

Testimony in Support of HB 1390 (“vote protection bill”) Jan. 28, 2020

To Honorable Members of the House Election Committee:

I am Deborah Sumner, a former teacher and reporter and have been involved with NH voting rights and election integrity since 2008. I helped count ballots before Jaffrey began using the AccuVote in 2004 and served two years as a ballot clerk. Because ballots were exempted from public records law in 2003, I have been to state court twice to ask to review ballots in my town (for November 2010 and November 2012). If I had been able to raise the \$10,000 to \$15,000 to pay an attorney, I would have asked to review ballots for one questionable contest in Nov. 2016.

This legislation is needed because NH voters deserve elections and officials we have reason to trust. HB 1390 will bring us back to the transparent, publicly accountable election system our state constitution and laws require.

I better understand the difficult job and political pressures volunteer legislators experience. I promise to tell you the truth. In my experience, that’s the basis for trusting relationships.

The NH Supreme court said in its March 2016 opinion, current law “enables public oversight of the vote counting process...RSA 659:63 **requires** that vote counting be conducted in public, so that the public may observe the counting process as it occurs.”

It ignored the fact that concealed vote counts violate that law in AccuVote towns. It said, in effect, that hiding evidence of possible fraud/error in our elections is a “political decision” of the Legislature. As someone with at least 13 NH ancestors who fought in the Revolutionary War, I strongly disagree with the court’s interpretation of our state constitution.

If I lived across the border in VT, where that Supreme Court confirmed ballots were public records in 2011, I would schedule a convenient time with the ballot custodian after the election results had been finalized. I’d also be able to photograph ballots before they are destroyed (federal law requires 22 months retention for ballots that include a federal contest.) Vermont uses the AccuVote and smaller towns hand count so our anonymous ballots with write in votes look just like theirs. The **ONE legitimate privacy concern**, confirmed by former and current Jaffrey town clerks is addressed p. 3, line 27-28.
<https://law.justia.com/cases/vermont/supreme-court/2011/op2010-125.html>

According to the Vermont SoS, only one researcher has asked to review ballots after each election since 2011 and that office offers minor training and guidance to local officials. I can get more specific information if you need it.

From SoS Condos’ 2020 New Year’s Resolution: Protecting Access to Public Records:
<https://www.sec.state.vt.us/media/915563/protecting-access-to-public-records-new-years-resolution-op-ed.pdf>

“Remember, public records access isn’t merely a courtesy that Vermont government extends to the public. These records actually belong to the public. Government agencies and staff are merely the custodians in possession of them....To be frank, at times it can be a burden. As a government by and for the people, that is our burden to shoulder.”

Why Ballots Were Exempted in NH

After the March 2016 Supreme Court opinion in my case, I found evidence of why Dave Scanlan and Bud Fitch wanted ballots removed from RSA 91-A in legislative history for another 2003 HAVA-required bill, HB 577. They said a superior court had granted a petitioner access to ballots because they hadn't been exempted. The Senate sponsor of the non-germane amendment, lied to the Senate, saying it was needed to comply with federal law. Probably most legislators and no one in the public were aware it had been added. (See supplement sent earlier for specifics.)

Cost—if there is a good working relationship, mutual trust and respect between government and citizens, we can work it out so it is least burdensome or costly. If the Legislature so authorizes, the Election Fund, which includes federal HAVA money, can be used if necessary. Voter and election official education, election law enforcement, technology projects and improvements are appropriate uses under RSA 5:6-d,II.

Estimate for election night counts using “sort and stack” method state and local communities use for recounts is 6 seconds/ballot, including training. Five teams of counters can check 3,000 ballots for one contest in about an hour. In communities that have previously done these verification checks, there has been **no** additional cost.

Recommended First Step for Ballot Review

Under our constitution and laws, local election officials and public share the duty of getting the count right. We can't outsource that job to a private corporation or assign it to the SoS who are not accountable to voters. Since Jaffrey (Nov. 2010) and Derry (Nov. 2016) have been illegally denied performance of that local duty, those two towns could go first in seeing how the ballot review can work in a smaller and larger town. (Jaffrey voters cast 2,893 ballots in Nov. 2016; Derry voters cast 17,399 ballots.)

I suggest a pilot project of reviewing ballots for ONE contest in ONE 2020 election in each of those two towns, depending on what question arises re: reported results.

1. AG or SoS supervises review (so no extra cost involved). 2. Look for how to improve guidelines, least burdensome for ballot custodian 3. return to legislature with that recommendation. 4. If this sounds like something you're willing to try, I am willing to work with Rep. Read and others on this.

Conclusion: If you care about public trust in our elections and in government, I KNOW we can make this work. Thank you.

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“In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. **Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.** Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.” Louis D. Brandeis *Olmstead v. United States*, 277 U.W. 438 (1928) (dissenting opinion).