

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Maxine Mosley and Donna Soucy

v.

David Scanlon, NH Secretary of State

Case No.

**VERIFIED COMPLAINT AND REQUEST FOR PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF PURSUANT TO N.H. SUP. CT. R. 48 AND EXPEDITED
HEARING**

NOW COME Plaintiffs Maxine Mosley and Donna Soucy, by and through counsel, Shaheen & Gordon, P.A., filing this Verified Complaint and request for Preliminary and Permanent Injunctive Relief and Expedited Hearing, and, in support thereof, state as follows:

Introduction

1. This is a civil action seeking a preliminary injunction and a permanent injunction against the New Hampshire Secretary of State. On November 14, 2022, a recount of the race for State Representative Hillsborough District 16 was conducted pursuant to RSA 660:1 thru 6 and the Rules of Procedure for Recounts promulgated by the Secretary of State. At the conclusion of the recount Democrat Maxine Mosley was declared the winner by the Secretary of State. The Secretary of State's declaration of Mosley's victory was posted on the Secretary of State's website. See <https://www.sos.nh.gov/elections/elections/election-results/2022-general-election-results>. The margin over her Republican opponent, Larry Gagne, was one vote. Pursuant to RSA 660:3 and RSA 660:6, I, the declaration by the Secretary of State is "final" subject only to a limited basis of appeal to the Ballot Law Commission.

2. Nevertheless, on November 17, 2022, the Secretary of State issued a Notice that "the process of recounting the ballots cast in the race will now continue starting on Monday

November 21st, 2022, at 4:00PM.” See November 17, 2022, Notice attached as Exhibit A. The stated basis for this second recount is an alleged discrepancy in the number of ballots cast on election day, when compared to the number of ballots counted during the recount, and the number of ballots counted during an audit conducted pursuant to RSA 660:17-a (Laws of 2022, Chapter 262:1). The Secretary of State’s Notice ordering a second recount is an abuse of discretion, without precedent, and in clear violation of New Hampshire law.

3. Plaintiffs seek an immediate order enjoining the Secretary of State from initiating a second recount on Monday November 21st, 2022, at 4:00PM for three primary reasons. First, RSA 660:3, 660:5 and 665:8, II make plain that there may only be **one recount** for an election, subject to one exception set forth in newly enacted RSA 660:17-b (Laws of 2022, Chapter 262:1), which is inapplicable here. Second, RSA 660:17-b, IV states there may only be a second recount if the discrepancy between the number of votes cast on election day and the number of votes counted in the audit is greater than one percent. The audit for Hillsborough District 16 determined the discrepancy was less than one percent. Third, RSA 660:3 and RSA 660:6 make plain that the Secretary of State’s declaration of the recount results are “final” subject only to an appeal to the Ballot Law Commission. Because the Secretary of State made this public declaration on November 14, 2022, he has no authority to recount ballots and, in fact, has no jurisdiction over the matter at this time.

Parties

4. Plaintiff Maxine Mosley is a resident of Manchester, New Hampshire. She is registered to vote in Manchester Ward 6 and the representative-elect of Hillsborough District 16.

5. Plaintiff Donna Soucy is a resident of Manchester, New Hampshire. She is registered to vote in Manchester Ward 6 and the State Senator for Senate District 18.

6. Defendant David Scanlan is the Secretary of State of the State of New Hampshire and is the state official charged with election administration. Secretary Scanlan's Office is located at State House Room 204, 107 N. Main Street, Concord, New Hampshire. Secretary Scanlan is sued in his official capacity.

Jurisdiction and Venue

7. This case arises under the New Hampshire State Constitution and New Hampshire RSA Chapter 660 and is within the general jurisdiction of the Superior Court.

8. The Superior Court has authority to issue temporary restraining orders and injunctive relief. Super. Ct. R. 48 (Injunctions). Venue is proper in Merrimack County because the Defendant is a state actor located in Concord, New Hampshire, by statute all recounts take place in Concord, New Hampshire and based upon State Election Docket Court Procedures dated October 25, 2022 ("Election Cases' include emergency petitions or expedited requests for relief involving ... the collection and tabulation of results of such elections.").

RSA Ch. 660 -- Recounts

9. The authority for and the procedure for the conduct of general election recounts is governed by RSA 660:1 through RSA 660:6.

10. RSA 660:1 governs who may apply for a recount and states, in part, "[a]ny candidate for whom a vote was cast for any office at a state general election may apply for a recount, provided that the difference between the votes cast for the applying candidate and a candidate declared elected is less than 20 percent of the total votes cast in the towns which comprise the office to be recounted." RSA 660:1. Additionally, the application for a recount "shall

be made in writing to the secretary of state and shall be submitted no later than the Friday following the election.” RSA 660:1.¹

11. RSA 660:3 governs the number of recounts per application submitted and states, in part, the candidate applying for a recount “shall be entitled to apply for only **one recount** under this chapter.” RSA 660:3 (emphasis added). Moreover, if more than one candidate for the same office applies for a recount, there shall only be one recount. RSA 660:3.

12. RSA 660:4 governs the time and notice of the recount and states the recount shall take place in the city of Concord, reasonable notice shall be given to applicant and opposing candidates, and the secretary of state will prepare and distribute the rule and procedures governing the recount.

13. RSA 660:5 governs the conduct of the recount including the manner in which ballots are counted; the opportunity for candidates, their counsel and assistants to inspect the ballots and protest determinations made by the secretary of state; and the procedure in the event of ballot discrepancies that may arise during the recount.

14. Specifically, concerning protests, “[e]ach candidate or his or her counsel or designee shall have the right to protest the counting of or failure to count any ballot.” RSA 660:5. If a protest is made, “[t]he secretary of state shall thereupon rule on said ballot and shall attach thereto a memorandum stating such ruling and the name of the candidate making the protest.” RSA 660:5. Each protested ballot and attached memorandum is then preserved for any appeal that may be taken to the ballot law commission after the completion of the recount. RSA 660:5.

¹ In 2022, because the Friday following the election was Veteran’s Day, the deadline to submit the application as extended to the Monday following the election.

15. RSA 660:5 also addresses discrepancies concerning ballots and states, “[i]f, at any time during the counting of ballots, a discrepancy appears in any ballot for any reason, the secretary of state shall suspend the recount until the discrepancy is resolved, at which time the secretary of state shall continue the recount.” RSA 660:5. However, “[i]n no event shall a discrepancy result in a second recount ...” RSA 660:5 (emphasis added).

16. RSA 660:3 and 660:6 govern the secretary of state’s declaration of the candidate elected by the recount. At the conclusion of the recount, the secretary of state shall declare the winner of the recount. RSA 660:3; 660:6, I. “If the recount ... show[s] that some candidate other than the one declared elected [on election day] has the greatest number of votes cast for the office, the secretary of state shall declare said candidate to be elected.” RSA 660:6, I.

17. Under the statutory scheme, “the declaration made by the secretary of state under RSA 660:6 shall be **final**.” RSA 660:3 (emphasis added). The finality of the secretary of state’s declaration may only be “subject to a change ... following an appeal to the ballot law commission, as provided in RSA 665:8, III.” RSA 660:3; see also 660:6, I (the candidate declared elected at the recount shall be entitled to a certification of election “unless the result [of the recount] is changed upon an appeal taken to the ballot law commission, as provided in RSA 665:8, II.”).

18. On an appeal from a recount, the subject matter jurisdiction of the ballot law commission is limited.

19. The candidate who did not have the greatest number of votes must appeal within 3 days after the declaration by the secretary of state. RSA 665:8, II. The secretary of state formally declared Mosley the winner when the results were posted on the secretary of state’s website as it has done in every other race during this and every election cycle in recent memory.²

² The posting of the declaration of the winner triggers statutorily defined time frames for appeals to the ballot commission.

20. On appeal, the ballot law commission may only “consider and review all the rulings of the secretary of state on ballots protested during the recount.” RSA 665:8, II.

21. If after review of the protested or challenged ballots, the ballot law commission determines the appealing candidate “had the greatest number of votes, the commission shall change the declaration of the secretary of state and issue a certificate of such changed declaration to the appellant.” RSA 665:8, II.

22. However, “[i]n no case may the ballot law commission order a second recount.” RSA 665:8, II.

Audits

23. In 2022, the New Hampshire Legislature passed a statute concerning audits of certain races subject to recount. See RSA 660:17-b (Laws of 2022, Chapter 226:1). The statute

states:

262:1 New Section; General Provisions for Recounts; Recount of Additional Offices. Amend RSA 660 by inserting after section 17 the following new section:

660:17-b Recount of Additional Offices on Ballots Involved in Recounts. For general election recounts of state representative races, the secretary of state's office shall, in addition to recounting the state representative race:

- I. Conduct an audit of the votes cast on those ballots for President, United States Senate, United States House of Representatives, or governor;
- II. Conduct such audit using the ballots for 10 of the state representative races to be recounted. The races shall be selected randomly. If less than 10 races are to be recounted, the ballots for each recounted race shall be audited;
- III. Select the office to be audited for each recount; and
- IV. **Allow a full recount of any race where there is a discrepancy of greater than one percent from the election results reported to the secretary of state.**

(emphasis added).

24. Accordingly, under RSA 660:17-b, IV a second recount of a state representative race may only go forward if the audit demonstrates a discrepancy of greater than one percent

between the number of ballots cast on election day and reported to the secretary of state and the number of ballots cast as determined by the audit.

The Election for State Representative Hillsborough District 16 and Subsequent Recount

25. On November 8, 2022, the State of New Hampshire conducted a general election.

26. The election of State Representative Hillsborough District 16 involved four candidates, two Democrats and two Republicans. The two candidates receiving the most votes were elected to the New Hampshire House of Representatives. The race for Hillsborough District 16 was confined to voters in Manchester Ward 6.

27. On election day, election officials prepare a Return of Votes Form after all votes are counted. A true and accurate copy of the Return of Votes Manchester Ward 6 attached as Exhibit B.

28. According to the election day results, the total number of ballots cast in Manchester Ward 6 was 4001. See Exhibit B.

29. On election day, the votes for Hillsborough District 16 were tabulated as follows: 1) William Infantine (R) 1895 votes; 2) Larry Gagne (R) 1820 votes; 3) Maxine Mosley (D) 1797 votes; 4) Holly Hillhouse (D) 1644 votes. See Exhibit B. Based upon those results, Infantine and Gage were elected to the New Hampshire House of Representatives.

30. However, Plaintiff Maxine Mosley filed a timely application for a recount pursuant to RSA 660:1.

31. Defendant Scanlan noticed the recount for the afternoon of November 14, 2022. See RSA 660:4 as described, supra, at ¶ 12.

32. Defendant Scanlan promulgated the rules and procedures of the recount pursuant to RSA 660:4 as described, supra, at ¶ 12. The conduct of the recount was conducted pursuant to RSA 660:5 as described, supra, at ¶ 13.

33. A true and accurate copy of Rules of Procedure for Recount is attached as Exhibit

C. The Rules are as follows:

1. The Secretary of State will operate with two-person teams for recounting.
2. For each two-person team, each candidate may have one observer.
3. Each candidate will be informed as to how many two-person teams will be conducting his/her particular recount.
4. No observer will use pencil or pen while sitting at the recount table.
5. Observers are prohibited from touching the ballots.
6. One member of the two-person team will read the ballot declaring those legal votes apparent from the voter's marks. The second member will place a mark on his/her tally sheet for the candidate(s) receiving a vote. After all the ballots have been read, the totals for each candidate for the town or ward will be determined by adding the marks recorded.
7. If there is a challenge of any ballot, it must be made immediately and the Secretary of State will rule on such challenge. If that decision is protested, the Secretary of State will attach on the protested ballot a statement of fact.
8. The candidate who requested the recount may cancel same at any time during the procedure, at which time the Secretary of State will publicly announce the candidate's request to cancel the recount and that particular recount will cease at once.
9. Once a town or ward is to be recounted, it shall be completed by the particular team or teams involved before starting another precinct.
10. The Secretary of State will maintain a tally sheet showing the old and new figures and **at the completion of a recount will announce the official winner based on the recount figures.**
11. At the end of each recount, if the contestant wishes to appeal further, he/she may do so to the Ballot Law Commission under the terms of RSA 665:6.
12. NO SMOKING in recount areas.
13. NO CELL PHONES in recount areas.

David M. Scanlan Secretary of State
2022

(emphasis added).

34. During the course of the recount 8 ballots protested and preserved for an appeal to the ballot law commission pursuant to RSA 660:5, 660:6, 665:8, II.

35. After the recount, the votes for Hillsborough District 16 were tabulated as follows: 1) William Infantine (R) 1877 votes; 2) Maxine Mosley (D) 1799 votes; 3) Larry Gagne (R) 1798 votes; 4) Holly Hillhouse (D) 1643 votes. See Election Results From Secretary of State's Website attached as Exhibit D.

36. Pursuant to RSA 660:3, RSA 660:6, I, and paragraph 10 of the Rules of Procedure for Recounts, Defendant Scanlan declared the results and announced Plaintiff Mosley as the "official winner based on the recount figures." The declaration was made in the presence of the candidate, the observers, and counsel.

37. The Defendant then published the results on the Secretary of State's website. See <https://www.sos.nh.gov/elections/elections/election-results/2022-general-election-results>, Exhibit D.

38. Rep. Gagne was present throughout and was quoted in the press as stating: "I watched it. It's long, it's tedious, they check things out very carefully – very little room for error ... So, I have full confidence, whichever way it would have turned out." See <https://www.wmur.com/article/recounts-nh-house-election-111422/41959317#>.

39. Pursuant to RSA 660:3 and 660:6, I, the Defendant's declaration of Plaintiff Mosley as elected is **final** and may only be subject to change pursuant to an appeal to the ballot law commission pursuant to RSA 665:8, II.

40. Pursuant to RSA 660:3, 660:5, and RSA 665:8, II there may only be one recount.

41. As a result of the Defendant's declaration, Plaintiff Mosley has been elected to the New Hampshire House of Representatives subject only to a timely appeal by Rep. Gagne to the

Ballot Law Commission. Any such appeal is limited to a review of the 8 ballots protested by legal counsel during the recount.

The Audit

42. Pursuant to RSA 660:17-a (Laws of 2022, Chapter 26:1), the race for Hillsborough District 16 was selected for audit.

43. As stated above at ¶ 27, on election day it was determined that 4001 ballots were cast in Manchester Ward 6.

44. According to the audit, it was determined that 3996 ballots were cast in Manchester Ward 6. See Spreadsheet from the Secretary of State attached as Exhibit E.

45. Therefore, there is a discrepancy of .12% between the number of ballots cast according to the election day tally and the number of ballots cast according to the audit.

46. According to the number of ballots counted during the recount, it was determined that 3972.5 ballots were cast in Manchester Ward 6.³

47. Therefore, there is a discrepancy of .587 % between the number of ballots cast according to the election day tally and the number of ballots cast according to the recount.

48. Pursuant to RSA 660:17-b, IV (Laws of 2022, Chapter 26:1), a second recount may only go forward if there is a discrepancy of greater than 1 percent between the number of ballots cast according to the election day tally and the number of ballots cast according to the audit.

49. Because the audit for Hillsborough District 16 has a discrepancy of less than 1 %, no recount may be authorized as a matter of law.

The Defendant Notices a Second Recount

³ This number was determined by tabulated the number of votes for the four candidates in the Hillsborough District 16 race plus the number of “undervotes” (or blank vote) and dividing that number by 4. Plaintiffs do not concede that this is a valid way to determine the number of ballots counted during the recount.

50. On Thursday, November 17, 2022, the Defendant *sua sponte* issued a Notice concerning Hillsborough County State Representative District 16 (Manchester Ward 6). See Exhibit A. The Notice was issued to the press, but, at no time, was the Notice provided to Plaintiff Mosley, and she did not have an opportunity to respond before it was published.

51. According to the Notice, “[b]allot counting will be continued in the Hillsborough County State Representative District 16 recount.” The stated reasons are: 1) a routine reconciliation process indicated that the “reconciliation numbers and the recount reconciliation numbers were not equivalent” and 2) the audit results disclosed a discrepancy between the number of ballots cast and counted for the office of Governor as determined by the audit is greater than the number of ballots accounted for as cast in the recount. See Exhibit A.

52. “As a result, the process of recounting the ballots cast in that race will now continue starting on Monday November 21st, 2022, at 4:00PM.” See Exhibit A.

53. The Notice is contrary to New Hampshire law and the Defendant has no authority to order a second recount.

54. Under RSA 660:3, 660:5, and RSA 665:8, II there may only be one recount per race.

55. The only exception to this rule is the newly enacted RSA 660:17-b, IV which permits a second recount if the statutory audit reveals a discrepancy of greater than 1 % between ballots cast on election day and ballots cast according to the audit. However, because the audit’s discrepancy is less than 1 %, the legislature has determined that no second recount may take place.

56. Under RSA 660:3, RSA 660:6, I, and the Rules of Procedure for Recounts, the Defendant has declared Plaintiff Mosley as the “official winner” elected pursuant to the results of the recount. The Defendant made this declaration on Monday, November 14, 2022, and then

published the results on the Secretary of State's website. Under RSA 660:3 and 660:6, I, this declaration is "final" and may only be subject to change after appeal to the Ballot Law Commission.

57. Although the Notice states the secretary of state has conducted a reconciliation of the recount, there is no provisions for a reconciliation in RSA Ch. 660 or the Rules of Procedure for Recounts promulgated thereunder.

58. The Defendant's determination to notice a second recount is contrary to the relevant provisions of RSA Ch. 660 and rules promulgated thereunder, and the Plaintiffs seek an immediate order from this Court enjoining the Defendant from recounting on Monday, November 21st, 2022, at 4:00PM the ballots cast.

Count I Preliminary Injunction

59. Plaintiffs incorporate all paragraphs above and below.

60. Pursuant to N.H. Sup. Ct. R. 48, "No preliminary injunction shall be issued without notice to the adverse party and it shall only be issued by the court."

61. Preliminary injunctive relief is a provisional remedy that preserves the status quo pending a final determination of the case on the merits. New Hampshire Dep't. of Environmental Serv. v. Mottolo, 155 N.H. 57, 62 (2007). An injunction may issue when there is an immediate danger of irreparable harm to the party seeking such relief and there is no adequate remedy at law. Id. A party seeking an injunction must show it would likely succeed on the merits. Id. It is within a trial court's discretion to grant an injunction after consideration of the facts and established principles of equity. Id.

62. Plaintiffs provided the Defendant with notice of this filing on November 18, 2022, prior to this Verified Complaint and request for Preliminary and Permanent Injunctive Relief and Expedited Hearing being filed.

63. Plaintiffs state that there is an immediate danger of irreparable harm and that a preliminary injunction is necessary to protect the fundamental statutory right of candidates for public office in New Hampshire and New Hampshire voters to participate in fair elections conducted pursuant to New Hampshire law.

64. As set out above, after conducting the one recount a candidate is entitled to under RSA 660:3, the Defendant has issued a notice ordering a second recount in the race for State Representative Hillsborough District 16 after the Defendant declared the winner as he has done in every other race throughout the state, by publishing the results on the Secretary of State's website, which, under New Hampshire law, is final subject only to a limited appeal to the Ballot Law Commission. See RSA 660:3, 660:6, I.

65. Because the Defendant made this declaration on November 14, 2022, he is divested of jurisdiction over the race and has no authority to recount ballots. Any action to do so is *ultra vires*. Indeed, the Defendant's declaration is final and may only be altered by the Ballot Law Commission after a timely appeal.

66. Further, here the Defendant alleges the second recount is necessary due to a discrepancy in the count of ballots cast among the election night returns, reconciliation numbers, and recount reconciliation numbers. Ordinarily, under New Hampshire law, in "no event shall a discrepancy result in a second recount . . . ," RSA 660:5, rendering the noticed recount unlawful.

67. Although a new statute effective this year provides a legislative mandate for "a full recount of any race where there is a discrepancy of **greater than one percent** from the election

results reported to the secretary of state,” RSA 660:17-b, IV, in this race, by the Defendant’s own calculations, the alleged discrepancies in the number of ballots cast between election night and the audit is only .12% and between election night and the recount is .587%—well below the greater than 1% necessary to permit a recount under 660:17-b, IV.

68. Thus, the Defendant’s noticed second recount is prohibited under 660:17-b, IV.

69. No adequate remedy at law exists for the real and imminent deprivations of statutory rights and imminent planned ultra vires actions by the Defendant as set out above. An order of this Court will be the only way to prevent the Defendant from implementing procedures in violation of and contrary to New Hampshire election law.

70. Plaintiffs are likely to succeed on the merits of this case because if the Defendant were to carry out his noticed second recount, as set forth herein, it is evident his actions would violate New Hampshire election law.

71. Further, it is in the public interest for this Court to grant the preliminary injunctive relieve that Plaintiffs request because without such an order, Plaintiffs and New Hampshire voters will be deprived of their statutory right to participate in fair elections conducted pursuant to, not in violation of, New Hampshire law.

72. Additionally, the public has an interest in the finality and reliability of election results reached by following the laws and procedures required by New Hampshire election law. If the Defendant is permitted to arbitrarily order a second recount in this case in violation of New Hampshire law, that will undermine the confidence of Plaintiffs, candidates, and voters that New Hampshire elections are conducted according to the laws established by the General Court and the agreed upon procedures promulgated by the Secretary of State. Further, if Defendant is permitted to conduct his ultra vires second recount in this case, should there be yet another discrepancy in

the count of the number of ballots cast, there would be nothing preventing another candidate from demanding yet another recount. And, if the Defendant's declaration of a winner in this race by announcing the results at the end of the recount and posting the results on the Secretary of State's website on November 14, 2022, is not final, as defined under RSA 660:3, then his declaration of the winner of every other race in this election cycle carried out in the same way is also not final, which could result in candidates from across the State demanding recounts and filing appeals to the Ballot Law Commission that would otherwise be untimely.

73. Consequently, because Plaintiffs have established an immediate danger of irreparable harm with no adequate remedy at law, a likelihood of success on the merits, and that the public interest favors their request for injunctive relief, this Court should grant Plaintiffs' request for a preliminary injunction.

Count II Permanent Injunction

74. Plaintiffs incorporate all paragraphs above and below.

75. For the reasons set forth above, permanent injunctive relief is necessary and appropriate to enjoin the Defendant from violating New Hampshire election law.

PRAYERS FOR RELIEF

Accordingly, Plaintiffs respectfully request that this Court enter the following relief:

A. An order preliminarily enjoining the Defendant from conducting the recount he has noticed for Monday, November 21, 2022, at 4:00PM and directing the Defendant to maintain the status quo pending the final resolution of this case.

B. An order declaring that the Defendant's noticed second recount violates the New Hampshire law.

C. An order permanently enjoining the Defendant, his agents, officers, employees, successors, and all persons acting in concert with each or any of them from conducting the noticed recount in violation of New Hampshire law.

D. An order awarding Plaintiff its costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant to Claremont Sch. Dist. v. Governor, 144 N.H. 590, 595 (1999).

E. Such other or further relief as the Court deems just and proper.

Respectfully submitted,

New Hampshire Democratic Party
By Its Attorneys,
SHAHEEN & GORDON, P.A.

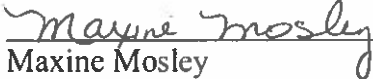
Dated: November 18, 2022

/s/ William E. Christie
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VERIFICATION

I, Maxine Mosley, verify and affirm under oath that the facts stated in this Verified Complaint and Request for Preliminary and Permanent Injunctive Relief Pursuant to N.H. Sup. Ct. R. 48 and Expedited Hearing are true and correct to the best of my knowledge and belief.

Dated: November 18, 2022



Maxine Mosley

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Subscribed and sworn before me this 18th day of November 2022.



Justice of the Peace/Notary Public

EVA M. DAVIS
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
August 17, 2027

VERIFICATION

I, Donna Soucy, verify and affirm under oath that the facts stated in this Verified Complaint and Request for Preliminary and Permanent Injunctive Relief Pursuant to N.H. Sup. Ct. R. 48 and Expedited Hearing are true and correct to the best of my knowledge and belief.

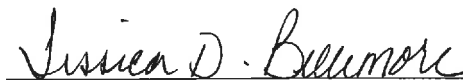
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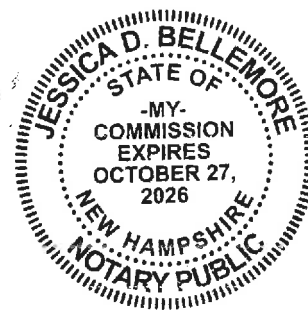
Donna Soucy

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn before me this 18th day of November, 2022.



Justice of the Peace/Notary Public



NEW HAMPSHIRE
DEPARTMENT OF STATEErin T. Hennessey
*Deputy Secretary of State*David M. Scanlan
*Secretary of State*Patricia Lovejoy
Senior Deputy Secretary of State

November 17, 2022

NOTICE

Hillsborough County State Representative District 16 (Manchester Ward 6)

Ballot counting will be continued in the Hillsborough County State Representative District 16 recount. The routine recount reconciliation process—which, for the first time, considers counts of over-votes and under-votes on both a local level and for a recount—indicated that, in part, due to the absence of undervote and overvote numbers on the election night return of votes for this race, reconciliation numbers and recount reconciliation numbers were not equivalent. On 11/16/2022 a revised Return of Votes containing the undervotes and overvotes for each race was received. Reconciliation revealed there is insufficient certainty that all ballots cast in that race have been recounted, necessitating further counting. Additionally, while reconciliation efforts were ongoing, the office of Governor was recounted on the ballots cast in this district as required by RSA 660:17-a (Laws of 2022, Chapter 262:1). This “audit” recount disclosed that the total number of ballots cast and counted for the office of Governor in this district is greater than the total accounted for so far in for the Hillsborough County State Representative District 16 race. This indicates that some ballots from the Representative District 16 race have not yet been counted at the recount, and therefore the Secretary of State is unable to make a declaration per RSA 660:6. As a result, the process of recounting the ballots cast in that race will now continue starting on Monday November 21st, 2022, at 4:00PM.

Rockingham County State Representative District 6 (Brentwood)

The recount of the State Representative District 6 race concluded that candidate Turer received 1213 votes and candidate Litchfield received 1198 votes. The margin of victory is 15 votes. An examination of the Absentee Ballot Materials, sealed into boxes by Brentwood election officials and transferred to the Secretary of State with the boxes of ballots, disclosed 27 Absentee Ballot Affidavit envelopes that still contain ballots. Preliminary indications are that these voters were marked as voting on the checklist and on the clerk’s list of absentee voters, but the absentee ballots were not removed from the envelopes, cast, nor counted. Because these 27 ballots have the potential to change the outcome of this race, the Ballot Law Commission will be requested to order that these ballots be counted and the results added to recount results for Rockingham County State Representative District 6. These 27 ballots do not have the potential to change the outcome of any other race or question voted on these ballots. Compliance with election administration obligations is being referred to the Attorney General’s Office.

David M. Scanlan
Secretary of State

EXHIBIT

B

Vote November 8, 2022 a true copy attest:

Matthew Hornum

Signature of Town/City Clerk

One copy to be Returned ELECTION NIGHT to the Secretary of State.

STATE OF NEW HAMPSHIRE
RETURN OF VOTES
MANCHESTER WARD 6
GENERAL ELECTION
NOVEMBER 8, 2022



Offices	Democratic Candidates	Republican Candidates	Other Candidates	Undervotes Overvotes
For Governor Vote for not more than 1	1435 Tom Sherman	2474 Chris Sununu	24 Libertarian Kelly Halldorson 19 Libertarian Kariyn Borysenko	Undervotes Overvotes
For United States Senator Vote for not more than 1	2059 Maggie Hassan	1824 Donald C. Bolduc	75 Libertarian Jeremy Keuffman	Undervotes Overvotes
For Representative in Congress Vote for not more than 1	2105 Chris Pappas	1839 Karoline Leavitt		Undervotes Overvotes
For Executive Councilor Vote for not more than 1	1828 Kevin J. Cavanaugh	2071 Ted Gaisas		Undervotes Overvotes
For State Senator Vote for not more than 1	2041 Donna M. Soucy	1841 George A. Lambert		Undervotes Overvotes
For State Representatives Hillsborough District 16 Vote for not more than 2	1797 Maxine Mosley 1644 Holly Hillhouse	1895 William Infantino 1820 Larry G. Gagne		Undervotes Overvotes
For State Representatives Hillsborough District 38 Vote for not more than 2	1661 Joshua Query 1824 Benjamin Baroody	1757 Kirk McConville 1749 Ross Berry		Undervotes Overvotes
For Sheriff Vote for not more than 1	Christopher Connelly 3625	Christopher Connelly		Undervotes Overvotes
For County Attorney Vote for not more than 1	Nicholas Sarwark 1699	John J. Coughlin 1980	1 Libertarian Nicholas Sarwark	Undervotes Overvotes
For County Treasurer Vote for not more than 1	Richard Manzo 1694	David G. Fredette 1971	1 Libertarian Richard Manzo	Undervotes Overvotes
For Register of Deeds Vote for not more than 1	Mary Ann Crowell 1786	Dennis C. Hogan 1895		Undervotes Overvotes
For Register of Probate Vote for not more than 1	William Bryk 1702	John A. Graham 1939		Undervotes Overvotes
For County Commissioner Vote for not more than 1	Toni Pappas 3559	Toni Pappas		Undervotes Overvotes

BALLOTS CAST

Regular Ballots Cast

3650

Absentee Ballots Cast

351

Total Number of Ballots Cast

4001

Number of Overvoted Ballots Cast

2022 CONSTITUTIONAL AMENDMENT QUESTIONS

Constitutional Amendment Proposed by the 2022 General Court

1. "Are you in favor of amending articles 71 and 81 of the second part of the constitution to read as follows: (Art.) 71. (County Treasurers, County Attorneys, Sheriffs, and Registers of Deeds Elected.) The county treasurers, county attorneys, sheriffs and registers of deeds, shall be elected by the inhabitants of the several towns, in the several counties in the State, according to the method now practiced, and the laws of the state, provided nevertheless the legislature shall have authority to alter the manner of certifying the votes, and the mode of electing those officers; but not so as to deprive the people of the right they now have of electing them.

(Art.) 81. (Judges Not to Act as Counsel.) No judge shall be of counsel, act as advocate, or receive any fees as advocate or counsel, in any probate business which is pending, or may be brought into any court of probate in the county of which he or she is judge." (Passed by the N.H. House 294 Yes 43 No; Passed by Senate 21 Yes 3 No.) CACR 21

YES 1996

NO 1198

UNDERVOTES 806

OVERVOTES

Question Proposed pursuant to Part II, Article 100 of the New Hampshire Constitution

2. "Shall there be a convention to amend or revise the constitution?"

YES 1176

NO 2048

UNDERVOTES 776

OVERVOTES

Vote November 8, 2022 a true copy attest:

Matthew Sherman
Signature of Town/City Clerk

One copy to be Returned ELECTION NIGHT to the Secretary of State.

STATE OF NEW HAMPSHIRE
RETURN OF VOTES
MANCHESTER WARD 6
GENERAL ELECTION
NOVEMBER 8, 2022



Offices	Democratic Candidates	Republican Candidates	Other Candidates	Undervotes Overvotes
For Governor Vote for not more than 1	1435 Tom Sherman	2474 Chris Sununu	Libertarian Kelly Halldorson 24 Libertarian Karlyn Borysenko 19	Undervotes 47 Overvotes 0
For United States Senator Vote for not more than 1	2059 Maggie Hassan	1824 Donald C. Bolduc	Libertarian Jeremy Kaufman 75	Undervotes 41 Overvotes 0
For Representative in Congress Vote for not more than 1	2105 Chris Pappas	1839 Karatine Leavitt		Undervotes 52 Overvotes 0
For Executive Councilor Vote for not more than 1	1828 Kevin J. Cavanaugh	2071 Ted Galsas		Undervotes 96 Overvotes 0
For State Senator Vote for not more than 1	2041 Donna M. Soucy	1841 George A. Lambert		Undervotes 109 Overvotes 0
For State Representatives Hillsborough District 16 Vote for not more than 2	1797 Maxine Mosloy Holly Hillhouse 1644	1895 William Infanline Larry G. Gagne 1820		Undervotes 840 Overvotes 0
For State Representatives Hillsborough District 38 Vote for not more than 2	1661 Joshua Query Benjamin Baroody 1824	1757 Kirk McConville Ross Berry 1749		Undervotes 1006 Overvotes 0
For Sheriff Vote for not more than 1	Christopher Connelly 3625	Christopher Connelly		Undervotes 348 Overvotes 0
For County Attorney Vote for not more than 1	Nicholas Sarwark 1699	John J. Coughlin 1980	Libertarian Nicholas Sarwark	Undervotes 319 Overvotes 0
For County Treasurer Vote for not more than 1	Richard Manzo 1694	David G. Fredette 1971	Libertarian Richard Manzo	Undervotes 332 Overvotes 0
For Register of Deeds Vote for not more than 1	Mary Ann Crowell 1786	Dennis C. Hogan 1895		Undervotes 316 Overvotes 0
For Register of Probate Vote for not more than 1	William Bryk 1702	John A. Graham 1939		Undervotes 356 Overvotes 0
For County Commissioner Vote for not more than 1	Toni Pappas 3539	Toni Pappas		Undervotes 416 Overvotes 0

**BALLOTS
CAST**

Regular Ballots Cast

3650

Absentee Ballots Cast

351

Total Number of Ballots Cast

4001

Number of Overvoted Ballots Cast

Moderator added Undervotes and Overvotes for each Office on 11/16/2022

28
11-16-2022

2022 CONSTITUTIONAL AMENDMENT QUESTIONS

Constitutional Amendment Proposed by the 2022 General Court

1. "Are you in favor of amending articles 71 and 81 of the second part of the constitution to read as follows: (Art. 71. (County Treasurers, County Attorneys, Sheriffs, and Registers of Deeds Elected.) The county treasurers, county attorneys, sheriffs and registers of deeds, shall be elected by the inhabitants of the several towns. In the several counties in the State, according to the method now practiced, and the laws of the state, provided nevertheless the legislature shall have authority to alter the manner of certifying the votes, and the mode of electing those officers; but not so as to deprive the people of the right they now have of electing them.

(Art. 81. (Judges Not to Act as Counsel.) No judge shall be of counsel, act as advocate, or receive any fees as advocate or counsel. In any probate business which is pending, or may be brought into any court of probate in the county of which he or she is judge." (Passed by the N.H. House 294 Yes 43 No; Passed by Senate 21 Yes 3 No.) CACR 21

YES 1996

NO 1198

UNDERVOTERS 806

Question Proposed pursuant to Part II, Article 100 of the New Hampshire Constitution

OVERVOTES

2. "Shall there be a convention to amend or revise the constitution?"

YES 1176

NO 2048

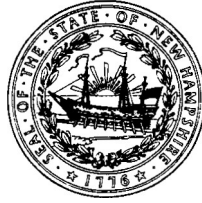
UNDERVOTERS 776

OVERVOTES

**NEW HAMPSHIRE
DEPARTMENT OF STATE**

EXHIBIT

C



David M. Scanlan
Secretary of State

Erin T. Hennessey
Deputy Secretary of State
Patricia Lovejoy
Senior Deputy Secretary of State

**RULES OF PROCEDURE FOR RECOUNTS
RSA 660**

1. The Secretary of State will operate with two-person teams for recounting.
2. For each two-person team, each candidate may have one observer.
3. Each candidate will be informed as to how many two-person teams will be conducting his/her particular recount.
4. No observer will use pencil or pen while sitting at the recount table.
5. Observers are prohibited from touching the ballots.
6. One member of the two-person team will read the ballot declaring those legal votes apparent from the voter's marks. The second member will place a mark on his/her tally sheet for the candidate(s) receiving a vote. After all the ballots have been read, the totals for each candidate for the town or ward will be determined by adding the marks recorded.
7. If there is a challenge of any ballot, it must be made immediately and the Secretary of State will rule on such challenge. If that decision is protested, the Secretary of State will attach on the protested ballot a statement of fact.
8. The candidate who requested the recount may cancel same at any time during the procedure, at which time the Secretary of State will publicly announce the candidate's request to cancel the recount and that particular recount will cease at once.
9. Once a town or ward is to be recounted, it shall be completed by the particular team or teams involved before starting another precinct.
10. The Secretary of State will maintain a tally sheet showing the old and new figures and at the completion of a recount will announce the official winner based on the recount figures.
11. At the end of each recount, if the contestant wishes to appeal further, he/she may do so to the Ballot Law Commission under the terms of RSA 665:6.
12. NO SMOKING in recount areas.
13. NO CELL PHONES in recount areas.

David M. Scanlan
Secretary of State

2022

State House Room 204, 107 N. Main St., Concord, N.H. 03301
Phone: 603-271-3242 Fax: 603-271-6316
TDD Access: Relay NH 1-800-735-2964
www.sos.nh.gov email: elections@sos.state.nh.us

Hudson	5,474	5,454	5,161	5,170	5,293	4,882
	Katsos, d	Knowles, d	Urrutia, d	Blue, d	Scatter	
Hudson	4068	4135	3894	4052	44	
District No. 14 (2)	Lascelles, r	Boehm, r	Stanieich-Burke, d	Bakshi, d	Scatter	
Litchfield	2358	2090	1702	1370		
District No. 15 (2)	Proulx, r	McLean, r	Quiroga, d	Lemay, d	Scatter	
Manchester Ward 8	2011	1946	1627	1678	3	
District No. 16 (2)	Infantine, r	Gagne, r	Mosley, d	Hillhouse, d	Scatter	
Manchester Ward 6	1895	1820	1797	1644	4	
Recount	1877	1798	1799	1643		
District No 17 (2)	Davis, r	Chase, r	Preece, d	DiSilvestro, d	Sarwark, l	Scatter
Manchester Ward 2	1243	1397	1940	2053	323	2
District No. 18 (2)	Whitlock, r	Marston, r	Smith, d	Grill, d	Scatter	
Manchester Ward 12	1295	1458	1665	1719	6	
District No. 19 (2)	Garthwaite, T., r	Garthwaite, D., r	Hamer, d	Beaulieu, d	Scatter	
Manchester Ward 10	1300	1242	1471	1425	10	
District No. 20 (2)

EXHIBIT
D

EXHIBIT

E

exhibitsticker.com

Recount

Hillsborough Dist. 16 (Manchester Ward 6)

	Infante, r	Gagne, r	Morley, f	Hill, d	Under Votes	Over Votes	Write-ins	Totals
Recount Totals	1877	1798	1799	1643	828	0	0	7945
Election Day Totals	1895	1820	1797	1644	840	0	4	8000
	-18	-22	2	-1	-12	0	-4	-55

Audit

Hillsborough Dist. 16 (Manchester Ward 6) - Governor

	SUNUNU, r	HALLDORSON,	BOYRYSENKO,	SHERMAN, d	Under Votes	Over Votes	Write-ins	Totals
Recount Total	2479	25	10	1436	32	2	12	3996
Election Day Total	2474	24	19	1435	47	0	12	4011
	5	1	-9	1	-15	2	0	-15

Recount Comparison
3972.5
3996
-23.5

ROV Ballots Cast	Variance To Recount
4001	-28.5
4001	-5