Attorney Orville B. Fitch II January 16, 2024

Election Legal Counsel

NH Secretary of State

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cc:

NH Secretary of State NH Attorney General Formella Rye,NH Town Moderator David M. Scanlan attorneygeneral@doj.nh.gov Robert Eaton

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Attention Mr. Fitch,

Machine testing for the Presidential Primary Election in the Town of Rye, NH was conducted on January 12th, beginning @ 9AM. Town Officials present for this testing included elected Moderator, Robert Eaton and Nina Parrot, as assistant Moderator, and Town Clerk, Donna Decotis. Observers during the session included me (Michael Bean) and Al Brandano.

 At the immediate outset of the session, questions arose concerning the number of ballots required for testing and the requirement for testing folded ballots (simulating absentees) as described in the 2022/2023 Election Manual (see page 371-372).

Mr. Eaton placed a call to the Secretary of State’s office to obtain a ruling on said requirements. Accordingly, it was determined by Election Legal Counsel (Orville Fitch), that 50 ballots for each party were to be used in performing the test as a Statutory requirement. Further, Mr. Eaton expressed concern, given the number of candidates on the ballot, that folding the ballots and avoiding all ovals was probably not possible. You advised Moderator Eaton that processing folded ballots, although recommended, may not be a Statutory requirement. Hence, the decision was made to not test folded ballots through the machine.

In summary, Rye testing resulted in processing the required number of ballots (50 each party) through two machines for two main Device Memory Cards and two Spare Device Memory Cards.

No folded ballots were tested through the machine throughout the testing session.

REQUEST FOR DISTRIBUTION:

1. Please advise all towns in NH using EBCD’s 50 ballots from each party are required for testing through each machine, for each memory card on hand for the Presidential Primary.
2. Please advise all towns that folded ballots are not required for testing, since avoiding an oval (ref. Windham Incident) may not be doable.
3. Please send **immediate notification** to all towns utilizing an EBCD, that since folded ballots could not be tested prior to the Presidential Primary, all folded (Absentee Ballots) must be hand counted and NOT put through the EBCD.

Respectfully,

Michael Bean

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