



STATE OF NEW HAMPSHIRE

To: New Hampshire City and Town Clerks and Moderators

From: William M. Gardner, Secretary of State 
Gordon J. MacDonald, Attorney General 

Re: Important Notice Regarding the Processing of Absentee Ballots on Election Day

Date: August 24, 2018

On August 14, 2018, the United States District Court for the District of New Hampshire held that RSA 659:50, III is unconstitutional. This provision previously required moderators, when processing absentee ballots on Election Day, to compare the signatures on an absentee ballot application and the absentee ballot affidavit envelope in order to determine whether the documents “appear[] to be executed by the same person.” RSA 659:50, III. In the case of Mary Saucedo, et al. v. . . . New Hampshire, Civil No. 17-cv-183-LM Opinion No. 2018 DNH 160, the Court ordered that “. . . RSA 659:50, III is unconstitutional under the Fourteenth Amendment of the United States Constitution. . . . [and] enjoins defendants from enforcing RSA 659:50, III.” Order at page 44.

Moderators are therefore prohibited from conducting the signature comparison set forth in RSA 659:50, III for the upcoming September 11, 2018 election and for all future elections. This guidance will remain in effect until such time that the law is amended or our offices otherwise advise.

As a result of the court order, the statute governing the processing of absentee ballots must now, in effect, be read as:

RSA 659:50 Announcement by Moderator. – The moderator shall begin processing absentee ballots by clearly announcing that he or she is about to open the envelopes which were delivered to him or her. The moderator shall then remove the envelope containing the ballots of each absentee voter and shall compare the signature on the affidavit with the signature on the application for the ballot. If:

- I. The name of the voter is on the checklist; and
- II. The affidavit appears to be properly executed; and
- III. ~~The signature on the affidavit appears to be executed by the same person who signed the application, unless the voter received assistance because the voter is blind or has a disability; and~~
- IV. The signatures appear to be the signatures of a duly qualified voter who has not voted at the election; then the moderator shall publicly announce the name of the absentee voter, except that with respect to any voter who has been included in the address confidentiality program under RSA 7:43 or who has been granted a protective order under RSA 173-B,

the moderator shall identify such voters as "confidential voter number 1" and "confidential voter number 2," and so forth. If these conditions are not met, the moderator shall follow the procedure provided in RSA 659:53.

Therefore, on Election Day, Moderators are instructed to process the absentee ballot if:

- I. The name of the voter is on the checklist; and
- II. The affidavit appears to be properly executed; and
- IV. The signatures appear to be the signatures of a duly qualified voter who has not voted at the election.

If no successful challenge is made to the absentee ballot, the checklist must be marked and the absentee ballot must be deposited in the ballot box or ballot counting device to be counted after the polls close to voting.

As the Court notes in its Order on pages 42 and 43, if a voter fails to sign either the absentee ballot application or the affidavit envelope, or if the documents contain different names, the ballot may be rejected. Except as noted below, both absentee ballot applications and affidavit envelopes must be signed by the voter. RSA 657:6; RSA 657:4; RSA 657:17. An affidavit envelope is not considered "properly executed" under RSA 659:50, II if it does not contain a signature or if it contains a different name than that which appears on the absentee ballot application. Likewise, a voter who fails to sign an absentee ballot application form would not be considered a "duly qualified voter" under RSA 659:53, IV.

However, the above signature requirements do not apply to those voters who received assistance due to blindness or disability as long as the person who assisted the voter signs the statement on the affidavit envelope that acknowledges the assistance. *See* RSA 657:17. Also, it is important to keep in mind that "[n]o absentee ballot shall be rejected by the moderator for any immaterial addition, omission, or irregularity in the preparation or execution of any writing or affidavit[.]" RSA 659:54.

If you have any questions or concerns regarding this, please contact Deputy Secretary of State David Scanlan at (603) 271-3242, or Assistant Attorney General Matthew T. Broadhead at (603) 271-3650.

A copy of the Court's Order is available to download at:
<http://www.nhd.uscourts.gov/sites/default/files/Opinions/18/18NH160.pdf>