

## **Post-Election Audit for NH: A Proposal**

- Goals:**
1. NH elections we all have reason to trust and be proud of.
  2. Must pass constitutional muster: Local responsibility, publicly accountable for accurate vote counts as NH laws require.<sup>1</sup>
  3. Aim for continuing improvements in election procedures/processes and verifiable accuracy of voters' intent.
  4. Support cooperative spirit among state, local election officials and members of the public.
  5. Honesty and truth telling become the norm.

### **Purpose of post-election audit:**

1. That all votes are counted, tabulated, and reported accurately (voter intent legal standard) and with complete transparency.
2. The results are based on evidence, not faith.
3. Reveals needed improvements and follow up.

### **Problem with use of high speed scanner for post-election audit:**

Currently, a private corporation that is not accountable to voters tabulates more than 90% of NH votes. The solution is NOT another corporation that isn't accountable to voters checking the first one's work. See end for why RLAs are impossible for ordinary citizens (and many election officials and policy makers to understand). FACT: People don't trust what they can't understand or verify. <sup>2</sup>

**Solution:** Will allow responsible use of technology, with checks and balances, while fostering this attitude at both the local and state level. "The most important job in a democracy is to carefully count your neighbor's vote." Walter Holland, Lyndeborough town moderator.

"Election integrity is not built on trust, but on a transparent process. It's not incumbent on the voter to put blind faith in the accuracy of computers and the good will of election officials and poll workers...it's on the government to prove itself to the citizens." Mary Till, former Derry town moderator

"A decision [about who was elected] cannot be rendered without evidence, nor in disregard of settled rules of law." Broderick v. Hunt, 77 N.H. 143 (1913)

Consider developing CT "audit station" approach, which could fulfill NH constitutional and legal requirements. (See pp. 35- 43.)<sup>3</sup>

### **Framework for policy makers to consider:**

**Guiding Principle:** "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.”<sup>4</sup> (HAVA and/or state money should be made available to towns and cities to conduct post-election audits.) As of Sept. 20, 2020, more than \$11 million of HAVA funds available.<sup>5</sup>

**Specifics:**

1. SB 79 codified into law. **AN ACT relative to the authority of the moderator to verify the device count.**<sup>6</sup>

2. HB 1390, section enabling citizens to petition for election night check codified.<sup>7</sup>

3. Automatic hand recount for any race with winning margin 0.5% or less at state expense (or using HAVA funds). Announced based on preliminary results day after election.

4. Needs to be determined: Size of audit sample (in other states, audit sample size ranges from less than 1% of jurisdictions to 5%).

Should include at least two jurisdictions with “larger number of voters” and one hand count town. (Analysis has shown that tampering is more likely to occur in larger jurisdictions where it is less noticeable.)<sup>8</sup> Recruit expert in statistics to help determine size of sample and defining which jurisdictions include “larger number of voters.”

5. **WHEN** selected? No later than 48 hours after election.

6. **WHEN** is audit done/completed? Begun no later than 2 days after jurisdictions are selected. Both MA and CT allow at least two weeks for the audit results to be reported to the state. The NH timeline, which now requires recounts to be requested by Friday after election may have to be changed OR if the audit shows a greater than 1% discrepancy in the audit results, allow the candidate(s) to request a recount and delay final certification of those races.

7. **WHO** selects jurisdictions for audit? Independent entity (Ballot Law Commission?), selected publicly with at least one R and D witnesses present.

8. **HOW** selected: Bingo-size balls in Bingo cage. Separate into three labeled cages: handcount, larger jurisdictions, other jurisdictions. Witnesses have verified ALL jurisdictions are included in the random selection.

9. **WHICH** contests audited? Federal races, governor and constitutional questions on the ballot(minus any race that is recounted). Based on result of audit, local officials may choose to check other contests.

10. **WHICH** ballots audited? ALL, include overseas, absentee and accessible voting ballots.

11. **WHERE** conducted? In local jurisdiction to avoid expense and problems with ballot chain of custody.

12. **HOW** conducted? Local officials recruit mixed party counters (can include undeclared) and oversee hand counts. SoS prepares forms. Members of the public may observe. **Audit results are based on voter intent**, which will vary some from the computer count.<sup>9</sup>

13. If any total of audit result for a specific contest or ballot question exceeds 1% discrepancy, SoS follows up. What kind of follow up is needed?

14. Ballots and ballot images available as public records after recount period is over, any legal challenge has ended and election results have been finalized.

**Prepared by Debbie Sumner, Oct. 20, 2021**

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<sup>1</sup> 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

<sup>2</sup> **Comments on RLAs** (risk-limiting audits)

The goal of the RLA is to have high assurance the right winner won. Based on our constitution and laws consistent with it, NH standards are higher than that. Our commitment should be to count every vote possible while understanding that no election is perfect. RSA 659:63

This paper exemplifies the mathematical complexity and sophistication of risk-limiting audits, well beyond that of the average citizen or election official:

<https://arxiv.org/pdf/1812.06361.pdf> - <https://arxiv.org/pdf/1812.06361.pdf> “Bernoulli Ballot Polling: A Manifest Improvement for Risk-Limiting Audits,” Kellie Ottoboni, Matthew Bernhard, J. Alex Halderman, Ronald L. Rivest and Philip B. Stark, Dec. 15, 2018.

<sup>3</sup> “Independent Observation and Analysis of Connecticut’s Audit of the 2019 General Election, Feb. 21, 2020. <http://ctelectionaudit.org/2020/ObservationReport2019Nov.pdf>

<sup>4</sup> Final Report “Electronic Ballot Counting Device Advisory Committee HB 285, Chapter 134, Laws of 2008 November 30, 2009,” p. 21

<sup>5</sup>[https://www.eac.gov/sites/default/files/paymentgrants/expenditures/2020\\_State\\_Grant\\_Expenditure\\_Report\\_FINAL.pdf](https://www.eac.gov/sites/default/files/paymentgrants/expenditures/2020_State_Grant_Expenditure_Report_FINAL.pdf)

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<sup>6</sup> [http://gencourt.state.nh.us/bill\\_status/billText.aspx?sy=2021&id=999&txtFormat=html](http://gencourt.state.nh.us/bill_status/billText.aspx?sy=2021&id=999&txtFormat=html)

<sup>7</sup> [http://gencourt.state.nh.us/bill\\_Status/billText.aspx?sy=2020&id=1236&txtFormat=html](http://gencourt.state.nh.us/bill_Status/billText.aspx?sy=2020&id=1236&txtFormat=html)

<sup>8</sup> [https://codedred2014.com/wp-content/uploads/2020/04/primaryElectionResultsAmazingStatisticalAnomalies\\_V2.1.pdf](https://codedred2014.com/wp-content/uploads/2020/04/primaryElectionResultsAmazingStatisticalAnomalies_V2.1.pdf) “

“Republican Primary Election 2012 Results: Amazing Statistical Anomalies” by Francois Choquette and James Johnson, August 13, 2012.

<sup>9</sup> "The goal must be the ascertainment of the legally expressed choice of the voters. The object of election laws is to secure the rights of duly qualified voters, and not to defeat them." *Appeal of McDonough*, 149 N.H. 105, 112, (2003). RSA 659:64

**RSA 659:64 Determining Intention of Voter.** – If a ballot is marked for any office in a way which does not readily admit of counting or if a disagreement over how to count the ballot for any office occurs among the election officers present and counting votes, then the ballot shall be counted for that office in accordance with the majority vote of the election officials present and counting votes; provided that, if no alternative count receives a majority vote, the ballot shall be regarded as defective for that office as provided in RSA 659:65.