

Feb. 14, 2025

Information/Conditional Support for HB 693-FN

To the Honorable Members of the House Election Law Committee,

I previously expressed my support for HB 154, so voters could choose to have their ballots counted as the constitution requires. I would support this bill with language change that shows the legislature recognizes and respects the current constitutional duty of our town and ward moderators as both former Secretary of State Bill Gardner and Bud Fitch, the election law attorney in the Attorney General's office did until Fitch left in late 2010 to work for Senator-elect Kelly Ayotte.

Our moderators have a very important and difficult job, essentially as volunteers. We are lucky to find good, trustworthy people to protect our votes and elections.

In looking at HB 1605 from 2014, no current members of your committee were on the Election Law Committee or present for that hearing. Jim Gray and Regina Birdsell were present but moved on to the Senate.

Then DSOS David Scanlan and I were present to hear testimony, including then retired Danville Moderator Wally Fries as he explained what he had done for many years, complying with the spirit and intent of our constitution and to show why NH deserved to continue the tradition of NH's First in the Nation Primary.

From legislative history:

"Mr. Walter Fries, Danville, N.H. Moderator for a quarter of a century. He has done a hand count at the end of each election as a matter of practice; as a self-imposed audit. He neither supports or opposes the bill. He just wishes to impart his knowledge and experience. He has never found a discrepancy in the counts, between hand counts and machine counts. Suspicion of machines is because electronics and machines may fail from time to time."

My recollection of his testimony: "He shared the story of then CA SoS Debra Bowen observing his parallel hand count procedure and deciding to throw away the Diebold (now AccuVote) touchscreens they were using and do what NH does, use an optical scan system with hand count audits of the ballots."

Bowen told Wally she wanted to clone his procedure. To which the committee chair, David Cote replied, "I wish we could clone you!"

NH has two good two models that protect voting rights developed by moderators who know the law, respect our state constitution and their responsibility to voters and candidates.

No need to reinvent the wheel. These procedures could serve as guidelines for other moderators who take their oath of office seriously and haven't had the experience these two public servants have had.

None of the verification checks that I know about cost extra money. Election officials or volunteers, sworn in and taking the oath of office, did the counting, overseen by the moderator or an assistant. In several cases, people came in after the polls closed. Communities should decide what works best for them.

Link to 2022 bill SB 79 here: only top races and constitutional questions would be among the randomly selected choices (recommendation of 2008-09 study committee). That would not prevent moderators from checking any other race that warranted it.

https://gc.nh.gov/bill_status/legacy/bs2016/billText.aspx?sy=2022&id=999&txtFormat=pdf&v=current

If there was a significant discrepancy that couldn't be reconciled before reporting results to Concord, political parties and candidates could be notified so candidates could request a recount. My understanding of current law (may be wrong) if the recount was needed because of flawed programming, the vendor would pay the cost.

HB 261(2025) has moved the time for SoS audits for top ticket races until after the recount period....if a discrepancy was discovered in those audits, it would be too late to request a recount, but not too late to file a lawsuit. (That WOULD be an expense for communities and/or the state.)

If requested, I can send you a copy of Wally's daughter's testimony on SB 79 (the trust but verify bill) in 2022.

She said: "I grew up in a household where the sanctity of the voting process was held in the highest regard. At the dinner table many nights, I'd hear about efforts to attain a better way to assure Granite Staters that their vote would be handled and counted accurately."

She included this at the end:

Parallel Hand Counts—Example of New Hampshire Common Sense

Former Danville moderator Wally Fries always oversaw hand counting of 1-3 contests/ballot questions on election night to ensure an accurate computer count.

Why:

1. had worked with computers for years and knew there could be breakdowns and their reliability needed to be checked. As a member of several state advisory groups he also knew the pre-election ballot testing wasn't enough. The hand count check made it more likely any error

would be detected and accurate results would be reported to Concord (as NH Constitution and state law require).

2. knew there had been reported instances of tampering and wanted to discourage any possibility of that happening in his town's elections.

3. wanted the public to have confidence in his town's election results.

How:

1. Selective sampling—he chose contests based on a) expected closeness b) vulnerability to tampering c) importance. (For example, he would hand count just the competitive races in Presidential Primaries. and reconcile the “other” piles with total ballots cast and number of voters.) UNH statistician confirmed the validity of this kind of sampling.

2. Double count hand count using “sort and stack method.” (Election officials sort into piles, first counter cross stacks 25 ballots at a time, second counter verifies count or team determines voter intent, reconciles discrepancy). Public could observe.

3. Verified hand count checked with computer total. Reconcile any differences.

If Wally believed three races might be close, he'd check all three. Recounts cost money, he reasoned and at least candidates would know that one jurisdiction had an accurate count.

Cost: No additional cost for town or state

Respectfully,
Deborah Sumner
Jaffrey, NH

Copies: sponsors, citizens