

Special Committee on Voter Confidence Meeting Minutes

Approved 9/6/2022

Meeting date: August 23, 2022 at 1:00 P.M.

Location: Berlin City Hall Auditorium
168 Main Street
Berlin, NH 03570

In Attendance:

Committee: Richard Swett (Co-chair), Bradford E. Cook (Co-chair), Ken Eyring, Andrew Georgevits, Amanda Merrill, Douglass Teschner, and Olivia Zink

Secretary of State's Office: Secretary of State David Scanlan, Deputy Secretary of State Erin Hennessey, Dean Dexter, Anna Fay, David Lang, and Jennie Taggart

Committee Co-Chair Richard Swett opened the meeting at 1:04 P.M. Members of the Committee and the Secretary of State's Office were introduced. Committee member Jim Splaine joined the meeting on Zoom.

Committee member Ken Eyring proposed two amendments to the draft 8/15 minutes. Co-Chair Bradford Cook moved to amend the minutes by adding the following addition on page 2, 1st paragraph ["Mr. Buckley did not provide an opinion on the use of cameras"] and the following amendment to page 2, 2nd paragraph: ["...Mr. Buckley discussed the certification of election results and *how he thought* it would adversely change the process."] Committee member Ken Eyring seconded the motion. Committee member Amanda Merrill abstained due to her absence at the previous meeting. All voted in favor. None opposed. Committee member Andrew Georgevits moved to accept written testimony, seconded by Co-Chair Cook. All in favor. None opposed.

Presentation by New Hampshire Associate Attorney General Anne Edwards and Deputy General Counsel Myles Matteson

Associate Attorney General Anne Edwards cited RSA 7:6-C, explaining the Attorney General's Office's authority established by the Legislature to enforce all election laws in New Hampshire. She discussed the formation and function of the Election Law Unit, Election Law Criminal Investigator, and the growth of the team. Ms. Edwards talked about the biannual reports submitted to the Legislature that are broken up into three sections; one for complaints received in that six-month period; another for complaints received in prior periods that remain open; and another for the complaints that are closed during the six-month period of the report. The biannual report includes letters that have been sent to individuals, settlements, agreements reached, cease and desist orders issued, or anything other than official communications. During the past 2 ½ years, the Attorney General's Office has received 133 election law complaints; 36 were related to alleged wrongful voting; 53 related to alleged illegal campaign activity; 9 related to alleged election official misconduct; 6 related to campaign finance violations; and 29 related to election

reviews. Ms. Edwards said the Attorney General's Office also receives thousands of inquiries via its 24/7 1-800 hotline, some of which lead to investigations. Ms. Edwards spoke about the affidavits (challenged, qualified, and domicile) people can use in place of evidence or proof of domicile at the polls and how the Secretary of State's Office reviews them. She said hundreds of affidavits are sent to the Attorney General's Office, which then uses standard law enforcement techniques to investigate. Ms. Edwards said they are able to confirm the qualifications for a vast majority of these individuals, but some lack sufficient information to confirm, which she attributes to people moving, the housing boom, members of the military who are deployed somewhere else, college students, etc.

Ms. Edwards said that on average in each election cycle since 1998, there has been at least one case with an end result that had a finding of wrongful voting. These cases sometimes end with a conviction, a civil penalty, or an admission of wrong doing. These individuals are issued either a cease and desist order, or they are prosecuted. These cases involved double-voting, forged signatures, wrongful voting, underage voting and false addresses. She described the punishment given in each case. Ms. Edwards emphasized that the Attorney General and Secretary of State Offices also provide resources for victims of domestic violence to register and vote confidentially.

Myles Matteson, Head of the Attorney General's Election Law Unit, covered more recent prosecutions and cases they have been tracking, complaints, and election reviews performed. Mr. Matteson explained they have multiple tools for determining how cases are investigated. He said a number of complaints, questions, inquiries, and information come from different sources, such as the hotline. Mr. Matteson emphasized that the Attorney General's Office cannot give legal advice or recommendations to members of the public but it can direct them to certain statutes and other guidance. He said they receive complaints from citizens or election officials and some investigations have come from the cross-check program, which is no longer in use. Mr. Matteson said complaints can be addressed on Election Day while others are reviewed through documents. In addition to criminal investigations, he said there are a number of other issues the unit handles related to education and civil enforcement.

Mr. Matteson defined electioneering and who is exempt from the ban. He said the Attorney General's Office gets a lot of complaints about election officials electioneering. He stated that in cases where elected officials can electioneer, they cannot use government resources or social media. Mr. Matteson said the Attorney General's Office also receives many complaints about political advertising, signs and publications, which lack key information. The Attorney General's Office receives some inquiries and complaints related to ballot-counting device maintenance logs. It also answers questions related to the statutory authority for ballot-counting devices, specified in RSA 656:40.

Mr. Matteson said the Attorney General's Office coordinates efforts with the Secretary of State's Office to educate election officials and volunteers. He described the process for election reviews and stated a number of reviews have turned into more lengthy analyses to try to determine if there were flaws in the administration of an election or flaws in ballot counting. Three of those

reviews were conducted in the past one and a half years in Windham, Bedford, and Laconia Ward 6.

Ms. Edwards clarified that towns and cities have the right to choose if they want to use ballot-counting devices. She said the cross-check program no longer exists but *ElectioNet* is a helpful resource in New Hampshire. She discussed complaints related to the 2020 Windham General election that led to a detailed forensic audit that determined improperly folded absentee ballots led to counting discrepancies. As a result, the Attorney General's Office recommendation was to ensure absentee ballots are folded correctly. She added an election monitor has been appointed for the upcoming Primary in Windham. Commission member Eyring pointed out that one of the devices needed cleaning, and Ms. Edwards agreed with that.

Mr. Matteson talked about Bedford's failure to count 190 absentee ballots, which were discovered shortly after the 2020 elections. After Bedford election officials notified the Secretary of State's Office and the Attorney General's Office, an investigation was initiated. Mr. Matteson described the public session at Archives with the Secretary of State's Office to reconcile the recount results. He clarified it was an inadvertent error made by an election volunteer in Bedford. As a result of the error, an election monitor has been appointed for the 2022 Primary. Ms. Edwards said all the ballots that had to be recounted were not given to the Secretary of State's Office until November 16th, at which point a recount was already in process. Mr. Matteson said a more in-depth investigation was required to find the number of missing ballots.

Mr. Matteson spoke about the investigation into the Laconia Ward 6 2020 Primary and General elections, where ballots were left in the side pocket of a ballot collection box, not counted and only discovered at a subsequent election. There was a public session held at the State Archives building to go through and inventory the ballots that were found in the side compartment. The investigation revealed that ballots that ended up in a diverted compartment were counted twice. Mr. Matteson said this was driven by the moderator and one other election official who did not follow the basic operations for ballot-counting devices and counting write-in ballots. He stated that 34-58 ballots were counted twice. The Attorney General's Office found the moderator did not attend adequate training that was offered by the Secretary of State's Office. That moderator was asked to and did resign and an election monitor was appointed for the September Primary.

Mr. Matteson stated that the election monitor is someone who is knowledgeable in election law. They are tasked with observing elections, engaging with election officials, providing both oversight and education. The monitor is there to ensure that the elections are run according to the law and they are required to issue a report within 30 days of that election. He also explained how the Attorney General's Office deals with complaints and determines the nature of the investigation.

Ms. Edwards said it is important people know the Attorney General's Office takes complaints seriously. Complainants are usually responded to within 24 hours or seven days at the latest. She spoke about other issues that have come before the Committee, including a complaint about the 2020 Campton election. She said the Attorney General's Office has not found any major concern and had no record of any complaint being received. Ms. Edwards said when somebody raises a concern, the Attorney General's Office looks into it. She also discussed concerns about the

Exeter school elections and said some confusion was caused over who was running for what office, stating that it should not happen again. Ms. Edwards addressed the concern brought before the Committee about one machine recording a larger number of votes for a particular candidate compared to others in several voting locations. She said one machine was used to process absentee ballots. Another issue brought before the Committee was concerns about people voting with old addresses. Ms. Edwards said a person can do so if they have not established a new domicile.

Ms. Edwards praised election officials for their performance during the 2020 elections and said the Secretary of State offers in-depth trainings in-person all over the state and via on-demand webinars. She said the Attorney General has high confidence in New Hampshire elections, which Ms. Edwards feels are transparent. Mr. Matteson explained the Attorney General's law enforcement obligations when it comes to ongoing investigations, stating the outcomes are available to the public.

Committee member Amanda Merrill asked if they still respond to complaints that they determine do not warrant a follow-up investigation. Mr. Matteson said the responses can vary but every complaint is acknowledged.

Committee member Douglass Teschner discussed the Attorney General's issuance of a cease and desist letter against a supervisor of the checklist in his community of Haverhill and how it has undermined his confidence.

Committee member Georgevits discussed electioneering and political signs and his experience at Concord polls. He asked how we can increase education for moderators on what they do on Election Day and if it was wise to come up with standard protocols for electioneering. Ms. Edwards said cities sometimes have more challenges managing polling places because they only have elections every 2 years. She said polling places are different which makes it difficult to come up with standard procedures. She added that the Attorney General's Office can send out election inspectors to polling places.

Committee member Merrill asked what the Attorney General's thoughts on the Electronic Registration Information Center (ERIC) are. Mr. Matteson said he does not know ERIC in detail and does not have specific thoughts on it. He noted that the New Hampshire database *ElectioNet* is a helpful resource. Secretary Scanlan suggested the Committee look into the requirements for ERIC. He said the Department of Motor Vehicles (DMV) would have to share all records, including those for potential voters. Since New Hampshire's voter registration database is not linked to DMV records, there would be an increased cost to share information.

Committee member Eyring asked if the Attorney General's Office could provide the Committee with a list of investigations that were mentioned earlier. He also asked about ballot-counting machine logs and issues with missing information. He commented further that when LHS associates come in, a majority of time the log only states maintenance, but doesn't say what was done and machines are not recertified. Mr. Eyring requested this information be emphasized among moderators and said it would be helpful if the machine log sheets were modified to include printed names next to signatures. He also mentioned confusion happening in some towns

and cited Sandown as an example where some citizens want a special election and do not know who has the authority to call for them. Ms. Edwards said no one from Sandown has reached out, but the Attorney General's Office would be happy to look into it. She emphasized the Attorney General does not give legal advice but would look into concerns. She also stated that sometimes individuals have to petition the Supreme Court to get towns to hold a special election. Ms. Edwards agreed with the suggestion to have people print their names under signatures and mentioned the Secretary of State's Office hired former investigator Paul Brodeur this past spring to look at machine logs. Mr. Eyring asked when the Attorney General's Office acts and when it doesn't. Ms. Edwards stated it enforces election law when the laws are broken. She also mentioned that once the Attorney General's Office receives a complaint about Sandown, it will look into it.

Mr. Eyring spoke about the anomaly for the one machine in Windham, saying the total percentage of absentee ballots does not match the percentages for each party in the ballot counting device tallies. He said he respectively disagrees with the Attorney General's findings.

Co-Chair Cook asked whether the use of ballot-counting devices is unconstitutional. Ms. Edwards said the Constitution states that elections will be run as open meetings of the selectmen in different communities including city wards, and the Legislature has determined there is a double-step process to allow ballot-counting devices: first, the Ballot Law Commission has to approve the device and then each community determines if it wants to use the device. She stated there is nothing unconstitutional about using ballot-counting devices because the Constitution doesn't have specific language about how votes should be cast and counted.

Co-Chair Cook asked if investigations have revealed evidence of ballot stuffing and counterfeit ballots. Ms. Edwards said they have not but there is some confusion with people who see Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) ballots and there is a lot of official documentation required for this type of absentee voting. Mr. Matteson said they haven't seen evidence of ballot stuffing and mentioned the dual process for validating results and confirming the election outcomes.

Mr. Cook asked what the Attorney General's stance on mandatory election official training is. Ms. Edwards said election officials have their own autonomy, but towns usually require volunteers to attend training sessions. Ms. Edwards said the Attorney General's Office doesn't have an official position on whether training should be mandatory for elected officials. Mr. Cook asked about complaints that voters were brought across state lines to vote. Ms. Edwards said buses with out-of-state license plates were hired by voting groups to transport New Hampshire voters. She further commented that people sometimes come from out of state on election day to hold signs at the polls in towns like Salem but they do not vote. Mr. Cook asked if Ms. Edwards thinks it would be helpful for the Committee to suggest to the Legislature that there be a comprehensive review of election laws to make them a little more understandable. Ms. Edwards said it would be helpful.

Committee member Olivia Zink asked if the numbers after the recounts in Bedford, Windham, and Laconia Ward 6 were close enough to change the outcome of any race. Mr. Matteson said they weren't in Windham or Bedford, but the Attorney General's Office was not able to

determine if they were in Laconia Ward 6. Secretary Scanlan said the Help America Vote Act (HAVA) office looks into all returns that get sent back and when it sees on the reconciliation papers that there are numbers that do not match up, it contacts the town in question and asks it to double check its figures.

Committee member Georgevits asked if more people were added to the Election Law Unit, would it help discover more discrepancies. Mr. Matteson said the Unit has added resources to focus on complaints, so it can respond promptly. Mr. Georgevits mentioned the signed affidavits presented to the Committee at previous meetings and asked if this is something that would be investigated. Mr. Matteson said there are circumstances when a person can be registered legally at an address where they no longer live. Ms. Edwards said voters must be domiciled in NH to vote but it's a matter of determining the components of domicile for the individual voter. She gave the example of a voter who lives overseas. She also said the Attorney General's Office would be happy to look at the affidavits and review them.

Committee member Teschner mentioned other cases brought to the Committee and said there needs to be an ombudsperson or a less legalistic resource people can bring their voter confidence concerns to. Ms. Edwards said they have a process in place and people reach out every day to the Attorney General's Office. She added the Attorney General's Office carefully reviews complaints before criticizing election officials for non-compliance.

Co-Chair Swett asked the Attorney General's Office what it sees as the biggest problem with the election process and how or what can be done to improve confidence in elections. Ms. Edwards suggests people volunteer to be election officials and said the Attorney General provides the necessary information but there are some points of confusion when it comes to differences in election law from state to state. She added people can also seek information from the Secretary of State's office. Mr. Swett asked if the Attorney General's Office is overwhelmed by requests/complaints that come into the office. Ms. Edwards said they are not. Mr. Swett added that he would recommend the public utilize the Attorney General's Office as a resource. Mr. Matteson ended the presentation by describing the different nature of issues and investigations, emphasizing that the Attorney General's Office offers educational resources and uses enforcement when necessary.

Public Comment Period

Liz Tentarelli, President of the League of Women Voters of New Hampshire, and Kelsey Douville and Sara Lobdell from NH Campaign for Voting Rights, discussed the results of their project to improve information on town websites. Ms. Tentarelli stated they surveyed the 242 towns of New Hampshire and their election information on those websites. Ms. Tentarelli said some of the town websites were found to be out-of-date or did not have readily accessible voter and election information. She said information is generally either hard to find or lacking. Ms. Tentarelli said she is pleased with the improvements that have been made to the Secretary of State website, stating that it is more user friendly. She added that this has led to some towns having outdated links to the Secretary of State website as a result. Co-Chair Swett suggested helping improve town websites could be a great project for Eagle Scouts or for high school students. Ms. Tentarelli presented a template towns can use for their websites. She said she

would verify the information with the Attorney General's Office and present the template to towns to use if they want to. She said she felt this would build voter confidence. Committee member Teschner asked about social media platforms. Ms. Tentarelli said a combination of platforms is an important tool for reminding voters of deadlines. She also talked about the discovery of an outdated reference to SB3 on those websites. Ms. Tentarelli encouraged the committee to suggest that town websites be updated and agreed to send a cleaned-up pdf copy to the Committee by September 6th. Co-Chair Cook asked if the League has recommendations for simplifying election law. Ms. Tentarelli said we are way beyond the point of simplifying election law. She also mentioned most people are confused by the political calendar but the Secretary of State is posting the deadlines on social media. Committee member Teschner said while there are complications with election law, these complications do include necessary checks and balances.

Paul Robitaille, Gorham, talked about the issue of obtaining non-driver voter IDs. He said it took him 6 months to get a non-driver ID for his mother-in-law and that he has seen people who have lost their driver's licenses give up their right to vote because of this. Mr. Robitaille said elections can be close but people are using doubt in elections for their own benefit. He stated that since introducing ballot-counting devices, results have been accurate without issues and added election officials are doing the best they can and he thinks mandatory training would not help. Mr. Robitaille said he would like the Committee to recommend that the Legislature provides legal protection for election officials. He said he thinks the system works and says if we lose faith in democracy, mankind will fall into darkness. Committee member Teschner said election officials should be held accountable and asked for clarification on what protection should be provided. Mr. Robitaille clarified election officials need protection from bullying and harassment.

Ted Bosen, Berlin, described his experience as Election Law Counsel in Massachusetts. He said the Secretary of State and Attorney General's Office have answered his questions, paid attention to detail, and followed up. Mr. Bosen said he has never had such attention from a public official before. He suggested posting the presentation from the Attorney General's Office online because he thinks it would restore voter confidence. Mr. Bosen said his confidence has never been higher, but noted there have been attempts to undermine the democratic process. He said the Committee's job is critical and cited the Attorney General's statistics. He said people in Berlin often feel neglected but they don't after this meeting. He thanked the Committee for being there.

Henry Noel, Berlin, a candidate for State Representative, spoke about the need for multilingual voting materials for immigrants.

Other Business

Co-Chair Cook asked Committee members what process they think should be used for drafting the final report and suggested at least one working session. Co-Chair Swett suggested presenting an outline at the working session and dividing the work. Committee member Teschner suggested making it a short report with a few recommendations and many attachments. Committee member Merrill agreed and suggested having the session soon. Co-Chair Swett suggested that they agree on this via email and coming to a decision. Committee member Eyring agreed with putting together an outline but opined they should not have a target length. He said the Committee

should assess the information presented and refer to issues such as the affidavits. The Committee further discussed what would be included in the final report.

Co-Chair Cook moved to adjourn, Committee member Georgevits seconded, all in favor, none opposed. Meeting was adjourned at 4:36 P.M.