

## SPECIAL COMMITTEE ON VOTER CONFIDENCE REPORT January 5, 2023

Written By: Ken Eyring

I am honored to have served on the Special Committee on Voter Confidence along with seven distinguished individuals (see Appendix A). Each of us was selected by NH Secretary of State David M. Scanlan, with the goal of the committee to hold public meetings, listen to why people have lost confidence in the election process, and then report back to Secretary Scanlan.

Hundreds of people testified in person or via email between the first hearing on May 2nd and the last meeting on September 6, 2022 (see Appendix B). Many of those who testified said they have 100% confidence in New Hampshire's election process and that nothing needs to be changed. A nearly identical number of people shared their concerns along with their underlying reasons of why they do not have confidence in New Hampshire's election process.

As I listened (and read) each presentation, I made it a point to capture all of the public's input with the intent to deliver on my promise to Secretary Scanlan as defined in his Mission Statement:

*“The Special Committee on Voter Confidence will work to identify root causes of voter confidence decline and make recommendations to reverse the trend.”*

The committee met nine times between September 20 and December 22, 2022, to plan, write, and review its report. A sub-committee met an additional eight times during that time period to focus on summarizing the public testimony.

The [committee's report](#) was delivered to Secretary Scanlan on December 22, 2022. I respectfully did not sign the report because I did not agree with some of the statements, and also felt there was additional information that should have been included.

With that in mind, I wrote the following in an attempt to report what I believe are the root causes for the decline in voter confidence that were heard by the committee.

There is a significant overlap between this report and the [committee's report](#) – which I believe is a testament to the willingness of each of us on the committee to listen to each other and work together. There are also a few notable differences.

**I. Testimony.** Immediately following the last public meeting on September 6, 2022, the sub-committee consolidated and categorized and reviewed all of the summarized public testimony from the meeting minutes and emails sent to the committee between the first meeting on May 2nd and the last meeting on September 6, 2022. That information was transferred to [this spreadsheet](#).

The spreadsheet was then used to develop the summarized testimony in the [committee's report](#). The summaries below represent what was received by the committee between May 2, 2022 and September 6, 2022. These summaries are similar to what was written in the committee's December 22, 2022 report, with a few modifications, and some hyperlinks added.

#### **A. Confidence in Elections**

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

#### **B. Lack of Confidence in Elections**

A nearly equal number of the people expressed a lack of confidence based on numerous concerns, with a large number of concerns related to voting machines (see Section C below). Others cited: the findings of citizen audits that potentially identified thousands of votes cast in the names of people voting from the previous address after moving; out-of-state people voting in New Hampshire elections, including college students; serious mistakes by election officials in multiple towns; voter rolls that need to be cleaned; vote tabulations that take place un-monitored in the back of some polling places with no meaningful public oversight; and concerns the Office of the Attorney General [does not answer questions when asked](#).

#### **C. Voting Machine Concerns**

I believe by far, the largest number of concerns were related to the use of voting machines in New Hampshire elections: the machines are a "black box"; the current machines use old technology; they have known vulnerabilities; New Hampshire uses one machine vendor to program and service all New Hampshire machines; voters are told to trust the machine programming with no ability to verify the accuracy; machines in New Hampshire have produced unexplained anomalies that violate [the law of large numbers](#)"; [paper tapes have been printed with wrong dates](#); memory cards are not stored for 22 months as required per federal law; [machines are not re-approved after alterations](#) as required by law; the Cybersecurity and Information Software Agency (CISA) issued a security advisory outlining 9 specific vulnerabilities present in certain voting machines which New Hampshire may consider using in the future; folded ballots cause problems; machines are not accurate; and the use of voting machines is illegal and unconstitutional.

#### **D. Voting Machine Support**

Many people expressed confidence in the accuracy of the AccuVote machines, saying they are effective, safe, and secure from hacking and outside interference. Some who trust machines over hand-counting ballots cited concerns that poll workers are tired at the end of the long election day and that could lead to human error if they were

required to stay late to count votes. In addition, concerns were raised that it may be difficult to find enough volunteers to count the votes in a timely manner.

#### **E. Election Officials Training**

Annual training for election officials is provided by the Secretary of State, but attendance is not required. Multiple people testified that the SOS training should be mandatory. The New Hampshire Municipal Association also offers election training, as do local election officials for their volunteers. The committee also heard a few requests for increased training to assist voters with disabilities.

#### **F. Election Audits**

There was strong support for a robust independent process that would audit the ballots, equipment, and election processes of random polling places after each election. Post-election audits should be conducted transparently with easy access for all observers.

#### **G. Citizen Audits**

Citizens did their own independent investigations to validate elections. They researched and identified the following concerns:

1. Thousands of votes cast in the names of people voting from the previous address after moving. This document shows the names and addresses of voters who moved to different addresses in New Hampshire, and this document shows the names and address of voters who moved to addresses in other states.
2. Machine paper tape results that violated the ["law of large numbers"](#).
3. Violations related to chain of custody records for machines, memory cards and ballots.
4. Differences in how election day checklists are marked
5. And other potential infractions that have been referred to the Attorney General's office.

#### **H. Voter Rolls and Registration**

Many concerns were expressed regarding the registration processes that define who is permitted to vote in New Hampshire elections, and that New Hampshire's voter rolls need to be purged of voters who moved or are deceased – and then kept clean. Suggestions were made to use the techniques that were developed by those who performed citizen audits.

Many who testified want to mandate voter ID; end election day registration; require proof of residency and citizenship; and prevent voting by residents from other states (including out of state students).

Others want to keep election day registration and felt that no changes to New Hampshire election laws are needed.

## **I. Absentee Ballots**

Many who testified said that the use of absentee ballots should be based on a voter's inability to travel to the polling place to vote on election day, e.g. plans to be out of town, living in a nursing home, etc., and not for convenience. Concerns were raised regarding: improperly folded absentee ballots; the lack of chain of custody processes with absentee ballots; and some complained they received unrequested absentee ballots.

Others would like to return to the 2020 rules regarding absentee ballots or [implement no-fault absentee voting](#). There is a desire from election officials to preprocess absentee ballots by taking them out of their outer envelopes prior to Election Day so that they are ready to be counted on Election Day.

## **J. Voter Education / Website Improvements**

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

## **K. Modernization of Election Process**

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

## **L. Election Law**

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

## **M. Voter Confidence Analysis**

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

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

Some of the concerns that were presented to the committee were viewed by others as gaslighting and reflecting conspiracy theories. Others stated that if proof of fraud is shown, then it should be investigated - and if not, then officials should publicly say so.

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

**II. Findings.** The following findings are based upon the testimony which the Committee heard, and are supported by the references in each finding:

### **A. It's Easy to Vote in New Hampshire**

As stated by Secretary of State David Scanlan, and his long-serving predecessor William Gardner, New Hampshire is one of the easiest places to vote in the country. Most people agree with this statement. However, not all share the same interpretation.

Some want to make it even easier to vote. Others believe it is too easy to vote in New Hampshire, and expressed concerns regarding abuse of same day voter registration; and out-of state residents including out of state students, who they believe should not be allowed to vote in New Hampshire elections. They would like to ensure that only those who permanently live in New Hampshire are permitted to do so.

### **B. Voting Machine Concerns Identified During Testimony**

A large number of the people who testified believe New Hampshire's voting machines are safe, effective and secure from hacking and outside interference and should continue to be used. A nearly equal number of people called for their use to be discontinued, citing the numerous reasons in Section C of the Testimony section of this report.

### **C. Attorney General Oversight Is Necessary**

Oversight by the Attorney General when there are failures, including removal of officials when necessary, and appointment of monitors in appropriate cases, is

necessary. The election security unit at the Attorney General's Office handles complaints about election law infractions and needs to respond to questions and be transparent.

#### **D. Confidence in Elections Is Lower Than in the Past**

During public testimony, the most frequently brought up issues that contributed to the decline in voter confidence were: the use of voting machines to tabulate votes; inaccurate voter rolls that need to be purged of voters who have moved or are deceased; out of state residents voting in New Hampshire; abuse of election day voter registration; and the use of absentee ballots.

#### **E. Modernization of Election System**

A significant number of New Hampshire citizens and election officials would like to implement modernizations to New Hampshire's election system. Some suggestions included: upgrade all voting machines; upgrade the voter registration system; and [add security features to ballots](#), e.g. QR codes, watermarks, foil markings, and increased measures for stronger chain of custody.

Many who prefer hand counting ballots to the use of voting machines, want the ability verify the accuracy of each machine's results if they are continued to be used.

#### **F. Statutory Documentation Concerns**

The mandatory information for chain of custody records is not always properly completed as defined by law, e.g. many times there is missing information and/or signatures on chain of custody records for machines, memory cards and ballots. Many people want to mandate that a voter ID is presented in order to vote.

#### **G. Positive Aspects of New Hampshire's Voting System**

While the focus of the committee is to identify root causes for the decline in voter confidence, there are important positive attributes of New Hampshire's election system that differentiates our state from others. Highlighting and emphasizing these positive attributes to make them more readily known to New Hampshire voters could help to raise confidence:

1. Each voter has a paper ballot. This "original document" makes it possible to perform a hand recount of any election. Not all states require paper ballots.
2. Elections are administered on the local level according to state guidelines.
3. New Hampshire election law requires all votes to be counted and the election results to be publicly reported at the polling place before election officials go home. Some other states transport cast ballots from the polling place to a central location to be counted, and at least one state outsources the counting of absentee ballots.
4. Elected election officials at each polling place are residents of the town/city/ward. For many, this provides a sense of comfort that the votes are counted by neighbors.

#### **H. Training of Local Election Officials Could Increase Confidence**

Training of local election officials is voluntary and varies. Testimony indicated that extensive training is available to those administering New Hampshire elections but not all election workers take advantage of the opportunity to attend the training. Procedures should be implemented to encourage training attendance by election officials. In addition, mandatory Secretary of State training should be considered.

#### **I. Election Audits Increase Confidence**

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

#### **J. Citizen Audits**

New Hampshire citizens are passionate about the election process. Many take it upon themselves to perform their own audits of local and statewide elections. Access to the public documents they require is at times costly, difficult and/or time consuming to acquire. Public election related documents should be free and easy to obtain.

#### **K. Partisan Process for Drawing Election Districts Has Undermined Confidence**

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

**III. Recommendations.** Some of the issues that have contributed to the decline in voter confidence will be a challenge to address because there are a large number of people on both sides of the issue. For example, many testified they wholeheartedly support the use of voting machines to count their votes, while an equally large number expressed concerns regarding voting machines. Some other examples where there is a clear divide are the use of absentee ballots and voter registration requirements.

##### **A. Voting Machines**

The law empowers each city or town to choose for themselves how their votes will be counted: either by machines or hand count. Perhaps this information, as well as the processes required to use or discontinue the use of voting machines would be helpful to post on the Secretary of State's website, therefore educating voters how to implement changes for their city or town if desired.

Furthermore, during public testimony, it was suggested that the testing of all voting machines prior to each election should be live streamed.

##### **B. Absentee Ballot Improvements**

1. Absentee ballot instructions and forms should be clearer to avoid voter error, decrease confusion and increase ease of processing.
2. Absentee ballots should not be folded. If they are to be folded, they should be pre-folded on the score lines before sending to towns.
3. Consideration should be given to mandating the hand-counting of all folded absentee ballots on election night.

4. Consideration should be given by the legislature to allow for the pre-processing of absentee ballots by opening the outer envelopes, as was allowed in 2020, for all elections.
5. Consideration should be given by the legislature to strengthen the chain of custody and other security measures for all absentee ballots from printing through the entire election process.
6. All voters who request absentee ballots should be identified on the Election Day checklist prior to the poll opening.
7. Many believe the ability to vote via absentee ballot is being abused, and want restrictions based on need, not convenience. Better controls need to be in place regarding the number of absentee ballots provided to each voter.

### **C. Update Voter Checklists**

New Hampshire needs an updated checklist verification system to provide a uniform and secure statewide process that accounts for move ins, move outs, and deaths.

Town clerks and Supervisors of the Checklist should make use of the USPS publicly available database that tracks permanent address changes and send out 30-day letters to verify voters have moved. This process should be performed on a monthly basis in order to help keep the voter rolls up to date. There should also be a formal method to determine if New Hampshire citizens have voted in other states.

During public testimony:

1. A [proposed standardized form](#) was submitted by one New Hampshire citizen, suggesting it be used during real estate transfers to request seller's names be removed from the voter rolls, and the buyer names be added.
2. Many believe that NH needs better processing and requirement of identification.
3. Make it easier to get a replacement Photo ID after losing license.

### **D. Expand and Document Training of Locally Elected Election Officials**

The Secretary of State offers annual training for locally elected election officials, but it is not required and many do not take advantage of it.

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

Furthermore, the requirement to re-approve voting machines after alterations should be part of the training.



**E. Expand Election Audits**

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

**F. Citizen Audits / Access to Voter Information**

Legislation should be enacted to make it free and easy for citizens to appropriate voter information necessary to perform their own audits to independently validate election results, eg. free and easy access to digital voter rolls, copies of machine paper tapes, and make ballots public documents. In addition, the forms for the chain of custody records should be modified to add a space for names to be printed in addition to signatures.

**G. Expand Public Ability to Observe the Election Process**

There must be required public notice and public access to meaningfully observe each and every step of the elections. During public testimony it was suggested that certified poll challengers should be able to observe elections behind the rail.

**H. Increase Public Information on Process to File Citizen Complaints**

The process for citizens to file election-related complaints to the Secretary of State and Attorney General should be publicized and strengthened. Each complaint must be published online upon receipt and receive attention and a timely public substantive response.

**I. Election Official Recruitment**

An ongoing election worker recruitment effort should be established at the state and local levels, and a review of compensation should take place. It was suggested during testimony the state should help fund town election workers.

**J. Expand Voter Education Efforts**

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

1. A statewide marketing campaign regarding the voting process, including on social media, to reach all segments of voters, covering all aspects of elections;
2. Clear and user-friendly websites maintained by the Secretary of State and Attorney General;
3. Local municipalities should use a common website template for election information recommended by the Secretary of State's office; and
4. Election education as part of Civics Education in primary and secondary schools can prepare young people to become active participants, familiar with the processes when they qualify to vote.

#### **K. Election Law Review**

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

Furthermore, it was suggested that laws need to be passed to ensure that only permanent New Hampshire residents are permitted to vote, and that there needs to be accountability with election officials when they violate election laws and/or procedures.

#### **L. New Ballot Counting Machine Requirements**

New Hampshire's voting machines are reaching the end of their useful life. If new voting machines are purchased, they should comply with the current guidelines of one paper ballot per voter, have no ability of devices to network, and segregate over-votes and write-in ballots according to standards set by the Legislature; they must be safe and secure as verified by independent technology experts, using open-source software so voters can see how their votes are processed.

Many people testified they prefer hand counted elections, but if voting machines are to be used, they want the ability to independently verify the accuracy of the machine's results.

#### **M. Disabled Voting**

Several people recommended improvements regarding disabled voters:

1. Tabulators need to be compatible with disabled voting.
2. Improve oneforall system for voters with disabilities.
3. There should be a signature line for those who assist others with voting. This would allow for verification.

#### **N. Provide Funding for Needed Reforms**

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

**IV. Conclusion.** Secretary Scanlan deserves credit and praise for acknowledging the decline in voter confidence and pro-actively forming the Special Committee on Voter Confidence to aid in identifying the issues to reverse the trend.

Hundreds of people took time out of their busy lives to testify in person or via email. Some multiple times. About half of those who testified between May 2 and September 6, 2022, expressed concerns regarding why their confidence in New Hampshire elections has declined.

Whether any of the concerns that were shared with the Special Committee on Voter Confidence are real or perceived, those concerns are real to each individual who expressed them.

Therefore, in order to raise the level of voter confidence, it is important to acknowledge and address as many concerns as possible by implementing improvements to reduce legitimate concerns and explain why perceived concerns are a misunderstanding.

I would also like to acknowledge and thank everyone who took time out of their busy lives to provide testimony to the committee.

I also want to acknowledge every committee member. We worked well together in a respectful environment that brought different insights and perspectives, and in many instances that collaboration is reflected in both the [committee's report](#) and this report.

Finally, I want to thank Secretary of State David Scanlan for providing me with the opportunity and honor to serve his office and the state of New Hampshire in this important effort, and his fine staff, all of whom provided excellent support while performing their other duties, without whom the committee could not have done this work.

Respectfully submitted,  
Ken Eyring

January 5, 2023

## Appendix A

### Special Committee on Voter Confidence Committee Members

Richard Swett (co-chair) - Director on the World Affairs Council of New Hampshire Board and a fellow of the American Institute of Architects and Design Futures Council. Served in the U.S. House of Representatives and Congress, and as U.S. Ambassador to Denmark.

Bradford E. Cook (co-chair) - Chair of New Hampshire Ballot Law Commission, attorney and former president of Sheehan Phinney law firm, and regular contributor to the New Hampshire Business Review.

Ken Eyring - Co-founder of the Government Integrity Project. Gained interest in election integrity following the largest numerical discrepancy between the Windham November 3, 2020 General Election results and the subsequent recount on November 11, 2022.

Andrew Georgevits - Chairman of the Concord Republican City committee and a grassroots activist. Has also served in senior leadership roles on multiple presidential campaigns.

Amanda Merrill - Served five terms in the New Hampshire House of Representatives and two terms in the New Hampshire Senate. Board member for the New Hampshire Land & Community Heritage Investment Program (LCHIP) and the Community Power Coalition-New Hampshire.

Jim Splaine - Served in the House of Representatives and as a New Hampshire State Senator. Chaired the 1988-89 Charter Commission that rewrote Portsmouth's Charter and authored the 1975 law that requires the New Hampshire Secretary of State to set the First-In-The-Nation Presidential Primary at least "7 days or more" before a similar event.

Douglass Teschner - President of Growing Leadership, New England Regional Leader of Braver Angels and former Peace Corps Director in Ukraine. Chief of party of USAID legislative strengthening projects in Rwanda and Morocco. Also an OSCE election observer during the 2019 Ukraine Presidential election.

Olivia Zink - Executive Director of nonprofit Open Democracy in Concord. Currently a Franklin, New Hampshire city councilor and served as Interim Mayor in Franklin in 2021.

## Appendix B

### Special Committee on Voter Confidence Meeting Dates

The hearings and invited presenters were as follows:

- May 2 (State Archives, Concord): Secretary of State Scanlan and Legal Counsel Orville Fitch.
- May 13 (State Archives, Concord): Counsel Orville Fitch Presentation on Election Laws and Procedure Manual followed by Public Comment.
- May 24 (Derry Town Hall): Local Election Officials followed by Public Comment.
- June 7 (Portsmouth City Hall): Local Election Officials continued followed by Public Comment.
- July 12 (State Archives, Concord): LHS Associates & Secretary of State Staff Demonstration of Ballot Counting Devices and Ballot Law Commission presentation on Standards for Selecting Devices followed by Public Comment.
- July 26 (Laconia Public Library): UNH Pollster Professor Andrew Smith followed by Public Comment.
- August 15 (Nashua City Hall): Democratic State Chair Raymond Buckley and Republican Counsel William O'Brien followed by Public Comment.
- August 23 (Berlin City Hall): Associate Attorney General Anne Edwards and Assistant Attorney General Myles Matteson followed by Public Comment.
- September 6 (Keene Public Library): MIT Professor Charles Stewart III, Dartmouth Professors Michael Herron and Brendan Nyhan followed by Public Comment.

The Committee also met for public working sessions on September 20, September 28, October 5, October 11, November 1, November 16, December 1, December 13, and December 22, 2022, to plan, write, and review its report. A sub-committee met an additional eight times during that time period.

Minutes and videos of all hearings totaling 37 hours are posted on the Secretary of State's website [here](#).