

January 23, 2017

Re: relative to enforcement of election laws

### **Written Testimony Opposing SB 47**

To Honorable Members of the Election Law and Internal Affairs Committee

As a citizen who has been involved with state voting rights and election integrity issues since early 2008, I strongly oppose this bill.

Currently RSA 7:6-c and RSA 666:8 give authority for law enforcement and investigation of election law violations to the Attorney General. We need to improve that process, clarify and strengthen it and remove the current conflict of interest of the AG inherent in RSA 21-M:2.

It is both unwise and dangerous to give full, unchecked power to the same department that administers our elections. The lack of checks and balances in our current election system undermines public trust in our elections. Our current system lacks integrity and that's what we need to improve.

In 2015, the State Integrity Report Card gave NH an F in electoral oversight. With legislative leadership working with informed citizens and dedicated election officials, we can begin moving this grade toward D (or better)!

<https://www.publicintegrity.org/2015/11/09/18467/new-hampshire-gets-d-grade-2015-state-integrity-investigation>

A number of election laws that protect the rights of voters and candidates, our votes and our elections aren't being followed or enforced now and seem to be interpreted by the Secretary of State in a capricious, arbitrary way. The result is an unhealthy dependence on that office from local officials, who have a legal public duty to us at the local level. For example, one moderator, who is also a lawyer, told me, in the presence of other election officials and two legislators, "I don't need to know what the law says. I just do what the Secretary of State tells me to do." Really?

That's a problem.

With the AccuVote (which now "counts" 87.5% of NH's votes) programmed by a private corporation and vulnerable to various risks of error and tampering, do moderators oversee the count to make sure all legal votes are counted and illegal votes NOT counted based on voter intent? (RSAs 659:60, 659:64, 666.2, 659:77) Is the count conducted in public so the public can observe 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?" (RSA 659:63) *Opinion of the Justices*, 53 N.H. 640, 1873 (See photo below of public vote count in England to see what that looks like.)

Can election officials be sure the count is accurate and there has been no tampering of software or computer? (RSA 659:42)

Clearly, the answers to all of the above are “no.” And yet election officials sign the poll tape on election night, certifying state election laws have been followed. In so doing they are in fact “guilty” of violating RSA 641:1. Since they are NOT following the above laws, they have NO way to know if the election results they send to Concord are true and correct.

I have filed three complaints of clear election law violations with the Attorney General and requested three investigations. I can talk with someone more about the specifics, but the bottom line is, where does a member of the public go when concerns are ignored?

Prior to 2003, the Ballot Law Commission was charged with hearing and determining “disputes involving alleged violations” of election law of a non-criminal nature. (RSA 665:7) Since the repeal, the only option others and I have, according to the US DOJ, is to hire an attorney. Because of the conflict of interest in RSA 21-M:2, the attorney general would represent the state’s interest (in violating election laws?) at public expense, against the public’s interest. I would need to fund raise to pay for an attorney.

That’s a problem.

We do need some new laws, but the good ones consistent with Part 2, Art. 32 that we already have need to be followed and enforced, if not to the letter, at least in the spirit of their clear intent. Evidently that has not happened since electronic voting was approved for use in NH in 1987.

Does our election integrity/violation of voting rights problem have a solution? Yes, and I would welcome the opportunity to talk with any of you to begin addressing the parts of our REAL problem. (new laws, better enforcement of good ones we already have, effective complaint procedure, clarifying AG’s role as primarily representing the public’s interest, etc.)

Please vote against SB 47 and commit to working with informed members of the public and election officials. That would be a vote FOR election integrity, FOR protecting voters’ rights, our votes, our elections and FOR an election system and election officials the public has good reason to trust.

Thank you. Please don’t hesitate to contact me if you have any questions or are willing to work with me on any of the above issues.

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