NEW HAMPSHIRE SECRETARY OF STATE
David M. Scanlan

October 8, 2024

Henry Klementowicz, Esq.
ACLU of New Hampshire
18 Low Avenue
Concord, NH 03301
henry@aclu-nh.org

Re: Affidavit ballot procedure for November 5, 2024 State General Election

Dear Attorney Klementowicz:

This letter responds to your October 1, 2024 letter, in which you asked what impact the passage of HB 1569 would have on the affidavit ballot process for the upcoming November 5, 2024 State General Election. Pursuant to advice from the Attorney General's Office and as described below, the Secretary of State's Office will follow the existing affidavit ballot procedures to completion for all affidavit ballots that are cast under existing law on November 5, 2024.

I. Background:

The affidavit ballot process set forth in RSA 659:13 and RSA 659:23-a requires certain voters who do not have documentary proof of identity or otherwise meet the identity requirements of RSA 659:13 to vote by affidavit ballot. A voter who casts an affidavit ballot on election day then has seven days to provide proof of identity to the Secretary of State's Office. If the voter fails to do so, the Secretary of State's Office must instruct local election officials to retrieve that voter's affidavit ballot and deduct the votes on that ballot from initially reported election results.

The Legislature recently enacted HB 1569, which is scheduled to go into effect on November 11, 2024—after the November 5, 2024 State General Election. HB 1569 changes election procedures for registering to vote and for voting on election day. As relevant here, HB 1569 requires a person seeking to vote on election day to provide documentary proof of identity and removes the ability for a person to vote by affidavit ballot.

II. Affidavit Ballot process in November 5, 2024 State General Election:

The affidavit ballot process will be in effect on November 5 and require certain voters to vote by affidavit ballot. An affidavit ballot voter will receive an affidavit ballot verification letter, which they must complete and return to the Secretary of State's Office by November 12.

Although you acknowledge that the affidavit ballot process will be in effect on November 5, you assert that the Secretary of State's Office should not be able to conclude the affidavit ballot process that began on November 5 because HB 1569 goes into effect one day prior to November 12.

No language in HB 1569 indicates any legislative intent that the law's voter registration and election-day procedures were intended to affect the November 5, 2024 State General Election in any way. To the contrary, the date the bill was signed and the provision that HB 1569 take effect 60 days after passage indicate that the law was specifically intended to not affect the November 5, 2024 State General Election in any way. Put differently, there is no indication of legislative intent that HB 1569 was intended to retroactively change the process for verifying affidavit ballots that were cast on November 5 pursuant to existing election procedure laws.

Therefore, the Secretary of State's Office will follow the existing affidavit ballot procedures to completion for all affidavit ballots that are cast under existing law on November 5, 2024.

Sincerely,

David M. Scanlan

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