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SENT VIA EMAIL TO SARAH.COPELANDHANZAS@VERMONT.GOV

Vermont Secretary of State
128 State Street
Montpelier, VT 05633
Attn: Secretary of State Sarah L. Copeland Hanzas

April 7, 2026

RE: Media Access to Vote Counting and Need for Statewide Clarity

Dear Secretary of State Copeland Hanzas,

We are writing on behalf of the New England First Amendment Coalition, the Vermont Press Association and the Vermont Journalism Coalition. Our organizations have long considered the Secretary of State's office a vital partner in safeguarding Vermont's constitutional commitment to open government and have been grateful for your excellent guidance on public records, open meetings and beyond.

We write with concern stemming from events on Vermont's Annual Town Meeting Day on March 3 when at least one local newsroom was prevented from fully observing, recording and covering the vote counting process in Rutland City. We understand that, historically, Vermont journalists have been permitted to oversee and record such vote counting, so long as that observation does not interfere with the process. The events last month appear to us to be a troubling shift in practice.

With high-stakes elections on the horizon, we are concerned about the lack of a clear, state-wide policy that protects the rights of journalists to observe and record the vote counting process. To ensure that towns and municipalities fulfill their legal obligations — and, hopefully, to avoid potentially burdensome disputes reaching your office during vote-counting itself — we strongly recommend issuing guidance to all towns and municipalities on their obligation to provide press access in the future. To the extent helpful, we would welcome the opportunity to collaborate in the drafting, promotion, or in any other form of assistance to ensure clarity well before elections this fall.

In addition to taking the steps outlined below, we welcome you and your colleagues to join the next meeting of NEFAC's Vermont team via Zoom at noon on May 6 to discuss this issue. We are also able to accommodate an earlier day and time that may be more convenient for you.

Events of March 3

It is our understanding that the following events occurred on March 3 as Rutland officials conducted a vote counting in the town's mayoral race which was decided entirely by write-in ballots:

- As a courtesy, a WCAX reporter visited the Rutland City clerk's office in the morning to give advance notice of his intent to observe and record the vote counting process.
- The clerk responded that only election workers were permitted in the room where the vote counting would occur. This is contrary to past practice for at least 50 years of news coverage.
- The reporter soon returned to the clerk's office and cited 17 V.S.A. § 2581, which provides for public observation. The clerk then called the Secretary of State's (SOS) office with the reporter present.¹ The SOS representative acknowledged that observers, including reporters, are permitted, but stated that still photography was allowed while video recording was not. This is believed to be the first time that reporters had encountered a no-video-recording policy.

*Affiliations appear for
identification purposes only.*

- WCAX News Director Roger Garrity contacted SOS directly to contest the ban on video recording. An hour later, SOS Chief of Staff Bryan Mills called back on behalf of you with the office's formal position: there is no "affirmative right" to any form of photography in either the statute or existing guidance and the SOS would defer entirely to the local official's discretion. The clerk then permitted only still photos.
- The WCAX reporter attended vote counting at one of the election wards, stood where instructed, and took a small number of still photos on his phone. Video documentation of the process was denied.

Right to Observation

Your office has noted that Vermont's election statutes do not contain an explicit, affirmative authorization for video cameras at vote counting. Consistent with the First Amendment and Vermont's constitutional commitment to open government, Mr. Garrity asserted, and we agree, that the absence of an explicit prohibition on video recording should not be construed as one, particularly where press access and democratic transparency are at stake.

The statute affirms the right to observe, but does not spell out the particulars of what forms "observation" may take. That is unsurprising: open government provisions rarely specify particular technologies or means of newsgathering, instead embracing larger principles of public transparency. But in a modern media environment where video is one of the primary ways the public receives information, audio-visual recording *is* observing.² By deferring entirely to local officials to define the scope of "observation" and not honoring the long-standing practice of allowing members of the press to record vote counts, there will inevitably be inconsistent and constitutionally suspect policies enforced throughout the state. First Amendment protected newsgathering will be suppressed.

Need for Clear Policy

The First Amendment's protection of a free press exists precisely for moments like these. The Supreme Court has long recognized that newsgathering is a constitutionally protected activity and that the press serves as a surrogate for the public in observing governmental functions. The counting of votes is among the most significant of those functions. Restricting the ability to document that process, with no articulable harm and no firm statutory basis, raises serious constitutional concerns.

As your office knows, we are approaching the 2026 midterm elections, some of which may be closely contested. Public confidence in electoral integrity has rarely been more consequential. Allowing journalists to document the vote counting process with video deters misconduct, creates a contemporaneous and verifiable record, provides the public with direct evidence of how their votes are counted, and builds the institutional trust that democratic legitimacy requires. The answer to this moment is more transparency, not less.

We are also concerned about how bad actors or those seeking to amplify misinformation might seize on a patchwork approach to this issue; in the current election environment, it is not difficult to imagine a scenario where one town's refusal to allow video recording — while others welcome it — is held up as evidence of malfeasance. We believe that a uniform, statewide policy is therefore crucial for combatting misinformation and protecting local administrators from possible election conspiracies.

We therefore respectfully urge the Secretary of State's office to:

- Promptly clarify that a local official's denial of video access is inconsistent with Vermont's tradition of open elections, and that openness, not restriction, is the default presumption; and
- In advance of the 2026 election, issue clear, affirmative statewide guidance explicitly affirming that members of the press have the right to observe and record, including by video, the vote counting process, subject to only reasonable restrictions such as those protecting the secrecy of individual ballots.

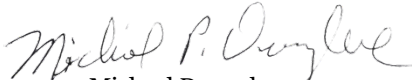
We would be thrilled to assist with any aspect of a process to ensure statewide standards for video recordings in election administration. In addition to the steps above, that could entail: establishing minimum uniform standards for press access to vote counting that apply across all municipalities, so that access rights do not vary arbitrarily from town to town; working with the Legislature to codify these access rights in statute, providing unambiguous direction for future press, local officials, and future administrations alike; or engaging the press and public in the rulemaking process, as your March 4 communication with Mr. Garrity indicated your intent to do. We welcome that conversation and commit to participating constructively.

We appreciate your acknowledgement that the media has a role to play in providing transparency and building public confidence in elections, and the work your office has already done to ensure that Vermonters remain informed about the essential workings of their government. In this fraught environment for election administrators, we ask you now codify Vermont's longstanding practice of honoring the press's constitutional right to observe ballot counting before the next election cycle. Doing so will ensure full transparency, serving the public and election officials alike; avoid the possibility of high-stakes disputes over access unfolding in real-time on Election Day; and help maintain Vermont's well-earned status as a leader in election integrity. The alternative — endorsing a patchwork of policies where individual municipalities might deny press access and video recording — risks undermining public trust, introducing confusion, and eroding a long-standing practice of honoring the press's constitutional right to observe.

Thank you for your consideration. We welcome the opportunity to discuss this matter further.

Sincerely,


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Michael Donoghue
VPA Executive Director


Kristen Fountain
VJC Interim Coordinator

¹ According to 17 V.S.A. § 2581, “Persons who are not election officials may remain within the polling place but outside the guardrail, or within a designated area in any other room where ballots are being counted, provided that they are able to observe the counting process, but that they do not in any way interfere with the orderly count and return of votes.”

² As NEFAC recently explained to the U.S. Court of Appeals for the Second Circuit in the right-to-record case *Massimino v. Benoit*, “Recording warrants protection as an essential precursor to speech, it is often expressive in its own right, and it facilitates the right to gather and disseminate information. Each of these functions falls independently within the sphere of activity the First Amendment protects. Together, these three functions strongly support and clearly establish First Amendment protection for the act of recording in public.” See *NEFAC, First Amendment Scholars Argue for Right to Record in Second Circuit*, <https://nefac.org/news/nefac-first-amendment-scholars-argue-for-right-to-record-in-second-circuit>.