

**To:** The Voters of Bedford  
David Scanlan, New Hampshire Secretary of State  
John Formella, New Hampshire Attorney General

**From:** Eric Forcier, Election Monitor

**Date:** October 12, 2022

**RE:** Report Prepared Pursuant to RSA 659:77 Regarding the September 13, 2022 Primary Election in Bedford, New Hampshire

I was appointed as monitor to the primary election held on September 13, 2022 in Bedford, New Hampshire in accordance with RSA 659:77. The assistant monitor appointed was Brian Linares.

Pursuant to the letter of appointment and RSA 659:77, IV, I was given authority to fully and directly access and observe the entire primary election on September 13, 2022 in Bedford, including the following processes: the registration of voters, the checking in of voters, the accommodating of voters with disabilities, the receipt of ballots, the processing of absentee ballots, and the counting of all ballots. I was also given authority to provide training and guidance to the town clerk and moderator of the election.

The reason why I was appointed to monitor Bedford's Primary Election was because Bedford failed to count 190 absentee ballots during its November 2020 General Election. It was determined that this deficiency was a direct result of not following best practices and that "significant deficiencies" existed that caused the issue. As such, and while the entire Primary Election was observed for compliance with relevant New Hampshire election law, practices, procedure, and guidance, the thrust of the focus was to monitor the absentee ballot process – including the processing and counting of absentee ballots. I also completed a "New Hampshire Attorney General's Office Polling Place Checklist" designed for the 2022 Primary and General Election and which focuses on nearly 70 different election requirements.

Bedford has a single polling place: Bedford High School located at 47 Nashua Road in Bedford. The moderator for the September 13, 2022 Primary Election was Brian Shaughnessy and the town clerk was Sally Kellar. I met with and introduced myself to both Mr. Shaughnessy and Ms. Keller prior to September 13, 2022. Polls opened on September 13, 2022 at 7 A.M. and closed at 7 P.M. Either myself or my assistant was present for the duration that the polls were open, as well as after polls closed and results were determined. I have broken down my findings into two parts: Part 1 will cover absentee ballot law compliance (the reason I was appointed monitor) and Part 2 will cover compliance with all other election laws.

### **Part 1: Absentee Ballots**

My appointment as monitor precipitated from significant deficiencies that occurred with the processing of absentee ballots in the November 2020 election. Thus, I keenly observed and monitored the absentee ballot process for deficiencies during the September 13, 2022 Primary Election. Neither myself nor Mr. Linares observed any obvious deficiencies or violations of New Hampshire election laws, though I do note an unresolved discrepancy with absentee ballot totals reported after the election. I did personally

observe the foregoing actions indicative of compliance with proper absentee processing: The names of voters who returned absentee ballots to Bedford were highlighted on the official voter checklist to signal that they had returned their ballots. Additionally, it was announced over 24 hours before the Election that absentee ballot processing would begin at 10 AM. Accordingly, just after 10 AM, election officials began opening the outer and inner envelopes, with ample room for public viewing and read the names aloud. Additionally, ballots were checked to make sure voters received and returned the correct party ballot, and that the affidavit envelope was signed. The ballots that were rejected were properly marked on the outer envelope and on the clerk's list and set aside. Upon completion of this, this list of names for the absentee ballots opened along with the ballots still in their absentee envelopes was brought to the ballot clerks so that the applicable voters would be checked off as having voted by absentee ballot. The ballots were then brought over to a designated Accuvote machine for casting, where each ballot was cast into the machine. Any ballots rejected by the AccuVote machine were properly placed into the auxiliary bin of the Accuvote machine for hand counting.

A post-election analysis of the absentee ballots reported does reveal a discrepancy with Republican absentee ballots cast. The Moderator's Worksheet indicates that the total number of Republican absentee ballots cast totaled 263. The official return of votes submitted to the Secretary of State, however, reports a total of 250 Republican absentee ballots cast, a 13-vote discrepancy. For further analysis, I acquired an Election History of Active Voters ("EHAV") Report from ElectioNet. This is a record in the Statewide Voter Registration System, entered by the Supervisors of the Checklist after the election based on the marks made on the checklist, documenting voting history from this election. This report is not completed until days after the election and is therefore not available to the Moderator on election night. The EHAV reported 261 Republican absentee voters, which is either a discrepancy of 2 votes when compared to the Moderator's Worksheet, or 11 votes when compared to the return of votes. Moderators need to exercise due diligence in seeking to resolve any discrepancies found on the return of votes or Moderator's Worksheet. A best practice is to use the Clerk's List of Absentee Voters as a data point, which should be marked with the voters who the clerk received returned absentee envelopes back from, including absentee ballots received after the report is printed and absentee ballots received by the clerk on election day. The report must be marked to document the absentee ballots that have been rejected by the Moderator. Another useful data point that can be compared to the Clerk's List of Absentee Voters when resolving discrepancies in the number of absentee ballots cast is the marked checklist. We support Moderators who exercise their constitutional and statutory authority to require election officials to stay after the polls close and count the number of voters who are marked on the checklist as having voted. Even where the full checklist counts required to complete the Names on Checklist report are done on subsequent days, Moderators ideally have staff available election night to count the number of voters marked on the checklist as having voted by absentee. One challenge that Moderators face is projecting the staff and resources needed after the polls close on election night. Even with due diligence, it's not possible to resolve all discrepancies. Prudent moderators determine what amount of extra work is warranted to resolve a discrepancy identified during reconciliation with consideration of whether discrepancies are capable of changing election outcomes. Bedford's Moderator made appropriate efforts to resolve the discrepancy, in light of the resources that remained available at the polling place at that moment in time. At future elections the Moderator may want to hold staff at the polling place until the reconciliation is complete.

Any analysis of Democratic votes cast utilizing the Moderator's worksheet, the tally sheet, and the Election History of Active Voters Report revealed no discrepancies, with all three sources reporting 219 absentee ballots cast.

As discussed above, I did note some discrepancies in the number of Republican absentee votes cast. However, looking at the data reported on the return of votes, I have no basis to suspect that there was any failure to count any absentee ballot.

## **Part 2: Other Observations**

Mr. Linares and myself personally checked for and monitored compliance with numerous other provisions of election law and guidance. The Town of Bedford was in compliance with the vast majority of them. The traffic plan, route, and parking was well-thought out, efficient, and allowed for easy access to the voting site. Proper electioneering and no-electioneering zones were established, and the law prohibiting electioneering inside of the polling place was actively observed as being enforced. There were plenty of ballot clerks, and same-day registration and voting for those who needed to complete affidavits and have their photo taken because they did not possess proper ID was setup efficiently. Ballot clerks were observed following proper procedure when checking voters in. Throughout most of the day there was little to no wait to check in and receive a ballot. We counted a total of 115 voting booths and tabletop screens, which was more than enough space for voters to fill out ballots in. The accessible voting booth was observed as being setup, functional, and ready for use. Voting machines were observed to be in compliance with relevant law. The Activity Logs and Access Log for each machine was properly filled out and documentation of successful tests was present. The machines contained the required two tape and wire seals, and the zero tapes for the devices were readily available for inspection.

All but one required sign was posted. The only sign absent was the "Notice of Primary" which announces the date of the primary or election and the hours. In the future, Bedford should post this at two public places within 10 days of receipt in accordance with N.H. RSA 655:12. Best practice is to post one copy at the polling place.

## **Conclusion**

As discussed, I observed virtually no violations or deficiencies in election law. While a post-election analysis does show a discrepancy among the reported number of Republican absentee ballots cast, I cannot speculate as to the cause of such a discrepancy nor suggest that it necessarily was a result of violation of relevant law. I commend the Moderator, Clerk, and other Bedford election officials for their planning, attention to detail, and hard work seeking to ensure a well conducted election.