

TESTIMONY

BEFORE THE LEGISLATURE OF THE VIRGIN ISLANDS
Committee on Government Operations, Veterans Affairs, and
Consumer Protection
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1 Introduction

2 Good morning, Honorable Chairman Avery L. Lewis, distinguished
3 members of the Committee, colleagues, members of the press, and
4 the public. I am Caroline F. Fawkes, Supervisor of Elections for the
5 Virgin Islands, a Certified Elections Registration Administrator
6 (CERA).

7 I appreciate this opportunity to provide testimony on Bill No. 36-
8 0187, which proposes amending Title 18, Virgin Islands Code,
9 Chapter 23, Section 622 to require the Board of Elections to count
10 by hand votes deposited in a ballot box.

11 Election integrity in the Virgin Islands depends on voting systems
12 that are scalable, secure, and defensible—hand counting is none of
13 those.

14 **Core Election Principle**

15 A comprehensive election integrity approach should strengthen
16 existing systems rather than replace them with less efficient
17 methods.

18 Elections rely on three components: people, processes, and
19 technology. When these elements work together, supported by audits
20 and transparency, they deliver accurate, timely, and trustworthy

results. Mandating hand counts as the primary method of tabulation does not strengthen election integrity. It undermines it.

Key Risks of Hand-Counting Ballots

1. Accuracy Issues

- **Human error:** Fatigue, distraction, or bias can lead to miscounts, especially when tallying thousands of ballots.
- **Complex ballots:** Modern elections often include multiple races and propositions, making manual tallying prone to mistakes.

2. Time and Efficiency Problems

- **Slow process:** Counting by hand is far slower than using certified machines, delaying results for days or weeks.
- **Scalability limits:** Hand counting ballots does not scale effectively. As turnout increases or ballots become longer, the time, staffing, space, and supervision required for hand counts grow exponentially.

3. Transparency and Trust Concerns

- **Inconsistent procedures:** Without standardized methods, different teams may interpret ballots differently, undermining fairness.

- **Public confidence risk:** Errors or delays can fuel conspiracy theories and reduce trust in election outcomes.

4. Resource Strain

- **Labor-intensive:** Hand counts require large numbers of trained counters, often working long hours under pressure, while the public and the candidates await Election night results.
- **Costly logistics:** Organizing secure facilities, supervision, and recounts adds significant expense compared to machine tabulation.
- **Security Vulnerabilities:** Increased handling of ballots raises risks of tampering or accidental damage.

It is important to note that most hand counted ballots are from recounts or ballots which a tabulator cannot read.

American Samoa is the only U.S. territory which hand count votes.

They only have three contests on their ballot (Governor/Lt. Governor,

Delegate to Congress, and Legislature) with a total average voter of

15,000. They finish counting their ballots by midnight on election

night. In March of 2025, they were coordinating with Election System

and Software (ESS) to purchase the DS200 Tabulator to improve the

process of canvassing. In the past, the Virgin Islands have had eight (8) contests on a ballot, including a referendum. We have a total average voter of 22, 244. We have 55,955 registered voters; we must plan as if all 55,955 voters are going to participate in all elections.

Across the nation, the use of hand counting ballots is decreasing and is considered the least effective way of counting ballots.

According to Mr. Charles Stewart III, who directs the MIT Election Data and Science Lab, I quote “Computers – which ballot scanners rely on are particularly good at tedious, repetitive tasks. Humans are bad at them.” Close quote.

Real-world hand counts have produced error rates as high as 25 percent. Hand counts introduce variability in ballot interpretation and increase the likelihood of challenges, delays, and litigation, particularly in close or high-turnout elections.

The Proper Role of Hand Counts

Hand counting does have a legitimate role, but that role is audits and recounts, not primary tabulation.

The Virgin Islands has conducted post-election audits since 2014.

Election audits are a critical component of a secure and trustworthy election system. They provide independent verification that election

81 results accurately reflect the votes cast by comparing machine
82 tabulation results with voter-marked paper ballots. Audits reinforce
83 public confidence by demonstrating that election outcomes are not
84 accepted on faith alone, but are confirmed through transparent,
85 documented review procedures conducted under established rules.
86 Audits also preserve the benefits of modern election technology while
87 maintaining accountability. Electronic tabulation allows for speed,
88 consistency, and efficiency on election night, while post-election
89 audits provide a safeguard against rare errors or anomalies before
90 certification. This balanced approach avoids unnecessary delays in
91 reporting results and reduces the risks associated with full hand
92 counts, such as increased costs, staffing burdens, and human error.
93 Importantly, audits are transparent, cost-effective, and legally
94 defensible. They are conducted in a manner open to observation and
95 are structured to expand if discrepancies are identified, providing a
96 clear corrective path when needed. Routine audits strengthen the
97 integrity of the electoral process, support continuous improvement
98 in election administration, and align with nationally recognized best
99 practices for accurate, secure, and credible elections.

This hybrid approach—electronic tabulating machines first, hand counts when warranted is the national best practice.

Time of Ballot Counting

Bill No 36-0187 states “Ballots may not be counted before 8:00 p.m. on the day of the election.” This Bill also restricts when counting may begin on Election Day from 7:00 p.m. to 8:00 p.m. Delaying counting unnecessarily can increase skepticism and confusion, rather than confidence.

Delaying the start of ballot counting from 7:00 p.m. to 8:00 p.m. introduces unnecessary inefficiencies into the election-night process without providing any corresponding enhancement to election security or integrity. This one-hour delay reduces available tabulation time, pushes unofficial results later into the evening or early morning, and compresses subsequent reconciliation and canvassing activities. Even modest delays can compound across precincts and districts, slowing the overall reporting process and placing additional strain on election administration.

A delayed start also increases administrative and fiscal burdens.

Election workers are required to remain on duty longer, increasing

fatigue at a critical stage of the process and driving overtime and staffing costs. Fatigue is a recognized risk factor for clerical and reconciliation errors, particularly after an extended Election Day. These risks are avoidable when tabulation is permitted to begin promptly upon the close of polls.

Finally, delays in counting can negatively affect public confidence. In modern elections, prolonged gaps between poll closure and reporting often invite speculation, misinformation, and doubt, even when the process is functioning properly. In close or high-profile contests, delayed reporting may also increase the risk of legal challenges and public controversy. Permitting timely tabulation supports transparency, reduces unnecessary uncertainty, and strengthens trust in the electoral process without compromising accuracy or security.

The DS200 Precinct Tabulator

The DS200 tabulator strengthens transparency and does not replace it.

Key features include:

- Voter-marked paper ballots retained as permanent records
- Secure ballot storage with tamper-evident seals

- Encrypted data and detailed audit logs
- Pre- and post-election testing
- Full federal certification under EAC standards
- By minimizing ballot handling and maximizing auditability, the DS200 tabulator reduces risk and improves accuracy.

Prior to deployment, each DS200 tabulator is secured with tamper-evident seals. At the close of polls at 7:00 p.m., the Presiding Judge formally closes the voting center and begins the required closing procedures for return to the Elections Office. The Judge removes the encrypted removable media and the results tapes from the DS200 and places them into a sealed transport bag. The Judge is then escorted by the Virgin Islands Police Department to the Elections Office, maintaining documented chain-of-custody throughout transport.

Upon arrival at the Elections Conference Room, the sealed bag is opened by the Presiding Judge in full view of Board of Elections members, election staff, candidates, members of the media, and the public. The encrypted removable media is removed by the Judge and handed directly to the Deputy Supervisor of Elections. The media is then transferred to the Voting Technician, who inserts it into the

160 Electionware tabulation system for processing. The system tabulates
161 the results, generates reports, and securely transmits encrypted data
162 to St. Croix, where the Supervisor is assigned, through a secure
163 cloud-based connection, where the data is downloaded to a protected
164 computer.

165 Election results are then reviewed by election staff and the Board of
166 Elections prior to release. Once verified, the results are provided to
167 the Webmaster for posting on the official Elections System website
168 and are simultaneously made available to the media and the public.
169 This process ensures transparency, security, and public observation
170 at every stage, while preserving the integrity of the tabulation and
171 reporting process.

172 **Legal and Statutory Foundation**

173 Virgin Islands law already resolves this issue.

174 In *Bryan v. Abramson* (2010), the Superior Court of the Virgin Islands
175 held that the paper ballot system was expressly repealed by the
176 Election Reform Act of 1984, applying the long-standing last-in-time
177 rule of statutory interpretation. The Court concluded that electronic
178 voting systems lawfully replaced hand-counted paper ballots.

179 The Court further determined that:

180 There is no legal right to demand hand-counted paper ballots in lieu
181 of electronic systems.

182 The former paper ballot system was abolished as a matter of law, and
183 rules and regulations promulgated by the Supervisor of Elections and
184 the Joint Boards of Elections are fully authorized under Title 18.

185 That ruling remains controlling precedent. A copy of the Court Order
186 has been submitted along with my Testimony.

187 Additionally, Title 18, Section 524 expressly authorizes the Joint
188 Boards of Elections to adopt procedures that ensure correctness,
189 impartiality, and efficiency using electronic systems. To be sure, the
190 voters do have choices, they can vote by a paper ballot or an
191 activation card-electronic, however, they must all be “tabulated” by
192 the DS 200 Tabulator.

193 **Statutory Conflicts and Implementation Timeline**

194 If Bill No. 36-0187 were enacted, it would not operate in isolation. Its
195 requirements would conflict with multiple existing provisions of Title
196 18 of the Virgin Islands Code, as well as duly adopted rules and
197 regulations of the Joint Boards of Elections, all of which are
198 structured around electronic tabulation.

199 Passage of this bill would therefore necessitate:

200 Revisions to multiple sections of Title 18 governing ballot handling,
201 tabulation, canvassing, audits, and certification;
202 Amendments to Board of Elections regulations and procedures;
203 Revisions to election manuals, training protocols, and security
204 procedures; and
205 Procurement, staffing, and logistical changes to support a
206 fundamentally different counting system.

207 These changes cannot be implemented administratively alone. They
208 would require additional legislative action to ensure statutory
209 consistency and legal enforceability.

210 Importantly, election laws, rules, and procedures must be finalized
211 well in advance of an election. The statutory deadline for
212 implementing changes affecting the 2026 gubernatorial general
213 election cycle is April 12, 2026, because Early Voting begins on
214 October 12, 2026. Attempting to revise multiple interrelated laws and
215 operational systems within that period would pose a substantial risk
216 of confusion, inconsistent application, and legal challenge.

217 **Response to Amendment No. 36-662 (Amendment in the Nature**
218 **of a Substitute to Bill No. 36-0187) received on January 21,**
219 **2026.**

220 Amendment No. 36-662 would fundamentally alter the
221 administration of elections in the Virgin Islands by mandating voter-
222 requested paper ballots, segregated ballot boxes, and precinct-level
223 manual tabulation of those ballots. While framed as an expansion of
224 voter choice, the amendment introduces significant operational,
225 legal, and logistical risks that outweigh any asserted benefit.

226 First, the amendment creates a dual, parallel voting and tabulation
227 system at every polling place, requiring election officials to administer
228 electronic voting and manual hand counting simultaneously. This
229 disjointed process substantially increases complexity at the precinct
230 level, particularly during poll closing and results reporting. The
231 requirement that hand-marked paper ballots be manually counted at
232 the voting center immediately after polls close will delay reporting,
233 extend the workday for poll workers, and increase the likelihood of
234 errors caused by fatigue, time pressure, and inconsistent application
235 of voter-intent standards.

236 Second, the amendment imposes strict segregation and
237 reconciliation requirements that are highly vulnerable to human
238 error. The detailed accounting mandated in subsection (i) including
239 issued ballots, spoiled ballots, replacements, counted ballots, and

unused ballots—adds multiple reconciliation points that must be performed accurately under election-night conditions. Any discrepancy, however minor, risks undermining confidence in results and may invite litigation or challenges, even where no fraud or misconduct has occurred. Electronic tabulation systems are designed specifically to reduce these reconciliation risks through automated controls; this amendment moves in the opposite direction. Third, the prohibition on scanning or electronically tabulating voter-requested paper ballots eliminates the ability to use existing certified equipment for verification or redundancy. By mandating that hand-marked paper ballots may only be counted manually, the amendment removes an important safeguard against arithmetic mistakes and inconsistent tallying. Manual tabulation is inherently less scalable, less efficient, and more susceptible to variation between voting centers, particularly in high-turnout elections or multi-page ballots with numerous contests.

Fourth, the amendment significantly increases staffing, training, and cost burdens. Requiring not fewer than three election officials to conduct public manual tabulation at each polling place, in addition to staff needed for standard voting operations, will strain an already

limited pool of trained poll workers. The Virgin Islands Elections System would be required to recruit, train, and retain additional personnel, revise procedures, redesign training materials, and expand Election Day oversight, all without clear funding provisions in the amendment.

Fifth, the amendment creates new legal and administrative exposure for the Supervisor of Elections and the Board of Elections. Mandatory public hand counting at the precinct level, combined with observer access, increases the risk of disputes over voter intent, interruptions, and allegations of irregularities. Even when conducted properly, manual tabulation processes are more difficult to defend because they rely heavily on subjective judgment rather than repeatable, auditable system logic. This amendment therefore increases the likelihood of post-election challenges rather than enhancing confidence in outcomes.

Finally, the amendment does not identify any failure demonstrated in the current electronic tabulation system that would justify such a sweeping change. Existing electronic voting systems already provide auditable records, established chain-of-custody procedures, and post-election verification mechanisms. Replacing or supplementing

280 the electronic tabulating systems with mandatory hand counting
281 introduces risk without addressing a documented problem, contrary
282 to best practices in modern election administration.

283 Hand counting ballots will significantly degrade election night
284 reporting and public transparency. The current electronic tabulation
285 system produces immediate, verifiable precinct-level results, showing
286 exactly how many votes were cast at each Voting Center for each
287 candidate. Hand counting eliminates this capability, replacing timely
288 and standardized reporting with delayed, fragmented results that
289 undermine voter confidence and invite unnecessary disputes.

290 Moreover, although the bill references “election night,” it fails to
291 clarify whether hand counting would also apply to early voting
292 ballots, which are currently tabulated at 7:00 p.m. This lack of clarity
293 creates serious logistical, staffing, and cost burdens. Election officials
294 would be required to conduct prolonged manual counts after a
295 workday that begins as early as 5:00 a.m., while simultaneously
296 closing Voting Centers, securing ballots, transporting sensitive
297 materials, and maintaining strict chain-of-custody requirements.
298 This is not a minor adjustment—it is an operational overhaul that
299 strains personnel, increases the likelihood of human error, delays

300 final results, and places the orderly administration of elections at
301 risk.

302 **This Proposal Creates Serious Legal Vulnerability by**
303 **Undermining the Secrecy of the Ballot.**

304 By permitting hand counting in low-turnout precincts, this bill
305 invites constitutional challenge. When only one or two ballots exist
306 for a precinct, ballot secrecy is effectively eliminated. Election officials
307 can reasonably infer how an identifiable voter cast their ballot. That
308 condition violates the fundamental right to a secret ballot and creates
309 an evidentiary trail that can be exploited in election contests, public
310 records requests, and court proceedings. The Virgin Islands would be
311 defending a system that structurally enables vote disclosure—an
312 indefensible legal position. The risk is not speculative; it is inherent
313 in the structure of precinct-level hand counting with minimal
314 participation.

315 This Amendment in the Nature of a Substitute to Bill No. 36-
316 increases complexity, cost, delay, and legal exposure, while reducing
317 efficiency, scalability, and consistency in election administration.
318 Rather than strengthening election integrity, it creates additional

points of failure and undermines timely, reliable, and professionally administered elections in the Virgin Islands.

Media – Sample Ballot. Request media to show – the Sample Ballot. Every Early Voting and Election Day ballot is annotated with a Precinct name where the “Provisional” wording is. When a voter checks in, election officials know the voter’s identity and which Precinct ballot is issued. After voting concludes, Request Media to show the Precinct Reports. (**Media – Four Pages**). Precinct Reports are produced that list the Precinct name and the total number of ballots cast. In low-turnout precincts or voting centers, the combination of check-in records, Precinct-identified ballots, and publicly available Precinct Reports creates a risk that individual ballots can be correlated back to specific voters. While ballots do not display voter names, this practice raises concerns about whether full ballot secrecy is preserved in all voting locations.

Conclusion

Mandating hand counting of ballots will fundamentally disrupt election night operations, erode transparency, and delay reliable results. Electronic tabulation currently provides immediate, precinct-level reporting that clearly shows how many votes were cast

at each Voting Center for each candidate—information the public expects and relies upon. Hand counting eliminates this capability, replacing it with delayed, labor-intensive processes that increase the risk of human error and invite confusion and dispute. Compounding these risks, the bill fails to clarify whether hand counting applies to early voting ballots, which are presently tabulated at 7:00 p.m., creating serious logistical, staffing, and cost burdens. Election officials would be forced to conduct extended manual counts after workdays beginning as early as 5:00 a.m., while simultaneously closing Voting Centers, securing ballots, transporting sensitive materials, and preserving chain-of-custody. This is not a simple policy change—it is an operational strain that jeopardizes accuracy, efficiency, and public confidence in the election process.

Any electoral process that makes it possible to deduce how an individual voted is not merely flawed—it is legally vulnerable and exposes the Virgin Islands to avoidable litigation and loss of public trust.

The experience of election officials nationwide is clear: hand counts introduce critical disadvantages compared to automated tabulation.

The evidence is compelling and overwhelming.

359 Electronic tabulation, paired with voter-verified paper ballots, robust
360 audits, and transparency provides the best balance of accuracy,
361 security, efficiency, and public confidence.

362 As electronic voting systems continue to evolve, they hold the
363 potential to shape the future of democracy by fostering greater
364 participation and trust in electoral processes. Audit strengthen
365 elections by verifying results without slowing them down, enhancing
366 transparency without increasing risk, and building public confidence
367 without unnecessary cost.

368 Taken together, the operational demands, legal vulnerabilities, and
369 administrative realities of conducting elections in the Virgin Islands
370 require systems that are consistent, scalable, and defensible.

371 Election laws in the Virgin Islands must be grounded in how elections
372 are administered in practice, not in theory. For these reasons, hand
373 counting is not a practical or sustainable election practice for the
374 Territory.

375 For these reasons, the Office of the Supervisor of Elections strongly
376 and fully supports continued use of electronic tabulation of **all** ballots
377 in the Virgin Islands.

378 Thank you. I am prepared to answer any questions.

379 “An election process that cannot be administered consistently across
380 all districts of the Virgin Islands is not an election reform—it is an
381 operational failure waiting to happen.”