321-370 voters², respectively. This is for several reasons. *First*, we have seen no evidence that any of the 275 disenfranchised voters in 2016 or the 321-370 disenfranchised voters in 2012 were ineligible to vote, let alone engaged in some form of voter impersonation or fraud. Even one disenfranchised voter—let alone hundreds—is too many. Moreover, during our litigation in *Saucedo*, the State was unable to identify a single case of fraud that the signature mismatching process had caught.

Second, and relatedly, signature matching is inherently unreliable in detecting fraudulent votes. No voter should be disenfranchised or have to jump through hoops simply because of his or her penmanship. There are multiple reasons why a person’s signature may differ on two occasions, including due to age, health, native language, and writing conditions. As a result, people with no handwriting-identification training are likely to erroneously conclude that two signatures from the same voter do not match.

¹ During the 2016 general election, there were 1,897 absentee ballots rejected out of 75,305 absentee ballots cast. The 275 absentee ballots rejected under this “signature mismatch” process represented 14.5% of the 1,897 rejected absentee ballots. (Note that 814,499 absentee ballots were cast during the 2020 general election.)

² During the 2012 general election, there were 1,735 absentee ballots rejected out of 68,014 absentee ballots cast. Using the 321 figure, these 321 absentee ballots rejected under this “signature mismatch” process represented 18.5% of the 1,735 rejected absentee ballots. (Note that 814,499 absentee ballots were cast during the 2020 general election.)

Third, signature matching is inherently uneven in how it is implemented, and public officials are not (and cannot be meaningfully be) trained in how to implement it. During the 2016 election, all of the ballot rejections due to signature mismatch statewide came from only 26% of New Hampshire's 318 polling places. The remaining 74% of polling places did not reject any absentee ballots due to a signature mismatch. Moreover, rejection rates differ wildly throughout New Hampshire. Statewide during the 2016 general election, mismatch rejections constituted approximately 14.5% of rejected absentee ballots. Many municipalities, however, had far higher rates of signature mismatch rejections—e.g., Portsmouth all wards (32.39% of rejected absentee ballot were due to signature matching), Hudson (29.94% of rejected absentee ballot were due to signature matching), etc. This demonstrates the lack of uniform application.

In sum, signature matching creates more burdens for voters and more work for poll workers—even if due process procedures are provided—with no real benefit of catching voter fraud. Indeed, the *Saucedo* decision criticized signature matching because of its inherent error, concluding that (i) “moderators conceive of the relevant [signature matching] standard differently”, (ii) “the task of handwriting analysis to laypersons ... is fraught with error” because people screening the signatures do not have “sufficient knowledge, training, equipment, and experience,” and (iii) there is no “meaningful review or oversight.” The same would still be true under SB89.

Finally, even if there is adequate due process (and we do think there is here), signature mismatching is still legally problematic given its lack of uniform and consistent application, which creates equal protection concerns.

II. The Attempted Due Process for Those Whose Votes Are Culled out Due to Signature Matching is Inadequate.

Even if this signature matching process had value relative to the burdens it imposes—and it does not—the notice and cure processes this bill puts in place are inadequate with respect to signature matching. As the *Saucedo* case makes clear, due process needs to be meaningful. Here, for two reasons, this purported due process would be insufficient.

First, this notice/cure process is not uniform and will depend on when the ballot is received and the town. For example, a voter who submits a ballot received two weeks before the election will have more time to cure than a voter who submits his ballot, as is appropriate, the day before the election. Indeed, for absentee ballots cast closer to Election Day, the notice and opportunity to cure is likely to be deficient because there is simply not enough time for the notice and cure to occur before votes are counted on Election Day evening. Perhaps this could be addressed in states where votes are counted after Election Day, but that does not occur in New Hampshire where all votes are counted on Election Day.

Second, the notice and opportunity to cure standards are not uniform and will vary from town to town under this bill. For example, nothing in this bill specifies how quickly a public official shall contact the voter. Nothing in this bill also specifies how much notice a voter should get. Nothing in this bill specifies how a voter can cure—including whether it can be done remotely—which is a concern, as many of these voters will not be in the area given their absentee status. All of these things would need to be addressed and also be uniform. But the bill leaves all of this silent, instead leaving the process *ad hoc*, without uniformity, to government officials.

Testimony on HB 524, March 5, 2021/for consideration of SB 89, March 8, 2021

My suggestions for improving HB 524 are based on 1) NH Constitution and laws consistent with it and 2) widely accepted audit principles and best practices.

See link and generic principles copied below:

Specific NH Principles (consistent with constitution and current election laws that say local officials are accountable to voters): NH Const. esp. pt.1, art. 8— public accountability, transparency, pt. 2, art 32: moderator duty to “sort and count” votes in “open meeting” in the presence of the town clerk, selectmen and “all others who may take an interest in the election, **and be able and willing to detect and expose any error, and obtain a correction of it immediately, when it can be most easily corrected.**” *Opinion of the Justices*, 53 N.H. 640, 1873

1. The NH legislature and local election officials don't have the authority to outsource election responsibility from local election officials and public to an unaccountable secretary of state and one or more private companies. Local election officials have a constitutional duty to protect voting rights, votes and elections. Citizens have a constitutional right to a publicly observable vote count and duty to participate in local election oversight.

The 2009 state advisory report confirms that local responsibility.

“Ballot counting accuracy, security and credibility are essential for a democracy to function. Ongoing efforts to test accuracy and maintain security for tabulators and paper ballots must be supported by the cities and towns responsible for counting ballots in elections. The primary cost of tabulator testing and security must be borne by the towns and cities. If towns or cities are unwilling or unable to make such commitments, the alternative is hand counting.” p.21

2. There have to be real checks and balances, with robust law enforcement from the Attorney General if needed, OR that responsibility (and funding) needs to be delegated to county attorneys.

3. HAVA money is available for audit expenses and if the state is ready to require computer-count communities to audit computer results, that money should be available to pay local managers (town moderators) and citizen auditors, with mix of R, D, U voters involved. That eliminates some of the ballot chain of custody issues that would be involved in transporting ballots to Concord and allows the public to both participate in the audit and observe it.

Suggestions (to ensure checks and balances, “Separation of responsibilities”)

1. Ballot Law Commission makes “random selection” of jurisdictions to be audited. At least one R and D party representatives witness; ensure selection process is public.

2. Secretary of State prepares auditing forms (see samples from MA)
<https://www.sec.state.ma.us/ele/elepostelection/2016postelectionidx.htm>

Includes local officials’ explanation of why discrepancy exists (see “V. Any additional notes on perceived causes of discrepancies”) SoS and AG develop audit protocols consistent with current laws.

3. Local election officials recruit citizen auditors. Reimbursed costs through state/HAVA funds.

4. SoS follows up to see why there is a discrepancy of 1% or more and makes recommendation for improvement. Public report.

5. Hand-count audits conducted before results are certified, giving candidates time to request recounts. Calendar for reporting to Concord (currently 48 hours) and for requesting recount (currently the Friday after a Tuesday election) will need to be altered to allow local election officials time to finish the audit and candidates to request a recount if warranted.

6. Include SB 79 (re-referred in Senate) per 2009 Advisory Committee recommendation that will specifically serve to deter tampering with federal, governor races and constitutional questions and allow possibility of detection if it occurs so it can be corrected and alert candidates of the need to request recount.

“A state-wide random audit described above may be augmented at the local level by the selection of closely contested high-profile races for immediate on-site post- election hand counts as checks on the tabulator. This should remain an option for local officials. “ p.14

7. Audit results should be trustworthy and not used to hide evidence of any problem. Tool to continually improve election performance. Goal: Elections NH has reason to trust and be proud of.

Deborah Sumner
474A Great Rd.
Jaffrey, NH 03452
603-532-8010
dsumner@myfairpoint.net

<https://verifiedvoting.org/wp-content/uploads/2020/05/Principles-and-Best-Practices-For-Post-Election-Tabulation-Audits.pdf>

Principles and Best Practices for Tabulation Audits

EXAMINATION OF VOTER-VERIFIABLE PAPER BALLOTS: Audits require human examination of voter-marked paper ballots — the ground truth of the election. Voter- marked paper ballots may be marked by hand or by ballot marking device. Audits cannot rely on scanned images or machine interpretations of the ballots to accurately reflect voter intent.

TRANSPARENCY: Elections belong to the public. The public must be able to observe the audit and verify that it has been conducted correctly, without interfering with the process.

SEPARATION OF RESPONSIBILITIES: Neither the policy and regulation setting for the audit, nor the authority to judge whether an audit has satisfied those regulations, shall be solely in the hands of any entity directly involved with the tabulation of the ballots or the examination of ballots during the audit.

BALLOT PROTECTION: All the ballots being tabulated and audited must be verifiably protected from loss, substitution, alteration or addition.

COMPREHENSIVENESS: All jurisdictions and all validly cast ballots, including absentee, mail-in and accepted provisional ballots, must be taken into account. No contest should be excluded *a priori* from auditing, although some contests may be prioritized.

APPROPRIATE STATISTICAL DESIGN: Audits should produce and scientifically while making efficient use of available [1]resources. A risk-limiting audit (RLA) with a small risk limit assures a large chance that an incorrect outcome will be detected and corrected.

RESPONSIVENESS TO PARTICULAR CIRCUMSTANCES: Audit processes must include a way to respond to circumstances that come to light affecting particular devices, ballots or contests.

BINDING ON OFFICIAL OUTCOMES: Audits, including any full hand counts that result, must be completed in time to change official outcomes if hand counts so indicate.

INVESTIGATING DISCREPANCIES AND PROMOTING CONTINUOUS
IMPROVEMENT:

10. The data gathered from post-election audits should be analyzed and used to continuously improve voting processes. [L]
[SEP]

Voting Sheets

Senate Election Law & Municipal Affairs Committee

EXECUTIVE SESSION RECORD

2021 Session

Bill SB 89 Omnibus

Hearing date: 3-8-2021

Executive Session date: 3/15/2021

Motion of: Part V Amend # 0803s Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTP/A Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: _____

Notes: _____

**Senate Election Law
& Municipal Affairs Committee
EXECUTIVE SESSION RECORD
2021 Session**

Bill SB 89 Omnibus

Hearing date: 3-8-2021

Executive Session date: 3/15/2021

Motion of: OTP Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: Part III 0804s Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Part IV 0496s Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Gray, Chair	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Birdsell, Vice Chair	X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Soucy	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Perkins-Kwoka	X	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Gray

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Monday, March 15, 2021

THE COMMITTEE ON Election Law and Municipal Affairs

to which was referred **SB 89**

AN ACT

adopting omnibus legislation relative to election
procedures and registers of probate.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0825s

Senator James Gray
For the Committee

Tricia Melillo 271-3077

General Court of New Hampshire - Bill Status System

Docket of SB89

Docket Abbreviations

Bill Title: (New Title) adopting omnibus legislation relative to election procedures.*Official Docket of SB89.:*

Date	Body	Description
1/26/2021	S	Introduced 01/06/2021 and Referred to Election Law and Municipal Affairs; SJ 3
3/3/2021	S	Remote Hearing: 03/08/2021, 09:00 am; Links to join the hearing can be found in the Senate Calendar; SC 14
3/15/2021	S	Committee Report: Ought to Pass with Amendment #2021-0825s , 03/25/2021; SC 16
3/25/2021	S	Committee Amendment #2021-0825s , RC 24Y-0N , AA; 03/25/2021; SJ 9
3/25/2021	S	Ought to Pass with Amendment 2021-0825s, RC 24Y-0N , MA; OT3rdg; 03/25/2021; SJ 9
3/31/2021	H	Introduced (in recess of) 02/25/2021 and referred to Election Law HJ 4 P. 51
4/15/2021	H	==CANCELLED== Public Hearing: 04/22/2021 11:15 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/99446784139 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
4/15/2021	H	Public Hearing: 04/23/2021 11:15 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/96682102830 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
4/29/2021	H	Full Committee Work Session: 05/05/2021 10:00 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/98783397971 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/12/2021	H	Public Hearing on non-germane Amendment #2021-1445h : 05/19/2021 09:30 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/99392215410
5/12/2021	H	Executive Session: 05/19/2021 10:00 am Members of the public may attend using the following link: To join the webinar: https://zoom.us/j/99392215410
5/26/2021	H	Majority Committee Report: Ought to Pass with Amendment #2021-1610h (Vote 11-8; RC) HC 26 P. 21
5/26/2021	H	Minority Committee Report: Inexpedient to Legislate
6/3/2021	H	Amendment #2021-1610h : AA RC 202-175 06/03/2021 HJ 8 P. 137
6/3/2021	H	Ought to Pass with Amendment 2021-1610h: MA DV 200-174 06/03/2021 HJ 8 P. 138
6/10/2021	S	Sen. Gray Moved to Concur with the House Amendment, RC 14Y-10N , MA; 06/10/2021; SJ 19
7/15/2021	S	Enrolled Adopted, VV, (In recess 06/24/2021); SJ 20
7/15/2021	H	Enrolled (in recess of) 06/24/2021

8/3/2021	S	Signed by the Governor on 07/30/2021; Chapter 0177
8/3/2021	S	Part I Effective 09/28/2021
8/3/2021	S	Part II Effective 09/28/2021
8/3/2021	S	Part III Effective 07/30/2021
8/3/2021	S	Part IV Effective 07/30/2021

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 89

Senate Committee: ELMA

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 0496s - amendment # 0803s
- amendment # 0804s - amendment # 0825s
- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____
- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

All available versions of the bill: {Clerk's Office}

- as amended by the senate as amended by the house
- final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office 