

JOINT MEMORANDUM

TO: New Hampshire Election Officials
FROM: Attorney General’s Office and Secretary of State’s Office
RE: 2024 General Election Guidance and Issues
DATE: October 30, 2024

AG HOTLINE & EMERGENCY CONTACT

Threat to Safety: FIRST CALL 911
For any medical issue, polling location emergency, or threat to safety, call 911 first. Notify the AG Hotline after you have communicated with law enforcement.

AG Hotline: 1-866-868-3703 or electionlaw@doj.nh.gov

Secretary of State: 603-271-3242 elections@sos.nh.gov

OTHER TOPICS

- I. HB 1569 NOT IN EFFECT
HB 1569, a new law that will change the use of election-day affidavits, goes into effect AFTER this election... Pg. 2
II. AFFIDAVIT BALLOTS IN EFFECT
The affidavit ballot procedure remains in effect for this election ... Pg. 2
III. ABSENTEE BALLOT CHALLENGES
Challenges re affidavit Envelopes... Pg. 2-3
IV. CHALLENGERS OF VOTERS
Positioning & authority limits ..... Pg. 3-4
V. ELECTIONEERING ZONE
Mandatory permitted electioneering zone at primary entrance to polling place..... Pg. 4
VI. ELECTIONEERING CLOTHING
Handling electioneering clothing inside polling place ..... Pg. 4-5
VII. HAND COUNT BIN USAGE . Pg. 5
VIII. ABSENTEE BALLOTS
Verifying all are processed..... Pg. 6-10

QUICK REMINDERS

- Set up your one4all accessible system.
- Verify polling location accuracy on Secretary of State website.
- Guardrail: There must be a guardrail separating a voting area from the public area. It needs to be a physical barrier of some sort (rail, rope, ribbon, tape) RSA 658:9. “Virtual guardrails” or tape on the floor are not permitted.

ELECTIONEERING

- Handing out electioneering materials is permitted if distributed from the electioneering zone.
- No-electioneering zone: the moderator has broad authority to define the no-electioneering corridor, which should include a polling place parking lot if the moderator determines that the parking lot is for permitting voters to arrive and leave the polls without interruption/interference or safety concerns exist.
- All electioneering materials must be attended. Political advertising cannot be placed in the ground or affixed to the polling place grounds.
- Cars parked at a polling place with electioneering material: If affixed in such a way that renders the vehicle unsafe or unfit for driving on the road, the signs are considered unattended signs affixed to public property and must be removed. Other vehicles with signs may be legally parked in polling place lots if the vehicles comply with applicable moderator rules governing parking lot usage.

**I. HB 1569 is not in effect for the November 5, 2024 State General Election:**

All voters who lack photographic identification on the day of the November 5, 2024 State General Election must be given the option to complete a challenged voter affidavit. All persons who seek to register to vote on November 5 but lack documentary proof of any voter qualification must be given the option to complete a qualified voter affidavit (identity/age/citizenship) or domicile affidavit to prove their voter qualifications.

The Governor recently signed into law HB 1569 (effective November 11, 2024), which removes the ability of a voter who lacks photographic identification to complete a challenged voter affidavit and vote, and which removes the ability of a person registering to vote to submit a qualified voter affidavit or domicile affidavit to prove their voter qualifications. However, HB 1569 does not go into effect until after the November 5, 2024 State General Election.

Therefore, for the November 5, 2024 State General Election, election officials must offer voters the opportunity to complete challenged voter affidavits, qualified voter affidavits, and domicile affidavits, as applicable.

**II. The Affidavit Ballot procedure remains in effect for the November 5, 2024 State General Election:**

RSA 659:23-a and RSA 659:13 require a voter to vote by affidavit ballot if all of the following apply: (1) the person is registering to vote on the day of the election; (2) the person is registering to vote for the first time in New Hampshire; (3) the person does not have valid photographic identification to prove their identity; and (4) the voter does not otherwise meet the identity requirements of RSA 659:13, which allow the moderator, clerk, or supervisors, including pro tem, deputies, and assistants, to verify the person's identity. See Secretary of State's Guidance Letter re SB 418, Affidavit Ballots (updated Oct. 18, 2023).

Although HB 1569 repealed the affidavit ballot procedures, HB 1569 does not go into effect until after the November 5, 2024 State General Election.

Therefore, for the November 5, 2024 State General Election, election officials must ensure that a voter votes by affidavit ballot if that person meets the requirements to vote by affidavit ballot.

**III. Challenges to absentee ballot affidavit envelopes:**

RSA 657:7 statutorily prescribes the exact form and wording of absentee ballot affidavit envelopes, and the statute **does not require** that these affidavit envelopes be signed in front of an election official, notary public, or justice of the peace.

During the State Primary Election, some polling places received challenges to **every** absentee ballot on the grounds that the absentee ballot affidavit envelope had not been signed in front of an election official, notary public, or justice of the peace. These challenges are contrary

to RSA 657:7, and a moderator receiving such challenges under RSA 659:27 should rule that each challenge is not well grounded.

If the moderator receives a challenge to every absentee ballot voter on this basis, the moderator should take the following steps to avoid an unnecessary delay in absentee ballot processing:

- (1) The moderator should deny the challenges as not well grounded.
- (2) **Election officials do not need to individually mark and number each absentee ballot and absentee envelope when a voter challenges every absentee ballot on the basis of the affidavit not having been signed in front of an election official, notary public, or justice of the peace.** RSA 659:51 ordinarily requires election officials to individually mark the absentee envelope and absentee ballot when a person challenges the absentee voter. The purpose of this requirement is to ensure that all challenged ballots can be identified if the challenger subsequently seeks court review of the moderator's denial of the challenge. Absentee ballots do not need to be individually numbered, e.g., "challenged ballot #1" when the challenge is being asserted against every absentee ballot on the same basis because absentee ballots are already readily distinguishable from official election day ballots.

Therefore, election officials should record on an Asserting a Challenge Form: (i) the name and domicile of the persons making the challenges; (ii) the name and domicile of each challenged voter; and (iii) the moderator's ruling that the challenges are not well grounded. **But election officials do not need to unnecessarily delay absentee ballot processing by separately marking every absentee envelope and absentee ballot with an individual challenge number.**

- (3) Please call the AG election hotline and report that the polling location received a mass challenge to every absentee ballot.

Please note that for any challenge to a specific absentee voter for a different reason, as opposed to the mass challenges identified above, the moderator must follow the process outlined in RSA 659:51 to separately mark the absentee envelope and absentee ballot.

#### **IV. Challengers of Voters:**

RSA 666:4 authorizes state political parties to appoint challengers of voters, who may challenge a voter offering to vote. See RSA 659:27 (setting forth the process for challenging a voter). Election officials must position challengers at a location in the polling place that will enable the challengers to see and hear each voter checking in to vote.

Appointment by a party as a challenger of voters does not include any right or authority:

- To challenge a person's qualifications to be a voter at the election day voter registration table
- To enter within the guardrail;

- To be within four feet of ballots that are being counted;
- To physically inspect any ballot;
- To physically inspect any tally sheet prior to election results being announced;
- To challenge any part of the vote counting process;
- To challenge any ballot that is being counted; or
- To improperly interfere with the vote-counting process in any other way.

**V. Mandatory electioneering permitted zone at primary entrance to polling place:**

RSA 659:43, III provides that the “moderator shall designate a preferred area for electioneering, which to the extent practical shall be within sight and conversation-level sound of the primary entrance to the polling place.” Thus, this statute expressly requires a moderator to allow electioneering within sight and sound of the primary polling place entrance. See also RSA 659:43, IV (authorizing electioneering to occur anywhere outside the no-electioneering corridor, including outside the designated preferred electioneering area).

If a town has adopted an ordinance regulating electioneering at an election, RSA 659:43, III provides that a moderator must additionally comply with that ordinance. See RSA 31:41-c (authorizing a town to “make bylaws regulating the distribution of campaign materials or electioneering or any activity which affects the safety, welfare and rights of voters at any election held for any purpose in such town.”); RSA 659:43, III (providing that a moderator additionally “shall abide by any regulations or ordinances approved by the municipality's governing body pursuant to RSA 31:41-c or RSA 47:17, XIV-a”). Although RSA 31:41-c grants the town the authority to make bylaws regulating electioneering at polling places, the town has no authority to do so in a manner that conflicts with state law. To the extent a municipal ordinance purports to prohibit electioneering within sight or sound of the polling place entrance, RSA 659:43, III would preempt that ordinance.

Therefore, moderators must ensure that they follow RSA 659:43, III’s mandatory requirement to designate a preferred electioneering area within sight and sound of the primary polling place entrance, if practicable.

**VI. Handling electioneering clothing & accessories inside polling place:**

RSA 659:43, I, prohibits a person from electioneering within the polling place building, which includes distributing or wearing any campaign material that is intended to influence the action of any voter. Upon observing a voter enter the polling place to vote wearing clothing displaying explicit advocacy for or against a candidate or question on the ballot, where the nature of the material and the individual’s attire make doing so appropriate, it is reasonable to ask the voter to remove or cover up campaign material being worn which is intended to influence voters in the polling place. However, the law explicitly creates an exception when the voter is unable to remove or cover the clothing, while that person is registering and voting.

No person may be prevented from registering to vote or voting for violating this statute. If a voter refuses to comply with this law, election officials should

make a note of the interaction and refer the matter to the Attorney General's Office for review of whether any enforcement action is appropriate.

Election officials are strongly encouraged to review the New Hampshire Election Procedure Manual: 2024, Pages 280-82. These pages review what constitutes "campaign material" within the meaning of this statutory prohibition. Some examples of prohibited campaign material include:

- "Vote for candidate name (or party)"
- "Vote against candidate name (or party)"
- "Vote yes on 1"
- "Vote no on 2"
- A picture of a candidate;
- A candidate's name; or
- An uncommon logo associated with a candidate.

It is important for election officials to understand that the prohibition established by RSA 659:43, I, applies only to campaign materials involving candidates, issues, or parties that appear on the ballot for that election.

This prohibition on electioneering within the polling place also applies to election officials. An election official or other person serving in any capacity within the polling place (e.g. party appointed challenger) who is also a candidate for office, particularly for re-election, whose name is printed on the ballot or who is conducting a write-in campaign should not wear a name tag showing the person's name and the elective office that they hold and/or are seeking that is on the ballot. See also RSA 659:44 (strictly prohibiting election officers from electioneering while performing their official duties). It is appropriate and best practice for all election officials to wear a name tag, similar in appearance, with the title "election official" and/or the title of the election official office they hold/the role in which they are serving, e.g. Moderator, Deputy/Assistant Moderator, Clerk, Supervisor, etc.

## **VII. Hand count bin usage:**

For towns and cities using ballot counting devices, the presumption is that ballots will be counted by the device unless the law provides otherwise. Ballots with an overvoted office, Federal Office Only ballots, UOCAVA printed at home ballots, electronic accessible ballots printed at home, or ballots otherwise rejected by the device must be placed in the container for ballots to be hand counted.

A voter insisting that their ballot be hand counted should be advised that the town/city has adopted a ballot counting device and by law ballots must be inserted into the device for counting. If the voter nonetheless insists, inform the voter if they refuse to follow the law they will be reported, request and note the voter's name, but allow the ballot to be placed in the container for ballots to be hand counted. All ballots placed in the container for hand counting should be hand counted, do not later insert these ballots into the device for counting.

**VIII. Absentee Ballots – Verifying all received ballots are processed:**

Before closing the polls and ending the election in the ballot counting device or emptying the ballot box for hand counting, verify that all absentee ballots received have been processed. Compare the clerk’s “Absentee Ballot List” of absentee voters’ total number of absentee ballots received, plus absentee ballots received on election day, minus the number of rejected ballots, to a count of the number of voters marked on the checklist as having voted by absentee.

Example:

10/05/2024 12:42:56 PM Page 10 of 10  
User ID: OFITCH

Absentee Ballot List  
Private and Confidential - Not for Public Disclosure

Voter ID	Voter Status	Voter Name	Home Address	District	Party Registered	Party Choice	Date Requested	Date Mailed	Date Envelope Returned	Verified Voter	UOCAVA	FOO		
Total Count for Town District 01: 130							UND Ballot Choice		130	129	89	26	28	11
Grand Total Count for 130							Total Ballot Party Choice		130	129	89	26	28	11

**Clerk’s Absentee Ballot List**

Absentee Ballots received by the clerk before election day . . . . . 89

Plus Absentee Ballots received by the clerk on election day . . . . . 10

(In this example eight were previously registered and previously printed on the clerk’s list, one was an absentee voter registration approved on election day and one was a curbside/outside accessible absentee voter, both of which were written onto the clerk’s “Absentee Ballot List” and the checklist.)

Total Absentee Ballots received by the clerk . . . . . 99

Minus Absentee Ballots rejected by the moderator . . . . . 3

**Total Absentee Ballots to be Cast and Counted . . . . . 96**

**Compare to**

Paper Checklist

Hand count of voters marked as voting absentee on the

paper checklist . . . . .	96
<u>OR Poll Pad Check-ins</u>	
Poll Pad “Checkins” number . . . . .	94
Plus Election day absentee registrant’s absentee ballots marked only on paper . . . . .	2
Total Voters marked as voting absentee on the checklist . . . . .	96
<b>Difference</b> . . . . .	0

**If the absentee ballots to be cast and counted number is greater than the number of absentee voters marked as having their absentee ballot checked-in and cast, check to ensure all absentee ballots received, that were not rejected, were checked-in and counted.**

**Step-by-Step**

1. Marking the checklist to document that a voter cast an absentee ballot is the next-to-last step in processing an absentee ballot. Keep any batch of absentee ballots that are in process but not yet marked on the checklist physically separated, kept in a different area, from batches of absentee ballots where the checklist for that absentee ballot voter has been marked. When you think all are processed, randomly check the batches/trays of processed envelopes/applications to ensure none contain marked ballots that were not processed but should have been.
2. The law requires that absentee ballots remain in the affidavit envelope until the moderator is about to complete the checklist verification and marking. Therefore, absentee ballots in an affidavit envelope should not yet be marked on the checklist. Absentee ballots that have been marked on the checklist should not be in the envelope.

RSA 659:52 Opening Envelope; Depositing Ballot. – “If the absentee ballot is not challenged, the moderator shall, after announcing the name of the voter, open the envelope containing the ballot so the affidavit is not destroyed. **The moderator shall then take the ballot out of the envelope without unfolding the ballot or without permitting the ballot to be examined,** and he or she shall preserve the affidavit with the ballots cast at the election as provided in RSA 659:101. **The moderator shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters "A.V." in red ink and shall then deposit the ballot in the ballot box.”**

3. In the rare circumstance where upon opening the affidavit envelope the moderator determines the contents are not an absentee ballot that can be counted, return the contents to the envelope and follow the procedures required by RSA 659:53 for rejecting the absentee ballot. Mark both the affidavit envelope and the clerk’s list of absentee voters

with the word “rejected” and the reason for the rejection. See Election Procedure Manual, 2024, page 482 (listing potential reasons for rejecting an absentee ballot)

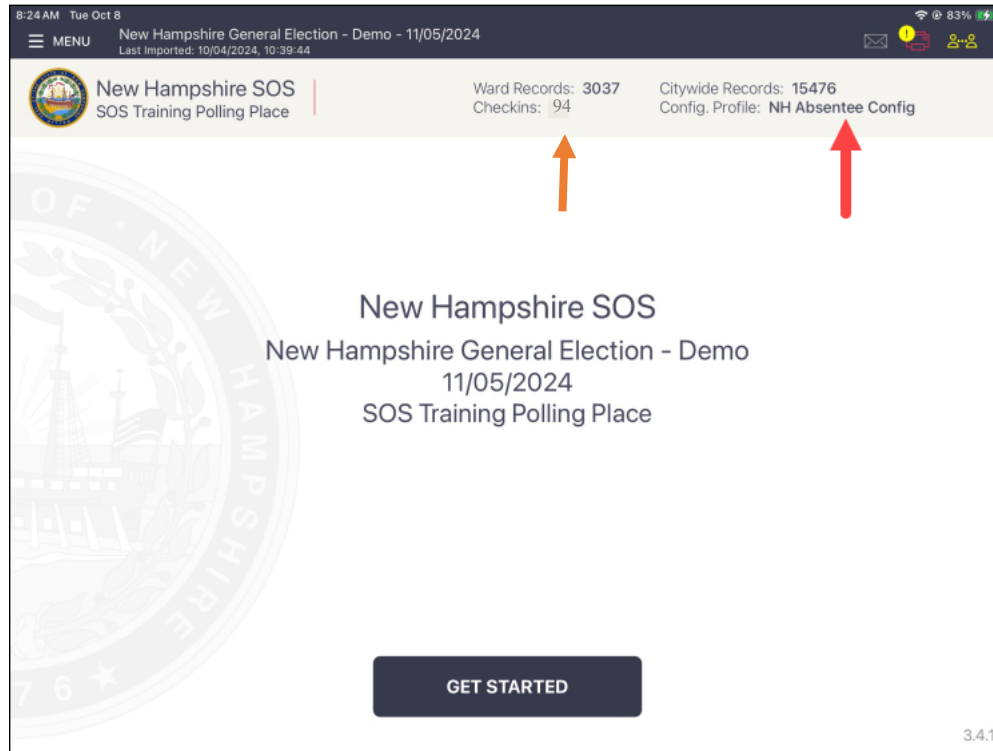
If the voter on the checklist returned the wrong ballot - a ballot to be used by voters in a different town or ward - do not reject the ballot. Hand count the ballot, counting only votes for offices that are also on the ballot the voter was entitled to vote on. For example, if the offices of United States President and Governor are on both ballots, count the wrong ballot vote for those offices. The office of State Representative may be for a different district(s), if so, do not count the vote for that office, record as an undervote(s).

4. If the absentee ballots that are to be cast and counted are batched, meaning multiple absentee ballots are marked on the checklist and collected into a stack before being deposited into the ballot counting device or ballot box, use a marked and distinct container to ensure these ballots are not confused with or intermingled with any other ballots. **Do NOT put stacks or trays of absentee ballots that have been marked on the checklist in the same area where stacks or trays of not yet marked at the checklist absentee ballots are held.**
5. After all absentee ballots have been marked on the checklist:
  - a. At paper checklist polling places have the number of voters marked as voting by absentee counted. This number is required for the Post-Election Certificate and the Return of Votes forms. Counting at this stage does not add work, it just makes this the first count.

Where processing of absentee ballots is completed during election day, it may be practical after processing is complete to have ballot clerks count the number of absentee ballots marked as cast on each page of the checklist during slow check-in times. However, ensure that these preliminary page totals are adjusted if an absentee ballot received later during election day is checked in.

- b. At electronic poll book (Poll Pad) polling places, access the poll pad used to check-in absentee ballots. Ensure it is configured for “NH Absentee Config.”





“Checkins: 94” means that this poll pad checked in 94 absentee voter absentee ballots. These instructions assume that only one poll pad was used to check in absentee ballots. If more than one poll pad was used, obtain the “checkins” number from each and add them together. Alternatively, access the number of absentee voters checked in for this polling place through the ePulse software. If you have multiple polling places, ensure you obtain the number of absentee voter’s ballots checked in for each polling place separately.

If any absentee voters were checked in only on paper, hand count that number and add it to the “Checkins” number from the poll pad. For example, if a voter was not registered and returned both an absentee voter registration and an absentee ballot, the supervisors approve the application and add the voter only on the paper checklist. The absentee ballot will then only be marked on the paper checklist. Therefore, that absentee ballot cast must be manually added to the poll pad reported number of “checkins.” Adding absentee check-ins to the poll pad “checkins” number is not necessary if the newly registered voter is added to the poll pad system on election day and then the absentee ballot is checked-in using the poll pad.

Example: 94 + 2 election-day absentee registrations who voted absentee and are marked only on the paper checklist = 96 Absentee Ballots checked in.

Part II, Article 32 of the New Hampshire Constitution provides that the election is:  
governed by a moderator, who shall, in the presence of the selectmen (whose duty it shall be to attend) in open meeting, receive the votes of all the inhabitants of such towns and wards present, and qualified to vote for senators; and shall, in said meetings, in presence of the said selectmen, and of the town or city

clerk, in said meetings, sort and count the said votes, and make a public declaration thereof, with the name of every person voted for, and the number of votes for each person

Due diligence requires that the moderator and clerk compare the readily available number of absentee ballots received by the clerk to the number of voters marked as voting by absentee on the checklist to ensure all submitted absentee ballots, which were not rejected, are cast and counted.