New Hampshire’s 2020 Elections in the Wake of COVID-19

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Abstract: New Hampshire—known for its first in the nation primary—is also the smallest swing state and in 2016 hosted the country’s most closely contested national elections. The state held a primary election on February 11, 2020. At the time, WHO had declared a public health emergency, but the number of confirmed cases outside of China was only 393. Thus, the New Hampshire primary voting processes were largely unaffected by the outbreak. In light of the continuing health threat posed by COVID-19, however, New Hampshire has implemented major changes to upcoming 2020 voting processes, including an administrative move by the State Secretary of State and Attorney General to effectively permit no-excuse absentee voting during COVID-19—a particularly significant change considering the state’s historical reliance on in-person voting and same-day registration.

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I. Introduction

New Hampshire—known for its first in the nation primary—is also the smallest swing state and in 2016 hosted the country’s most closely contested national elections. The state held a primary election on February 11, 2020. At the time, WHO had declared a public health emergency, but the number of confirmed cases outside of China was only 393. Thus, the New Hampshire primary voting processes were largely unaffected by the outbreak. In light of the continuing health threat posed by COVID-19, however, New Hampshire has implemented major changes to upcoming 2020 voting processes, including an administrative move by the State Secretary of State and Attorney General to effectively permit no-excuse absentee voting during COVID-19—a particularly significant change considering the state’s historical reliance on in-person voting and same-day registration.

Although new reported cases of COVID-19 had been on a downward trend into the beginning of summer 2020, an uptick in cases reported in New Hampshire (and even more severe spikes in daily reported cases elsewhere) by the end of June signaled that the virus may continue to pose a serious threat until and beyond the November election. By June 26, the state had reported nearly 6,000 confirmed cases and more than 350 COVID-19 deaths. A state-by-state tracker is available here.

II. Preparations for COVID-19-Affected Elections

A. Expansion of Absentee Voting

For the first time, New Hampshire is offering voters the opportunity to vote via absentee ballots with essentially a “no excuse” requirement, so long as the voter feels impacted by the COVID-19 pandemic. The following section describes the expansion of absentee voting, which a Select Committee on 2020 Emergency Election Support report called “[t]he safest way to keep voters and election workers safe during the Fall Primary and General Election.” It also explains the absentee requirements for voters and the steps they must take if their ballots are rejected.

Guidance on the “Physical Disability” Absentee Voting Excuse

On April 10, 2020, Secretary of State Gardner issued a memorandum expanding the definition of “physical disability.” According to the new guidance, “[i]n light of the current public health advisories related to COVID-19, any voter who in the voter’s judgment is being advised by medical authorities to avoid going out in public, or to self-quarantine, would qualify to vote by absentee ballot.” Notably, the Secretary of State emphasizes to voters that “[e]ven if you do not consider yourself a person with disability in other circumstances, this term applies for registering to vote and
voting in 2020.” Additional guidance issued jointly by Gardner and Attorney General Gordan MacDonald on June 3 further explains:

[A]ll voter registration applicants have a reasonable basis to conclude that a “physical disability” exists within the meaning of [the statutes governing absentee voting]. Registrants who are unable to register to vote in person because of illness from COVID-19 or because they fear registering in person may expose themselves or others to COVID-19 may use absentee registration. Therefore, all applicants may request an absentee voter registration package by mail, e-mail, fax, or phone on that basis.

This change was a significant departure from usual practice in the state. Under state law, RSA 657:16 & RSA 657:17, absentee ballots are usually only available under a narrow set of excuses: absence from one’s domicile, employment obligations, childcare/dependent care, religious commitments, or physical disabilities. (Last year, New Hampshire’s legislature passed a bill to allow all residents to vote by mail regardless of reason, but Governor Sununu vetoed it.) But because the COVID-19 pandemic continues to pose a threat to the state, the emergency absentee voting guidance effectively enables all voters to vote by mail in 2020.

Absentee Voting Procedures and Requirements

New Hampshire law does not set forth a time restriction for applying for absentee ballots, but it appears that voters who wish to vote by mail must apply before September 2, 2020. According to the Secretary of State website, “[p]eople who wait to register after September 2, 2020, may submit the completed absentee registration application forms and proof documents to the clerk’s office or register in person at the polling place on election day.” In addition, there are a number of other requirements that voters must follow:

1. First, the procedures require voters to mark the absentee ballot application form indicating a condition (e.g. “I am unable to vote in person due to a disability.”).
2. Second, voters must sign an Absentee Voter Affidavit Envelope indicating either (a) absence from city or town or (b) absence because of religious observance or physical disability.
3. Third, the law requires that there be a witness observe any voter signing the Absentee Registration Affidavit and that the witness also sign the form.
4. Finally, the voter must enclose copies of proof of identity and domicile with the completed Voter Registration Form and Absentee Registration Affidavit.

- **Proof of identity** can include a photocopy of a driver’s license or non-driver ID issued by any state or the federal government; a United States armed services identification card; a United States passport or passcard; a valid student identification card issued by a New Hampshire college, university, or career school, or a New
Hampshire public or private high school (but it must be current or did not expire more than 5 years ago).

- **Proof of domicile** can include any current utility bill, bank statement, government check, a paycheck, or other document showing an individual’s name and address.
- **Use of Email**: Finally, according to the new measures, clerks and supervisors can and should accept pictures of documents through email.

If a voter cannot comply with the above requirements, accommodation may be made. The Attorney General and Secretary of State’s guidance includes instructions and examples of absentee voting accommodations for local election officials. Voters must make accommodation requests before August 26, 2020.

When registering for an absentee ballot, voters will receive both their absentee ballot and their absentee voter registration forms and instructions at the same time. To approve or reject applications, officials are required to meet on a date 6 to 13 days before the September 8, 2020 primary and again before the November 3, 2020 general election. When voting by absentee ballot, if voters are returning [their] completed absentee ballot by US Mail, the clerk must receive it by 5:00 p.m. on election day. **Because of this requirement, the Secretary of State recommends that voters mail their ballot at least two weeks before the election.** These measures apply to both the September state-level primary elections and the November general election.

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**Rejected Absentee Ballot Procedures**

Due to the likely increase in new voters utilizing the absentee ballot system, there is a risk for a higher number of ballots being rejected for various reasons. Under current law, RSA 657:26, voters are required to execute an affidavit on the absentee ballot envelope. If the affidavit is not properly executed or not signed by the proper person, however, the ballot will be rejected. Notably, the text of the statute itself does not lay out specific guidelines for signature verification and there is a high degree of discretion left to election officials. According to the statute, “[t]he signature on this affidavit must appear to be executed by the same person who signed the absentee ballot application.” (However, the affidavit signature will not be compared to the absentee ballot application signature “when a person assisting the voter has signed the statement on the affidavit that assistance was provided.” RSA 657:7.)
In accordance with state law, the secretary of state has also made available a public website available for absentee voters to determine when an absentee ballot request has been received, whether an absentee ballot has been sent, and whether a ballot was accepted or rejected, including the reason for the challenge.

B. Federal Funding Plan

New Hampshire received $3.2 million in CARES Act funding for the purpose of conducting elections under the COVID-19 pandemic (consistent with the provisions of the Help America Vote Act and other requirements of federal law). On June 5, Secretary of State William Gardner and the Select Committee on 2020 Emergency Election Support released a report with recommendations for use of the federal government’s $3.2 million in relief funds. Gardner also outlined six steps that do not require statutory changes that his office would take in a letter accompanying the report:

1. Through a competitive bid process, a CPA firm has been engaged to structure the expenditure of federal funds in a manner that will meet a future federal audit of those funds.
2. Personal Protection Equipment (PPE) will be provided for each polling place to protect poll workers and voters who choose to work the polls or vote in person. Details related to the type, quantity and distribution of PPE are still being determined.
3. The Secretary of State is planning for an increase in the use of absentee voting, and plans on using federal funds to pay at least a portion of the increased cost expected to be incurred by the cities and towns as a result.
4. Plans to expand messaging with voters related to voting with COVID-19 through the use of social media, direct mail and the news media are underway.
5. A telephone hotline will be set up in the Secretary of State’s office to help voters obtain answers to questions they may have related to voting under the conditions created by COVID-19.
6. A special “Voting Under COVID-19” page has been put up on the Secretary of State’s website with all of the information needed to vote with an absentee ballot or file an absentee voter registration form.

According to Secretary of State Gardner, “[w]e will be working closely with local election officials to develop procedures that will protect both poll workers and voters while recognizing that each polling place is unique.” The Committee report includes several recommendations, including the following:

- **Personal Protective Equipment (PPE) should be purchased by the Secretary of State’s Office (SOS) in amounts as determined by the number of voters in the 2016 Fall Primary and General Elections or another formula that they deem appropriate for an equitable distribution of available funds.**

- **As town clerk offices reopen, basic precautions outlined in NH Department of Health and Human Services and CDC guidance should be followed.** Sneeze guards with pass through capacity or the equivalent are recommended to protect staff. All staff and customers should wear face coverings and social distancing with a six-foot radius should be practiced.
Any materials received directly from the public should be handled with non-vinyl gloves which are changed periodically or upon failure.

- **Absentee Ballot Processing**: Anyone attending a meeting to process absentee ballots must wear a face covering. Members of the public and witnesses will be required to bring their own PPE.

- **Election Day Procedures**: The goal is to minimize contact between voters and election staff, and among the election staff with each other. Voters who are not wearing the voter’s own PPE should be given a mask and gloves and allowed into the main voting area. All entering the facility/voting area must wear gloves and a mask and remain 6 feet apart. All staff should wear KN95 or N95 masks and, if sneeze guards are not available or they are unable to social distance to radius of six feet, face shields.
  - A voter will hold up the ID on the other side of a plexiglass shield. If the voter can be identified with a mask or face shield, the voter may keep it. The poll worker may request the voter drop the facemask briefly if necessary to positively identify the voter.
  - The report includes a list of necessary supplies for polling places.

- **Publicizing Election Procedures for 2020 Elections**: The Committee recommends that, if funds are available, a modest portion of the $3.2M in election funding be used to assist the Secretary of State’s office in making various website changes. In particular, there should be a dedicated “COVID and Fall of 2020 Elections” section that educates voters about absentee voting and registration and provides a “one-stop-shop” for them to acquire the applications/forms necessary.
  - **Website**: The Committee recommends that all relevant forms be posted in the new, separate pandemic-related section of the SOS website, prominently highlighted. In addition, a consensus of the Committee recommends that these forms be downloadable and that any download automatically include the instructions for completing the forms.
  - **Additional Outreach**: The Secretary of State should dedicate staff and web site space to getting this information disseminated to external organizations, and the Business and Industry Association and local chambers of commerce should send such information to their members to provide to all employees. Radio, TV and printed media sources should be urged to run public service announcements.

- **Leasing Additional Voting Machines**: The Committee recommends that the Secretary of State consider spending up to $50,000 of federal money to lease additional voting machines for the general election only, which could be made available to municipalities so they could use them to count absentee ballots, in addition to the machines which count ballots cast in person by voters on election day.
III. Ongoing Challenges for COVID-19-Affected Elections

Despite recent changes to New Hampshire’s absentee ballot requirements, there remain logistical, legal, and political challenges to implementing more significant change before the upcoming election and beyond.

A. Informing Voters of Election Changes

Given the changing circumstances during COVID, there are several challenges that New Hampshire faces in disseminating new information to voters. The Committee report, as described above, recommended several methods to solve this problem, including $100,000 worth of voter mailers, a revamp to the Secretary of State website, and leveraging free media. In addition to the Committee recommendations, the Attorney General and the Secretary of State have also asked local election officials for help in disseminating key information, including the state’s guidance, to voters. An example of a one-pager voter guidance document is reproduced below. Deputy Secretary of State Dave Scanlan has indicated that additional guidance may be forthcoming.

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**COVID-19 RELATED REGISTRATION AND VOTING INSTRUCTIONS**

Registering to vote and voting in person at 2020 elections may pose a health risk to some due to the COVID-19 health emergency. You may register and vote by absentee (by mail) if:

- You are ill due to COVID-19, or caring for someone with COVID-19/symptoms; or
- You are concerned that registering or voting in person will expose you or others to COVID-19

The term “disability” in the election law extends to these circumstances. Even if you do not consider yourself a person with disability in other circumstances, this term applies for registering to vote and voting in 2020. The opportunity to register and vote absentee due to disability from COVID-19 will apply in 2020, regardless of the future development of the public health crisis. You must sign the “disability” affidavit on the forms for absentee registration and absentee voting.

**REGISTERING ABSENTEE (BY MAIL)**

You may request absentee voter registration forms and instructions from your clerk before requesting an absentee ballot. Supervisors of the Checklist must review and approve your application. They are required to meet on a date 6 to 13 days before the September 8, 2020 primary and again before the November 3, 2020 general election. Unless the supervisors hold voluntary sessions before then, the supervisors will review your application at that meeting.

You are registered to vote when the supervisors approve the application.

If you request an absentee ballot and are not registered, the clerk will send you both your absentee ballot and your absentee voter registration forms and instructions.

**VOTING ABSENTEE (BY MAIL)**

Request your absentee ballot from your town/city clerk as early as possible. An Absentee Ballot Application can be downloaded from the Secretary of State’s homepage by clicking on “Voting During the COVID-19 State of Emergency.” See below for how to obtain your Clerk’s contact information.

If you are returning your completed absentee ballot by US Mail, the clerk must receive it by 5:00 p.m. on election day. To increase the likelihood the absentee ballot arrives on time and assist with an expected high volume of absentee ballots, we recommend mailing it at least two weeks before the election. After 5 days, check the Voter Information lookup, Absentee Ballot link, to see if your clerk has received the ballot. Contact your clerk if your ballot has not been received. You may also deliver it to the clerk’s office in-person or by a delivery agent until 5:00 p.m. on the day before the election. A delivery agent may deliver it to the clerk at the polling place until 5 p.m. on election day. Family members, nursing home and elder care facility administrators, and a person assisting a voter with a disability who signs the absentee ballot affidavit (limited to delivering ballots for 4 voters) may be a delivery agent. See RSA 657:17. http://www.gencourt.state.nh.us/rwa/html/LXIII/657/657-17.htm

Find your clerk’s contact information, your party membership status, or the status of your absentee ballot request here: [http://son.nh.gov/](http://son.nh.gov/)
II. Legal and Political Challenges

The stakes of the 2020 elections in New Hampshire are high. Regarding federal offices, in 2016, Democrats won the state by only a 0.4% margin, the second smallest margin by percentage (after Michigan) and the smallest margin by raw vote total. Hillary Clinton defeated Donald Trump by fewer than 3,000 votes. In the Senate election, Maggie Hassan defeated Kelly Ayotte by 1,017 votes, a margin of approximately 0.14%. The 2020 elections in the state are likely to again be close.

New Hampshire has historically been reluctant to change its election laws. The last substantial change to voting occurred in 1976 (allowing absentee voting in primaries and lowering voting age to 18). Currently, New Hampshire does not practice automatic voter registration or online registration, although the state allows same day registration. Moving forward, an expanded universal vote-by-mail (mailing ballots to all registered voters) is unlikely to gain political support. While Democrats control 58% of the State Senate and 59% of the State House of Representatives, there has not been a major push for universal vote by mail and Governor Sununu has vetoed past attempts to expand it. The Chairman of the Select Committee on 2020 Emergency Election Support Bradford Cook has said legislation expanding current voting laws is unlikely (and that the COVID-19 response should occur within the existing framework).

In the background of the political battles over vote by mail are recent and ongoing existing legal challenges to New Hampshire election laws. In 2017, New Hampshire passed SB3, a Republican-backed law that increased the complexity of the state’s voter registration process and created penalties for those who don’t comply. In April 2020, a state court judge struck down the law as unconstitutional because “the new process establishes enough hurdles, the forms contain enough complexity, and the penalties present enough risk that they tend to dissuade a specific type of voter from even engaging with the process.” Another legal battle is being fought over HB1264, a separate law which “requires students and other transient people to pay state motor vehicle licensing and registration fees if they vote and drive there, creating financial hurdles in a state where car registration can cost hundreds of dollars.”

IV. Key Decision-Makers and Resources

Select Committee on 2020 Emergency Election Support: Charged with advising the Department of State on use of the $3.2 million in federal emergency funding for elections during the pandemic. Created by the Governor April 27, 2020, with bipartisan representation. Chaired by Bradford Cook.

Governor Office: Governor Chris Sununu is a Republican up for re-election in November 2020.

Secretary of State’s Office: Secretary of State William M. Gardner, a Democrat elected by state legislature, has held the office since 1976. The Secretary of State oversees the Division of Elections.
which has published the state’s guidance on [Voting During the COVID-19 State of Emergency](https://www.healthyelections.org), as well [New Hampshire’s election laws and other resources](https://www.healthyelections.org).

**Ballot Law Commission**: Oversees election recounts. Chaired by Bradford Cook.

**NH Department of Health and Human Services, COVID-19 Dashboard**

**New Hampshire Public Radio’s COVID-19 Newsletter**