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January 14, 2025

To: Hon. Matthew Birong, Chair
House Committee on Government Operations and Military Affairs

From: S. Lauren Hibbert, Deputy Secretary of State
Sean Sheehan, Director, Elections and Campaign Finance

Re: Bennington-1 Election

Dear, Committee,

Thank you for the opportunity to testify regarding the Bennington-1 House Election.

We expect that you will have three major questions about this election.

1. What happened?
2. How do we prevent this from happening in the future?
3. What should be done now?

Overview: Vermont's Redistricting Process and Bennington-1

The Legislature is required to reapportion the districts every 10 years to reflect Vermont's changing population. Typically, this committee has the responsibility of creating new legislative maps. The last time the district maps were adjusted was in 2022. The Secretary of State's office provides feedback and input in the reapportionment process. Act 89 (2022) designated new boundaries for legislative districts.

The process of updating district boundaries involved the Vermont Secretary of State's Elections Division, town clerks, E-911 staff, and others. Our office's role was to update the Election Management System so that town clerks could assign the new districts to specific street segments in their town, and thereby, assign voters living at those street addresses to the new districts. When clerks and BCA had questions about a residence relative to district boundaries, they met with E-911 staff to seek clarification.

In Pownal, a mistake was made. On boundary roads, where the centerline was specified as part of the boundary between two legislative districts, some residents were misassigned.

What Happened as a Result of this Error?

Voters who were misassigned in Pownal's voter checklist in 2022 were considered to be in the town's other House of Representative district. Impacted voters received the other district's ballots for the statewide primary and general election in both 2022 and 2024.

For the 2024 Bennington-1 House of Representatives election, the number of registered voters who could not properly vote in the Bennington-1 House District (56 voters) was greater than the margin of victory (23 votes). For Bennington-5, the House race was not close. The error could not have impacted the result.

It is important to note that the error did not lie with the distribution of ballots. Voters received the ballot for the district associated with their name on the Town of Pownal's voter checklist.

Ostensibly, election officials, candidates, or voters could have caught the issue in the run-up to the 2022 or 2024 elections. 17 VSA 2501(d) requires the Board of Civil Authority (BCA) to "post prominent notices in and around the polling places urging voters to check whether they have been placed on the proper geographical checklist. The notice shall also explain the procedures by which a voter who is on the wrong checklist for his or her geographical area can be added to the proper checklist and vote at the proper polling place."

Our understanding is that the BCA fulfilled their posting requirement. However, no issues were raised with the checklists for either Bennington-1 or Bennington-5 districts before or on the days of the elections.

How do we prevent this from happening in the future?

The question of how to prevent similar errors in the future should be addressed at the level of Pownal specifically as well as more generally.

Starting with the specific, Pownal's checklists have been corrected. Pownal's BCA met on November 18, 2024, to review the voter checklist. They identified the erroneously assigned voters. Pownal's town clerk subsequently corrected the checklist.

Generally speaking, because Vermont elections are conducted at the local level, efforts to ensure checklist accuracy is a collaborative effort. The Elections Division of the Secretary of State's Office can, and will, continue to engage Vermont's 247 town clerks and ask them to affirmatively state that they have reviewed their checklists, with a particular focus on boundary roads in multi-district towns.

Our office manages the statewide computer system that clerks use to maintain their checklists and the IT contractors who maintain the system. We conduct training courses, hold office hours on election procedures, and support clerks in using system functionality. We will be launching a new system in the spring and conducting training for it. We also send a survey to clerks after Town Meeting Day and follow up with calls to any non-respondents. These touchpoints offer the opportunity to provide support for clerks and BCA who are responsible for maintaining voter checklists.

What should be done now?

To be clear, the decision of what to do belongs squarely with the House, as directed by Vermont's Constitution and affirmed by the courts.

The Secretary of State is dedicated to free, fair, and accessible elections and is happy to play an advisory role as the House grapples with its options.

At a high level, the House's options range from 1) conducting a district-wide revote, 2) conducting a partial revote, and 3) affirming the candidate who received the most votes.

The district-wide revote path would necessitate several logistical questions to be answered. To maximize participation and be as consistent as possible with a general election, ballots could be mailed to all active voters 45 days in advance of the election day. If the House opted for this path, our office would need at least two weeks to prepare ballots for mailing, meaning that the election should be set at least two months out.

Advantages: This option would assure that every voter in the Bennington-1 House District has a chance to vote. Further, voters would have the opportunity to vote on an equal footing to every other voter in the district. Fair and proper elections treat all voters equally, giving them equal access to the information necessary to vote and equal access to the time and manner of voting.

Disadvantages: This option includes delayed results and voter turnout challenges. The election would not be resolved until the second half of this year's legislative session. Given that turnout is typically highest on presidential ballots, there's also the likelihood that fewer voters would participate than in the original election.

The partial revote path has a few variations. As discussed in the Attorney General's report, interested parties have called variously for distributing ballots to the active voters who did not receive Bennington-1 ballots in the fall to a Pownal-wide revote.

Advantages: This option includes lower cost and easier logistics.

Disadvantages: This option could be seen as unequal treatment of voters across the five towns, as the new voters would be operating with different information than those who voted months ago.

Affirming the candidate who received the most votes is the most straightforward path.

Advantages: This option means that Bennington-1 citizens have a consistent representative in the State House as soon as possible and likely the support of the largest number of voters (highest turnout with presidential ballot).

Disadvantages: This option excludes voters who should have had an opportunity to vote in the district.

