From: Susan DeRoy
Sent: Monday, October 26, 2026 9:53 PM
To: ~Democratic House Members <DemocraticHouseMembers@gc.nh.gov>; ~House Municipal and County Govt <HouseMunicipalandCountyGovt@gc.nh.gov>; ~Republican House Members <RepublicanHouseMembers@gc.nh.gov>; ~Senate Democrats <SenateDemocrats@gc.nh.gov>; ~Senate Election Law and Municipal Affairs <SenateElectionLawandMunicipalAffairs@gc.nh.gov>; ~Senate Republicans <SenateRepublicans@gc.nh.gov>; ~House Election Law Committee <HouseElectionLawCommittee@gc.nh.gov>; Attorneygeneral@nh.gov <Attorneygeneral@nh.gov>; GovernorAyotte@governor.nh.gov <GovernorAyotte@governor.nh.gov>; bcook@sheehan.com <bcook@sheehan.com>
Cc: voting.section@usdoj.gov <voting.section@usdoj.gov>
Subject: Failure to Ensure Component-Level Examination, Transparency, and Verification of Electronic Ballot-Counting Devices in Violation of Statutory Duties

October 26, 2026
New Hampshire Ballot Law Commission
c/o New Hampshire Secretary of State
State House, Room 204
107 North Main Street
Concord, NH 03301
Re: Failure to Ensure Component-Level Examination, Transparency, and Verification of Electronic Ballot-Counting Devices in Violation of Statutory Duties
Dear Chairman Cook, Members of the Ballot Law Commission, and Secretary of State Scanlan:
We write to address a serious deficiency in the oversight of electronic ballot-counting devices now in use across New Hampshire. This issue was brought to the BLC with a formal notice on 9/17/26, with a follow-up to emerging issues on 9/23/26. Two NH Attorney General complaints were filed on 9/28/26. The BLC met on 10/19/26, and without any remedy, a subsequent federal civil rights complaint and a HAVA complaint were filed on 10/24/26. There has been no resolution, and we are mere days before the midterm elections.
The Ballot Law Commission and the Secretary of State share statutory responsibility for examining, approving, and safeguarding the devices that count ballots. That responsibility has not been fully met for the VotingWorks and Dominion/Liberty Vote ImageCast systems municipalities purchased and deployed after the Commission's conditional certification. The statutory responsibility to protect the citizens' ballot is one of our most sacred responsibilities. We have failed them. The conditionally approved voting machines purchased across the state hold no examination for network access – None.
Statutory duties
RSA 656:41 requires the Commission to "act as a board to examine devices for the electronic counting of ballots." No device may be used unless it "is of a type so approved", and any device that is altered must be re-approved before use. RSA 656:42, X states: "No electronic ballot counting device shall have access to or be connected to the Internet." This prohibition was reinforced as an explicit condition of BLC Order 2023-3, which

required no networking capacity. The Commission and the Secretary of State are charged with safeguarding the security, accuracy, and public trust of the election process.

The record and the shortfall

In September 2023, the Commission conditionally certified the VotingWorks and Dominion ImageCast Precinct devices (BLC Order 2023-3, effective March 1, 2024), subject to no networking capacity and eventual EAC VVSG 2.0 certification. Municipalities then purchased and deployed the machines with HAVA funds administered by the Secretary of State. The Commission did not examine the specific units delivered, did not require a bill of materials, and has not verified that field machines match the configuration presented. Towns do not have a parts list. Contracts contain no scanner designation, no right to open the sealed units, and no affirmative statement confirming the absence of networking capability. Laboratory testing of a vendor-submitted sample is not the examination of the devices in use that RSA 656:41 requires.

The ImageCast Precinct 2 User Guide states that results "can be transferred directly from the ICP2 via an external wireless USB modem." Without a bill of materials and without any right or process to open the units' Commission Machine towns purchased, it is impossible to verify whether modem hardware or related capability remains present. Manufacturer assurances and vendor-sample testing do not substitute for examination of the field units. This leaves an unresolved question of compliance with RSA 656:42, X and the no-networking condition of BLC Order 2023-3.

Arguments presented at the recent hearing

When we met at the Ballot Law Commission, instead of being met with acknowledgement of the citizen concern and a plan to address it, the Secretary of State's office advanced arguments to dismiss these issues. Those arguments do not close the gap.

It was stated that the Commission is not responsible for unit examination. In 2010, the Commission itself ordered that machines be opened and examined and required the removal of networking capability before re-approval. That was a Commission order directed at the specific units then in the towns.

It was stated that type approval, laboratory testing, and EAC certification satisfy the duty. That testing is performed on a vendor-supplied sample. It does not examine the camera, the scanner, and its firmware, or the computer; those components are passed through. For the ImageCast path relevant to systems in use, there was no telecommunications examination; the vendor self-certified with a statement. That is not an examination of whether a machine can go on a network.

It was stated that logic-and-accuracy testing and seals close residual risk and that network capability has been permanently disabled. Standard L&A uses a small known deck in test mode and does not confirm the absence of network capability. The Commission's own December 14, 2021, standards required no networking capacity, including other networks or technology which can be compromised; that broader standard has not been withdrawn. Public documentation of residual modem capability and the absence of any verification of acquired units leave both the statute and the Commission's condition unmet.

A Nashua moderator—a Senior Systems Analyst with professional experience dating to 2016—testified that he personally recorded radio-frequency readings emanating from an ImageCast machine in use during the primary in his ward. The room fell into dead silence.

Not a single member of the Commission asked a substantive question or requested the raw data, methodology, or time stamps. A credentialed local official presented a concrete, election-day observation that directly implicates the statutory prohibition on networking capability, and the body charged with examining these devices offered nothing. That silence is not neutrality. It is an abdication of the examination duty imposed by RSA 656:41 and the security mandate of RSA 656:42, X.

Secretary of State Scanlan has publicly acknowledged the limitations of these devices, stating after the October 19, 2026, hearing: "We have never said these devices are foolproof and that it is impossible for them to be hacked." If the devices cannot be guaranteed free from the possibility of unauthorized alteration, the examination duty under RSA 656:41 and the no-internet prohibition under RSA 656:42, X becomes even more critical. The absence of unit-level inspection and component transparency leaves an unresolved gap between the risk the Secretary of State has recognized and the verification the statutes require.

Requested actions

We respectfully but firmly request that the Commission and the Secretary of State take the following steps without delay:

1. Require both vendors to produce and publicly disclose a complete bill of materials for the machines currently deployed, together with a process for field verification that installed units match the approved configuration and satisfy the no-networking-capacity condition of BLC Order 2023-3 as well as RSA 656:42, X.
2. Conduct or direct independent physical inspection of a statistically meaningful sample of field units to confirm components and the absence of networking capability and publish the results.
3. Formally confirm which versions were purchased by which municipalities and whether those versions satisfied all conditions of BLC Order 2023-3 at the time of purchase; require re-approval under RSA 656:41 for any unapproved alterations before continued use.
4. Establish prospective requirements so that no future device may be offered for municipal purchase until a materials list is provided, inspection rights are secured, and unit-level verification has occurred.
5. Include clear guidance in the Election Procedure Manual confirming that municipalities remain responsible for ensuring their devices comply with RSA 656:42, X and the no-networking condition of BLC Order 2023-3, and that manufacturer statements alone do not discharge that duty.

New Hampshire's election system depends on both accuracy and public confidence. Allowing widespread municipal purchase and deployment of machines without component-level examination, a materials list, or field verification of the delivered units is a material failure of the examination and transparency standards the statutes impose. I urge you to correct this deficiency promptly and publicly so that the machines counting our ballots can be confirmed to be the devices the Commission approved and the law requires.

Sincerely,

Representatives

Susan DeRoy, Richard Nalevanko, Glenn Bailey, Diane Kelley, Claudine Burham

Mary Murphy, Mary J, Ford, Tom Kaczynski, JD Bernardy, Michael Harrington
cc:
Governor Kelly Ayotte
New Hampshire House Election Law Committee (Chairman Ross Berry)
Harmeet Dhillon, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice
Attorney General of New Hampshire
Senate Election Law and Municipal Affairs Committee