

Support for HB 1223, Feb. 3, 2026

To the Honorable Members of the House Election Law Committee:

I urge you to codify what Attorneys General Ayotte and Delaney had supported as “discretionary” authority of moderators that inexplicably changed in 2016 under Attorney General Joseph Foster.

It was also recognized under both AG Ayotte and Delaney that it was illegal for anyone to interfere with the legal and constitutional responsibilities of any election official.

As a concerned voter, strong advocate for voting rights and an election observer since 2010, I hope this background will help you make an informed recommendation on this bill. Documentation is available on request.

2006-Statement by Ballot Law Chairman Gary Francoeur in a public hearing: “Even in the towns that have the machines, they can still turn around if they want to and hand count these things. Nothing is stopping this Committee today from allowing them to do that.

“They choose to use this electronic machine if they want to. They don’t only have to use that. They can also hand count them.”

2008- HB 285 established Electronic Ballot Counting Device Advisory Committee to advise the BLC and Legislature re: voting technology. Among EBCDA Committee’s recommendations: p.14 “Over the long run, public confidence relies on the state and local history of accuracy, security, transparency, and reliability in the ballot counting process. **One of the most effective and least expensive ways to achieve these goals is to conduct random hand-counted audits of tabulator counts immediately after the election. Such audits are valuable because they check the accuracy of the initial counting method from end to end.**

...”Moderators should continue to have the option of checking `closely contested high-profile races for immediate on-site post-election hand counts as checks on the tabulator.’”

Nov. 2010-Then election law attorney Matthew Mavrogeorge confirmed in email communication to me, with copies to Assistant AG Bud Fitch and Deputy Secretary of State David Scanlan, “Moderators are given significant authority to determine what procedures at their polling place are necessary to ensure an accurate count.”

2012- mid-2016, Election Procedure Manual included: “A statutory study committee has recommended post-election audits of randomly selected race(s) for electronic ballot device towns. Such audits are not required by law. On two occasions, the Legislature has considered but rejected law changes requiring audits, in part because the state completes more recounts than most other states. In recent elections, some moderators have been asked to conduct a

second count (hand count) of certain races on election night. Moderators may use their discretion as to whether or not they will conduct such a count on election night.

“If they decide to conduct a second count on election night, they should have a good reason for doing so. Moderators do not need to conduct such a second count just because some members of the public request one.”

2014- Then retired Danville Moderator Wally Fries shared his parallel hand count procedure with the House Election Law Committee in testimony on HB 1605.

“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.”

2016-Attorney General Joseph Foster stopped this long-time practice.

2022- Attorney General John Formella faulted Windham election officials for the problems discovered in the Windham audit, saying in part: “The moderator has a duty to accurately count all legally submitted ballots.” If any moderator shall intentionally neglect to cause an accurate count to be made of the votes cast as required by law, for which no other penalty is provided, he or she shall be guilty of a violation.” RSA 659:77, I. See also RSA 659:47 to RSA 659:55...

As we are aware, Windham was not the only community in the November 2020 election to show an abnormally number of overvoted ballots, probably caused at least in part, by folds in absentee ballots. Tom Murray of Windham did an analysis of computers in a number of communities that showed a high rate of overvoted ballots, with a high of 22.8% (396 overvoted ballots of 1738 ballots) on one computer in Merrimack.

Unanswerable question: If moderators had been allowed to exercise their discretionary authority to check the computer count on election night, could Windham (and other communities) have prevented the extensive illegal disenfranchisement of voters that occurred in November 2020?

I believe it would have.

Please codify what had previously been moderators’ discretionary authority until 2016 and reaffirm laws that prevent anyone in the future from interfering with election officials’ legal and constitutional responsibilities to voters and candidates.

Please let me know if you have any questions.

Thank you.

Respectfully,
Deborah Sumner
Jaffrey, NH

Copies: HB 1223 sponsors

PS Unfortunately for all of us, Wally Fries died in Feb. of 2016. However, he had previously explained his procedure to me. Former election law attorney Bud Fitch had called it “an example of NH common sense.”

Parallel Hand Counts—Example of New Hampshire Common Sense

Former Danville moderator Wally Fries, who retired in 2013, 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 on both Republican and Democratic ballots 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