

**NOTICE OF BREACH IN APPLICATION OF ELECTION LAW & CONSTITUTIONAL VIOLATIONS**

To the Town / City Clerk: Rachel Deane

Moderator: Christopher T. Regan

Town Council Chair: Sally Needell

Councilors: Joe Friedman, James Bubar, Wayne Burton, Darrell Ford, Emily Friedrichs, Heather Grant, Eric Lund, Curtis Register

of Durham, New Hampshire.

In accordance with our civic responsibility and constitutional duty as citizens, We the People under the New Hampshire Constitution (Part I, Articles 1, 8, 11, 12, and 38), respectfully submit this Remonstrance.

We assert that the New Hampshire Constitution clearly defines election procedures. The Town Moderator, in the presence of the Selectmen and Clerks, is responsible for sorting, counting ballots, and declaring the election results. The Clerk must record these results by affidavit, affirming their accuracy, and submit them to the Secretary of State within five days, as specified in Part II, Article 32 of the New Hampshire Constitution. As designated officials, you hold the responsibility for conducting the election process in your town or city—not the Secretary of State. The NH Constitution explicitly designates you as the authority over election procedures and holds you accountable as elected officials. Additionally, you have taken an oath to uphold both the U.S. and New Hampshire Constitutions. It is important to recognize that town bond coverage does not shield officials from liability for wrongful acts. This Remonstrance serves to inform you of constitutional and federal law violations embedded in election procedures provided by the Secretary of State's office. As responsible election officers, we urge you to address these issues in preparation for the upcoming General Election on November 5, 2024.

Following our discussions with the Department of Justice, it is clear that each city and town holds the responsibility to fully understand and comply with constitutional and legal requirements. In light of this, we wish to highlight guidance from the 2024 Election Manual issued by the Secretary of State, specifically from the "Preface and Acknowledgements" section on Page IV (last two paragraphs):

*"Whenever uncertainty exists as to what action to take, we will make our best effort to assist you \*and you should consult your local legal counsel. The Attorney General's Office enforces the election laws and serves the Secretary of State as legal counsel. However, if a local election official is sued, the local election official's town or city legal counsel will represent the official. \*If disagreement exists as to proper procedure, consult with your jurisdiction's local legal counsel before acting."*

We believe that certain laws and procedures outlined in the New Hampshire election manual are incorrectly applied and conflict with both the New Hampshire Constitution and federal law. We believe these violations will occur in the November 5, 2024 election but may have occurred in both the January 2024 and September 2024 State and Federal elections.

**FEDERAL ELECTION LAW VIOLATION:**

- 1) Retention and Preservation of Records: Returning ACCUVOTE memory cards- electronic records to be overwritten or erased: Failure to retain ALL original electronic records including those used and created for Voting Works machines or Poll pads for the federally required 22 months. Violation of:

- i. 52 USC §20701 Retention and preservation of records

- ii. 52 USC §20702 Theft, destruction, concealment... of records
  - iii. 44 U.S. Code § 3301 - Definition of records
- 2) Chain of Custody Violations: Security tape applied over packing tape and security labels on election ballot boxes as recommended by the Secretary of State allowing for undetected tampering within chain of custody and possible manipulation of evidence: the ballots.
- 3) The removal of time stamps from chain of custody paperwork by the secretary of state's office allowing for the potential for recount result manipulation. By removing the checks historically found on the chain of custody documents that included the "send time" certified by the towns and the "receipt time" certified from the NH Archive building staff. This missing time certification by the parties has allowed for an undocumented time window for evidence transport.
- i Violation of HAVA Title III Sec.402
    - a Ensures Transparency and Accountability.
    - b Protects Against Voter Suppression and Fraud:
    - c Supports Federal Investigations
  - ii Violation of HAVA Title III 302- (2)Audit Capacity.

### **NEW HAMPSHIRE ELECTION LAW VIOLATION**

- 1) Processing absentee ballots both by opening the outer envelopes upon the opening of the polls and processing the ballots themselves the earliest 1 hour after polls open.
- i. Violation of RSA 659:49



2) Towns are instructed to open affidavit envelopes and “assume” the signature is the voter or an alternate name and signature represents a person with disabilities absent of notarization required for a legal affidavit.

ii. Violation RSA 659:50 (b),(c) Without a duly executed affidavit with third party notarization confirming proof of identity, the voter is disqualified as described in RSA 695:53

### **EQUAL PROTECTION VIOLATION UNDER THE 14<sup>th</sup> AMENDMENT**

Creation of 2 classes of voters violating equal protections clause of the 14<sup>th</sup> amendment:

- 1) Failure to require notarized affidavit envelope for absentee ballots. This verification of identity is necessary for preventing unqualified voters to cast ballots in NH elections. As of this draft, there are approx. 98,000 absentee ballot requests statewide representing greater than 10% of the NH total registration.
- 2) Intimidating NH voters from requesting their ballots to be hand counted in voting machine towns with a threat to question their rights in front of the public at the machine, then require them to announce their names in public so they can be reported for *breaking the law for some unspecified crime, placing them on a still secret list* to authorities. while UCOVA, Write In, and almost half of NH towns hand count ballots. ( Reference Sec. of State and NH Attorney General Joint Doc. dated Oct 23, 2024) In addition, Violation of federal law: 18 U.S. Code § 594 - Intimidation of voters

### **NEW HAMPSHIRE CONSTITUTION VIOLATIONS:**

- 1) Failure to verify voting machine election results: Part II Art 32: Town Clerks and Selectman certifying by personal witness (affidavit) that election results in towns that use

voting machines without personally counting and verifying machine results, by using a hand count or supplementary count to verify the accuracy of machine results.

- 2) Failure of the moderator to qualify absentee voters as is their duty, by accepting absentee voters without validating the identity of absentee voters by verified affidavit.

We believe that any election official who accepts or acts in accordance with the procedures mentioned above risks both personal and professional legal jeopardy. Such actions may constitute Official Misconduct (RSA 666:3) and Official Malfeasance (RSA 666:2), as well as violations of federal election law, Part II, Article 5 of the New Hampshire Constitution, and civil rights violations related to equal protection under the law.

In line with our civic and constitutional duty, we respectfully request that you consult with your town attorney to establish the appropriate, lawful procedures for election day.

Signed Jeff Berlin Date 11/4/24

Name Jeff Berlin

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