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Senate Committee on Government Operations  
State House  
Montpelier, Vermont

Subject: H.474, Miscellaneous changes to election law

Dear Committee:

Thank you for this opportunity to testify on preserving the integrity of our elections.

My participation in preserving the integrity of elections goes back to 2003 when I learned about the federal Help America Vote Act and became interested in how Vermont was implementing that Act. I helped organize and I moderated a forum in Montpelier on HAVA and how it was being implemented in Vermont by Act 59 (2003). I was one of several people who then worked with this committee in 2004 and later to place into statutes measures to reduce the ability of outside manipulation of our vote counting system. Some of those accomplishments were implementing audits (at first optional, then mandatory), always randomly selected; requiring paper ballots; requiring vote tabulators to be stand-alone machines not connected to the internet or any other machine or communications device or system.

I am also a civil engineer with much experience in analyzing contracts, rules, and regulations.

**Section 11 (p. 8)** proposes to require elections officials to determine if an unregistered write-in candidate receives more votes than any candidate on the ballot without counting the number of votes for the unregistered write-in candidate. This long-standing internal contradiction in the statute was noted at last week's hearing by one of you, Sen. Vyhovsky I believe it was.

[Recommendation Rework all of subsection \(f\) to remove the internal contradiction.](#)

**Section 14 (p. 11)** proposes to require all candidates to file campaign finance reports for any amount of campaign expenses. You discussed this section last week.

Researchers also have an interest in having all candidates make a filing of some kind. In 2013, this committee was considering campaign finance. This was just after the U. S. Supreme Court's ruling on super PAC's. Some legislators were running scared of being overwhelmed by advertising by super PAC's. They were discussing raising the limits of campaign contributions to counter this. Sitting in on the hearings realized that they each knew how much they had raised and had no idea how much others had raised.. The previous December I had a public affairs radio program. I researched how much money had been raised by each of the 33 representatives and senators whose district was reached by the station's signal. I had to do it the hard way because I had to look up each of the scanned reports and add them together for each legislator. As a result, I had the best data available on how much money had been raised during that election cycle and on the types of filing errors committed by candidate's treasurers. So I presented my findings to both government operations committees. I had then questions about candidates with no reports. Did they have no expenditure? Did they spend less than the minimum reporting amount? Did they not file when they should have? So I support requiring each candidate to report whether or not they have any expenditures.

[Recommendation. Retain section 14.](#)

**Section 26 (p. 20)** proposes to remove one of the safeguards of the integrity of our election system. The section will not bring the counting of ballots during audits into alignment with the method used to conduct the six most recent audits (2014 through 2024).

Retaining the requirement that the polling places to be audited be selected randomly.

Section 26 as proposed will remove the requirement that polling places that are to be audited be selected randomly. Our checks on the integrity and security of our vote counting and reporting relies on the audits being random. That is because our counting procedures still have one major flaw. We have no specific check on the company that provides the memory cards. The random audit is the closest thing we have to a check on the company's work. The audit is designed so that it cannot overturn an election if the audit indicates the wrong candidate was declared the winner. I acknowledge that has never happened.

I was stunned and appalled when I learned at the audit of the 2024 general election that the polling places were not selected randomly. I was also stunned to learn that the selection process automatically eliminated all polling places that had been audited in any previous audit. This removed 51 polling places from those eligible to be audited. That is perhaps 15% to 20% of polling places that may no longer be audited. I find that unacceptable, and I hope you do, too.

I have considered in the past that there should be leeway for one or two polling places to be chosen based on what appear to be anomalies in the results. The remainder of the places would be truly random. I have not come up with a way to determine an anomaly and to have it selected, so I have not pushed for this limited non-random selection.

Bringing the auditing counting procedure into alignment with present practice.

Statute now requires that the counting of ballots during an audit be counted the same ways they are counted after the close of the polls. This means that ballots that were counted by individuals after the close of polls will need to be counted by individuals during an audit. And that ballots counted by tabulator will need to be audited by tabulator.

Audits began in 2006 and required individuals to count the ballots. The process of individuals counting ballots was tedious and allowed only two offices to be counted in two to five polling places. Four audits were conducted using this process.

Beginning in 2014, the audits were conducted by a company named Clear Ballot. Clear Ballot uses high speed scanners to scan all ballots and to count them. This system allows all offices to be audited in six towns, using fewer individuals. The Clear Ballot System is independent of our vote tabulators and provides an independent check on the tabulators and their memory cards.

The secretary of state's rule has gotten out front of the statute.

**Recommendations:**

- Delete the proposed amendment to § 2493 (a)(3)(A). Deleting this part will retain the requirement that audited polling places be randomly selected.
- Amend § 2493 (a)(3)(C) to match the Secretary of State's rule.

Suggested language for section 26 is:

**§ 2493. Rules for use of vote tabulators; audits**

(a) The Secretary of State shall adopt rules governing the use and the selection of any vote tabulator in the State. These rules shall include requirements that:

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\* \* \*

(3)(C) The Secretary shall open the ballot bags and conduct the audit as follows

(i) ~~in the same manner as ballots are counted under~~ If the audit process is to be conducted using a hand count of the ballots, the count shall be conducted in substantially the same manner as provided for in sections 2581 through 2588 of this chapter .

(ii). If the audit process is to be conducted using an automated tabulation of the ballots, it shall be conducted using a different, independent tabulation system than the tabulation system used on the night of the election. The system used to perform the audit shall be selected by the Secretary and shall meet the same standards for certification as the election night vote tabulation system is required to meet.

(iii) The Secretary shall publicly announce the results of the audit as well as the results from the original return of the vote.

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**Section 29 (pp. 22 and 23) in 1 V.S.A. § 310** proposes to establish that the voters of a municipality meet the definition of a public body. Then it excludes them from having to comply with the open meeting law at annual and special meetings. I cannot conceive how anyone can conceive that the voters of a municipality meet the definition of a public body. That definition is contained in section 29. And even if they did meet the definition of a public body, the annual and special meetings are warned with a full agenda long enough in advance of the meeting to satisfy the requirements of public notice. And if voters were a public body, the section would require that any two of them discussing municipal business would have to warn that they were holding a meeting. As far as I know there is no requirement for a minimum number of voters to be present at an annual or special meeting. Thus, in theory, one could be considered a quorum, because if only one voter shows up and votes, then presumably that voter's votes would determine the election results.

Recommendation. Get rid of section 29.

**Section 31 (p. 24)** proposes to amend § 2640 (b)(3) to require an affirmative vote of a town to rescind a previous vote of a town. The purpose might be to prevent a selectboard or city council or board of trustees or prudential committee from overturning a ballot article approved by voters. The proposed amendment is a simple statement and potentially difficult to implement.

I heard no testimony on this last week, so I am not even sure what types of ballot articles are covered.

The implementation questions. How long will this last? What types of ballot articles are covered? I cannot formulate meaningful comments on this without knowing how it would be applied.

Recommendation. Take more testimony to clarify this issue, so we all have a better understanding of why this has been proposed and what its effects might be.

**Section 31 (p. 25)** proposes to amend § 2642(a)(3)(D) to allow a lead petitioner to withdraw a petition before an election. I see several problems with this. A petition has signatures from multiple individuals who are requesting that the subject of the petition be placed on the ballot. The Secretary of State provides sample petitions: one for binding articles, the second for advisory items. Neither form has any requirement to identify a lead petitioner. The sample form for a binding article is:

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*Sample petition to request a binding article for an annual or special meeting, prepared by the Elections Division of the Vermont Secretary of State:*

Petition of Legal Voters of Town/School District to the Legislative Body

We the undersigned legal voters of Town/School District hereby petition the [Selectboard/School Board] to add the following article(s) to the warning for the Town/School District Annual Meeting to be held on [Month,Day,Year]:

1. Shall the Town of \_\_\_\_\_ . . .

The sample for a nonbinding article is similar.

The links to the samples are available at:

[https://outside.vermont.gov/dept/sos/Elections%20Division/election%20info%20and%20resources/town%20meeting%20and%20local%20elections/local%20petitions/sample\\_binding\\_article.pdf](https://outside.vermont.gov/dept/sos/Elections%20Division/election%20info%20and%20resources/town%20meeting%20and%20local%20elections/local%20petitions/sample_binding_article.pdf)

and

[https://outside.vermont.gov/dept/sos/Elections%20Division/election%20info%20and%20resources/town%20meeting%20and%20local%20elections/local%20petitions/advisory\\_article.pdf](https://outside.vermont.gov/dept/sos/Elections%20Division/election%20info%20and%20resources/town%20meeting%20and%20local%20elections/local%20petitions/advisory_article.pdf)

This part of section 31 proposes to allow an unidentified individual to withdraw the entire petition.

There are also problems with withdrawing a petition at all.

If a petition is withdrawn, that is a wrong to all those who signed the petition and are expecting to vote on the article requested by the petition. This seems like a form of disfranchisement to me: depriving the petitioners of a right to vote on that ballot item.

This part of section 31 allows an unscrupulous person to gather signatures on a ballot item that the person opposes. That person can then thwart the will of the other petitioners by withdrawing the petition without notice to the other petitioners, thus preventing the article from appearing on the ballot

[Recommendation. Remove section 29 from H.474.](#)

**Section 31 (p. 28)** proposes to allow the selectboard or city council or trustees to correct a technical error within the content of a ballot. The scope of what is considered a technical error does not seem to be defined in either chapter 55 (local elections) or 51 (conduct of elections). So the purpose and effect of this proposed amendment is not clear.

[Recommendation. Take testimony on examples covering the range of what is considered a technical error](#)

I ask that you find these recommendations have merit and that you incorporate them into H.474.

Sincerely  
Thomas Weiss

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