

**NEW HAMPSHIRE ATTORNEY GENERAL'S OFFICE
ELECTIONS DIVISION**

EXECUTIVE REPORT

Investigation of May 17, 2011 Special Election in New Boston

June 17, 2011

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A. SUMMARY OF INVESTIGATION

On May 17, 2011, the Town of New Boston held a Special Election to elect a State Representative in Hillsborough County District No. 4. During the Special Election, at approximately 10:40 a.m., Attorney Paul Twomey contacted the Elections Division of the Attorney General's Office and made a complaint about signs that were posted at the New Boston polling place. Attorney Twomey alleged that the signs notified voters that they were required to present identification before voting. The Attorney General's Office conducted an investigation to determine whether improper signs were posted at the New Boston polling place.

At approximately 10:42 a.m. that same morning, Mark Myrdek, an investigator at this office, asked the New Boston Police Chief, Christopher Krajenka, to respond to the polling place and investigate the signs. Chief Krajenka subsequently spoke to Lee Nyquist, Moderator for the Town of New Boston. Moderator Nyquist informed Chief Krajenka that the three signs in question had been removed from the polling place. At approximately 11:15 a.m., Chief Krajenka relayed that information to Investigator Myrdek.

Later that day, Investigator Myrdek interviewed Moderator Nyquist at the New Boston polling place. Moderator Nyquist confirmed that the signs were already posted at the polling place when he arrived at the polling place before it opened at 7:00 a.m., and that they remained posted until he removed them shortly after 10:30 a.m. All three signs contained black lettering on white 11 x 17 paper. The signs stated:

NOTICE

**PER PENDING LEGISLATION,
YOU WILL BE REQUIRED TO PRODUCE A
PHOTO ID IN ORDER TO RECEIVE A
BALLOT.**

**PLEASE HAVE YOUR PHOTO ID READY BEFORE
YOU APPROACH THE BALLOT CLERK**

THANK YOU.

The signs were posted in the following three locations: on the right side of the double glass doors leading into the polling place; on an easel in the hallway of the polling place; and on the table where the voters check in. When Moderator Nyquist arrived at the polling place before it opened at 7:00 a.m. on Election Day, he noticed the sign posted on the door. There were no other signs or election information posted on that door. He also noticed the signs on the easel and the voter check in table. Although Moderator Nyquist acknowledged looking at the posted signs, he stated that he "did not read them closely."

In addition to the signs, the ballot clerks who check in the voters were given permission by Moderator Nyquist to ask voters for identification. Moderator Nyquist explained that he

made it clear to the election workers that having photo identification was not required for voting and that no one should be turned away for lack of identification. He stated that the purpose of asking voters for identification was only to inform them of what might be required if the proposed voter identification bill, Senate Bill 129, became law.

Moderator Nyquist told Investigator Myrdek that he first became aware of an issue with the signs when Andrew French of the New Hampshire Democratic Party approached him between 10:30 and 10:35 a.m. Mr. French explained to Moderator Nyquist that he had received a call from Gene Martin of the New Hampshire Democratic Party who stated that the party had received a complaint about the signs. Moderator Nyquist stated that after speaking with Mr. French, he immediately read the sign on the door. He realized that it was not appropriate and proceeded to remove all three signs within a minute after speaking with Mr. French.

Even though Moderator Nyquist informed the election workers why he removed the signs, he nevertheless told the election workers that they could still ask voters for identification. Moderator Nyquist told the election workers that if voters had questions about why the workers were asking for identification, they were to explain that it was only voluntary and that no legislation had been passed requiring identification. After further thought, Moderator Nyquist instructed the election workers at approximately 11:40 a.m. to stop asking voters for identification in order to avoid any confusion.

Moderator Nyquist provided the following background information and explanation for why the signs had been originally posted. He stated that the New Boston Town Clerk, Irene Baudreau, and the Deputy Clerk, Cathy Strausbaugh, attended a regional meeting conducted by the New Hampshire City and Town Clerks Association in Manchester on May 11, 2011. He explained that Ms. Baudreau and Ms. Strausbaugh told him that one of the topics discussed at the meeting by officials from the Secretary of State's Office was the proposed legislation being considered by the New Hampshire House of Representatives and the New Hampshire Senate, which would require voters to present photo identification before being allowed to vote.

Ms. Baudreau and Ms. Strausbaugh informed Moderator Nyquist that they believed they were told to begin educating voters about the proposed legislation. According to Moderator Nyquist, after Ms. Baudreau and Ms. Strausbaugh left the meeting, they apparently discussed how they were going to educate the voters in New Boston about the proposed legislation. They thought that they should ask voters for photo identification at the upcoming May 17, 2011 Special Election in order to increase awareness of what might be required in the future. On May 12, 2011, Moderator Nyquist received an email from Ms. Strausbaugh inquiring if a sign asking the voters for identification should be posted at the upcoming Special Election. She stated in the email that the Secretary of State's Office "urged us to begin asking voters for their ID at the next election so the voters would be more aware." In Moderator Nyquist's reply to her email, he gave her permission to post the signs, while instructing them "[d]o not, however, require an id or make anyone go back to the car to get one." Investigator Myrdek obtained a copy of this email exchange.

On May 17, 2011, Investigator Myrdek interviewed Ms. Strausbaugh about the complaint. She explained that the issue about whether voters at the May 17, 2011 Special

Election should be asked for identification was discussed amongst a group of clerks at the May 11, 2011 meeting, but not with officials from the Secretary of State's Office. Ms. Strausbaugh confirmed that she discussed the issue further with Ms. Baudreau on the way back from the meeting and that Ms. Baudreau instructed her to email Moderator Nyquist about it. Ms. Strausbaugh explained that she and Ms. Baudreau drafted the signs and that she posted them at the polling place during the evening of May 16, 2011. She stated that the use of the word "required" on the sign was not intended to mislead voters.

On May 17, 2011, Investigator Myrdek interviewed Ms. Baudreau about the complaint. Ms. Baudreau acknowledged that at no time during the May 11, 2011 meeting were the attendees told by the officials from the Secretary of State's Office to implement a dry run of requesting voter identification before the passage of any bill requiring it. She confirmed that the issue of using the May 17, 2011 Special Election as a dry run did come up in a discussion with other clerks and that she and Ms. Strausbaugh also discussed the issue on the way back from the meeting. She also confirmed that she and Ms. Strausbaugh made the signs, and that the signs were posted by Ms. Strausbaugh. She claimed that although many voters had questions about voter identification, no voter was turned away for not having identification.

On May 17, 2011, Investigator Myrdek interviewed New Hampshire Democratic Party official Andrew French about the complaint. Mr. French stated that he was serving as the campaign coordinator for the Democratic candidate in the Special Election at the New Boston polling place. At around 7:00 a.m., Mr. French noticed the sign on the door and asked an election worker about it. The election worker responded that identification was not required and that they were just preparing voters for what might be asked of them in the future if the voter identification bill became law. Mr. French said that he noticed about six people read the sign on the door and then turn away. Upon seeing this, Mr. French approached these individuals and explained the purpose for the sign to them. He informed Investigator Myrdek that all but one of the individuals went inside and voted or went to their vehicles first to retrieve identification before going inside. One person left the polling place after reading the sign, but returned later that day and voted. Mr. French did not know the names of any of these voters. Mr. French confirmed that he spoke to Moderator Nyquist about the sign following a call that he received from Gene Martin, and that Moderator Nyquist removed the sign within a minute after speaking with him.

On May 18, 2011, Investigator Myrdek interviewed New Hampshire Republican Party Executive Director Will Wroblewski about the complaint. Mr. Wroblewski stated that he was at the New Boston polling place during the Special Election from 7:00 a.m. to 9:00 a.m. and then again from 11:00 a.m. to 1:00 p.m. He informed Investigator Myrdek that he heard election workers asking voters for identification and that a few voters asked questions about the request. Mr. Wroblewski was not aware of anyone being turned away from the polling place or being denied the opportunity to vote as a result of the signs.

On May 19, 2011, Investigator Myrdek interviewed Deputy Secretary of State David Scanlan and Assistant Secretary of State Anthony Stevens about the presentations that they made to the clerks at the May 11, 2011 regional meeting. Both of them confirmed that they briefed the clerks about the pending voter identification bill and the differences between the versions passed

by the House and the Senate. They told the clerks about provisions in the bill that would provide for voter education and for testing the process in the 2012 elections prior to the November 2012 General Election. Neither of them recalled any question being asked about using the May 17, 2011 Special Election as a dry run. Assistant Secretary of State Stevens said that he would have remembered such a question because of the implications of such a dry run. Deputy Secretary of State Scanlan stated that he would not have recommended holding a dry run before any voter identification bill became law.

On June 14, 2011, Investigator Myrdek contacted Moderator Nyquist and Ms. Strausbaugh to determine whether, since the election date, any voters in the Town of New Boston had reported that they had been turned away at the polling place for not having identification. They both confirmed that no voters had made such a report to them.

B. ANALYSIS

RSA 659:13 states:

A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the paper checklist and the supervisors of the checklist shall cause the centralized voter registration database to reflect the correction. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in RSA 659:27-33, shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.

RSA 659:13 (emphasis added).

RSA 659:13 currently does not require voters to produce any form of identification when checking in to vote. Senate Bill 129 proposes to amend RSA 659:13 to require voters on the checklist to present a valid photo identification. It has not, however, yet become law. Accordingly, the signs posted at the New Boston polling place on May 17, 2011, violated RSA 659:13, and it was improper for the New Boston ballot clerks to ask voters for identification. We conclude that the New Boston Town Clerk and Deputy Town Clerk proposed the idea of posting signs and asking for voter identification at the Special Election, as a “dry run” in anticipation that some version of Senate Bill 129 would become law. We further conclude that Moderator Nyquist improperly authorized them to ask for photo identification. He also failed to properly review the signs and identify them as illegal. The signs stated that photo identification would be

required to receive a ballot during this Special Election. These actions occurred without encouragement from, or endorsement by, officials from the Secretary of State's Office.

Part 2, Article 32 of the New Hampshire Constitution and RSA 659:9 make moderators responsible for ensuring that voting is conducted in accordance with the law. Moderators must ensure that the election officials at their polling place are aware of the election laws regarding voting procedure and that those laws are being observed. It is inexcusable that Moderator Nyquist allowed the voter identification signs to be posted at the polling place without carefully reading them first, and that he authorized the ballot clerks to ask voters for identification. While this office has not located any voters who did not vote during the Special Election at the New Boston polling place because of the signs, this neglect in supervision could have had serious consequences.

C. FINDINGS AND CONCLUSION

New Hampshire law does not authorize the Attorney General to impose civil penalties for these particular violations. While civil penalties may be imposed for many other violations of elections laws, there is no provision allowing for imposition of a civil penalty in this instance. However, RSA 659:77 states:

- I. If any moderator shall neglect to cause an accurate count to be made of the votes cast as required by law, for which no other penalty is provided, he or she shall be guilty of a violation.
- II. If any town or ward clerk shall neglect to make any return of votes required by law, for which neglect no other penalty is provided, he or she shall be guilty of a violation.
- III. If a return of votes is not timely submitted or is submitted with significant defects, if a recount discloses that the election night vote count was significantly inaccurate, or if other significant deficiencies in the conduct of an election are documented the secretary of state shall report the same to the attorney general. Upon a finding by the attorney general that the late submission, miscount, or other significant deficiency was due to lack of training, lack of established procedures, negligence, or misconduct, the secretary of state in consultation with the attorney general shall appoint an election monitor who shall be an individual trained in the conduct of elections and who shall attend portions of the ballot casting and all of the ballot counting to monitor the next election conducted in that town or ward. The finding of the attorney general may be appealed to the ballot law commission.
- IV. An election monitor appointed under paragraph III shall have full access to the polling place, including authority to directly observe the registration of voters on election day, the checking in of voters by inspectors of elections, assistance to voters with disabilities, the use of the accessible voting system, the receipt of ballots, the processing of absentee ballots, and the counting of

ballots, and may handle marked ballots for the purposes of instruction during the counting and tabulating process.

V. An election monitor appointed under paragraph III may provide training and guidance to the moderator and clerk who conducts the election. The election monitor shall issue a public written report within 30 days following the election to the voters of the town or ward, the secretary of state, and the attorney general, which shall be posted on the secretary of state's website, documenting the extent to which the town or ward complies with state law and utilizes the best practices set forth in the election procedures manual and the on-line training available on the secretary of state's website in conducting the monitored election.

RSA 659:77 (emphasis added).

This office finds that the improper signs and procedure of asking voters to present photo identification constitute significant deficiencies in the conduct of the May 17, 2011 Special Election in New Boston. These deficiencies were due to a lack of established procedures and constitute negligence. As a consequence of these findings, RSA 659:77 states that the Secretary of State, in consultation with the Attorney General, shall appoint an election monitor who shall be an individual trained in the conduct of elections and who shall attend portions of the ballot casting and all of the ballot counting to monitor the next election conducted in that town. Pursuant to the statute, the monitor shall have full access to the polling place, including the authority to directly observe the checking in of voters. The monitor may provide training and guidance to the moderator and clerk who conduct the election. See RSA 659:77, III-V.

The Secretary of State will notify Moderator Nyquist of the individual selected to be the monitor at the next election to be held in the Town of New Boston.

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