

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 23, 2023

Honorable James Gray
Chair, Senate Committee Election Law and Municipal Affairs
Legislative Office Building Room 102
107 North Main Street
Concord NH 03301

Honorable Ross Berry
Chair, House Committee on Election Law
Legislative Office Building, Room 308
107 North Main Street
Concord NH 03301

Dear Senator Gray and Representative Berry:

Enclosed please find the Election Law Complaint Status Report submitted pursuant to RSA 7:6-c for the reporting period January 1, 2022-June 30, 2022. Assistant Attorney General Brendan O'Donnell, who leads the Election Law Unit, is prepared to respond to any questions you may have. He can be reached at 603-271-3650 or Brendan.A.ODonnell@doj.nh.gov.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "J.M. Formella".

John M. Formella
Attorney General

Enclosure

STATE OF NEW HAMPSHIRE

DEPARTMENT OF JUSTICE

SENATE COMMITTEE ON ELECTION LAW AND MUNICIPAL AFFAIRS

HOUSE COMMITTEE ON ELECTION LAW

Election Law Complaint Status Report

Submitted Pursuant to RSA 7:6-c

Reporting Period January 1, 2022, to June 30, 2022

Issued August 23, 2023

Prepared by:

John M. Formella
Attorney General

Brendan O'Donnell
Assistant Attorney General
Election Law Unit
Attorney General's Office
33 Capitol Street
Concord, NH 03301
(603) 271-3650

INTRODUCTION

Part I, Article 11 of the New Hampshire Constitution provides, in part, that “[a]ll elections are to be free, and every inhabitant of the State of 18 years of age and upwards shall have an equal right to vote in any election.” To safeguard this constitutional provision, and pursuant to RSA 7:6-c, the Legislature has designated the Attorney General to enforce all election laws in New Hampshire. In 2017, the Attorney General established a free-standing Election Law Unit. For this reporting period, the Unit was staffed by two full-time attorneys, Deputy General Counsel Myles Matteson and Attorney Matthew Conley, one full-time elections investigator, Chief Investigator Richard Tracy, and one full-time investigative paralegal, Jill Tekin.

Pursuant to RSA 7:6-c, II, (a), the Attorney General hereby submits to the New Hampshire House of Representatives and the Senate this report on the status of all complaints of alleged violations of election laws received from January 1, 2022, to June 30, 2022. This report is divided into three parts. Section I, pursuant to RSA 7:6-c, II (b), includes a summary of complaints received from January 1, 2022, to June 30, 2022, and a categorization of complaints received by type of complaint and month received as required by RSA 7:6-c, II (b). Section II lists all complaints received prior to this reporting period that remain open as of the publication date of this report. Finally, Section III contains an index of matters that have been closed during the reporting period or subsequently, and pursuant to RSA 7:6-c, II (c), attached hereto are the closure letters, settlement agreements, cease-and-desist orders, and other official communications that describe the results of each complaint that has been investigated or an explanation of why the complaint was closed without an investigation.

I.

SUMMARY OF COMPLAINTS RECEIVED FROM January 1, 2022, to June 30, 2022

Complaint Against	Complainant	Date of complaint	Allegations	Status	Bates No.
Alleged Wrongful Voting	SoS Referral	2/2/2022	RSA 659:34, Alleged wrongful voting	Open	
Sarah Wiggin	Al Brandano	2/7/2022	RSA 656:42, Alleged election official misconduct	Closed on 1/5/2023	170-176
Berlin Police Chief Peter Morency	Timothy Donovan	2/8/2022	RSA 669:7, Alleged election official misconduct	Closed on 3/4/2022	017-018
Scott Morrow	Brandon Deacon	2/9/2022	RSA 664:17, Alleged illegal campaign activity	Closed on 1/5/2023	157-159
Nicole Woods	Christopher Cadreact	2/9/2022	RSA 654:1, Alleged election official misconduct	Closed on 3/30/2022	021-023
Donna Decotis	Michael Bean	2/14/2022	RSA 656:42, Alleged election official misconduct	Closed on 3/10/2023	207-210
Tricia Thompson	Brett Walker	2/14/2022	RSA 664:14, Alleged illegal campaign activity	Closed on 2/10/2023	205-206
David Ryan	Susan Shanelaris	2/17/2022	RSA 655:17, Alleged election official misconduct	Closed on 4/29/2022	060-065

Alleged Wrongful Voting	Melanie McGrail	2/18/2022	RSA 659:34, Alleged wrongful voting	Open	
Bethlehem Property Tax Mailer	Julie Seely	2/18/2022	RSA 664:14, Alleged illegal campaign activity	Open	
Mason Planning Board Mailers	Jon Bryan	2/18/2022	RSA 664:14, Alleged illegal campaign activity	Closed on 6/10/2022	084-088
Town of Winchester	Nathan Holmy	3/3/2022	RSA 666:1, Alleged election official misconduct	Closed on 1/5/2023	164-169
Tri-County Republicans	Scott Drummey	3/3/2022	RSA 664:14, Alleged illegal campaign activity	Closed on 3/4/2022	019-020
NH Voter Integrity Group	Multiple	3/4/2022	RSA 664:14, Alleged illegal campaign activity	Closed on 5/12/2022	071-073
Debra Paul/Nutfield Publishing	Laura Morin	3/8/2022	RSA 664:16, Alleged illegal campaign activity	Open – charges filed	
Town of Epping	John Cody	3/9/2022	RSA 659:60, Alleged election official misconduct	Closed on 2/10/2023	187-194
Douglas Viger, Pelham School Moderator	Kevin Edwards	3/11/2022	RSA 659:95, Alleged election official misconduct	Closed on 2/6/2023	181-186
Multiple allegations of wrongful voting	Brenda Towne	3/15/2022	RSA 659:34, Alleged wrongful voting	Open	
Mark Alliegro	Roger Blake	3/16/2022	RSA 664:14, Alleged illegal	Closed on 3/30/2022	024-027

			campaign activity		
Town of Raymond	Kera Godsmith	3/24/2022	RSA 666:3, Alleged election official misconduct	Closed on 12/22/2022	152-156
Robert Gauthier, Jr. Carroll Public Works Department	Albert Pearce	3/31/2022	RSA 659:44, Alleged illegal campaign activity	Open	
Alleged Wrongful Voting – unfounded	Keith Cota	4/7/2022	RSA 659:34, Alleged wrongful voting	Closed on 5/12/2022	074-079
Town of Croydon	Multiple	4/11/2022	RSA 666:3, Alleged election official misconduct	Closed on 12/9/2022	139-151
Town of Haverhill	Multiple	4/13/2022	RSA 666:3, Alleged election official misconduct	Open	
Alleged Wrongful Voting – unfounded	Town of North Conway	4/19/2022	RSA 659:34, Alleged wrongful voting	Closed on 1/30/2023	179-180
Alleged Wrongful Voting – unfounded	Town of Chester	5/6/2022	RSA 659:34, Alleged wrongful voting	Closed on 2/10/2023	199-204
Thornton Education Association	Robert Hatcher	5/11/2022	RSA 659:44, Alleged illegal campaign activity	Closed on 1/5/2023	160-163
Fremont Education Association	Keith Stanton	5/20/2022	RSA 659:44, Alleged illegal campaign activity	Closed on 2/10/2023	195-198
Alleged Wrongful Voting	Jon Swan	6/1/2022	RSA 659:34, Alleged wrongful voting	Open	

David Croft, Sheriff	Anonymous	6/20/2022	RSA 659:44, Alleged illegal campaign activity	Closed on 1/10/2023	177-178
Alexander Talcott	Eliza Grant	6/30/2022	RSA 658:28, Alleged illegal campaign activity	Open	

A. Number of Complaints Received Per Month

Month/ year	Number of Complaints
January 2022	0
February 2022	11
March 2022	10
April 2022	3
May 2022	3
June 2022	3
TOTAL:	30

B. Complaints Received by Type of Complaint

Type of Complaint	RSA Violations	Number of Complaints
Alleged Wrongful Voting	RSA 659:34 (registration/domicile)	6
Alleged Illegal Campaign Activity	RSA 658:28 (candidate domicile); RSA 659:44-a (electioneering by public employee); RSA 664:14 (political advertising disclosure requirements); RSA 664:16 (political advertising in newspaper)	13
Alleged Election Official Misconduct	RSA 654:1 (eligibility of office holder); RSA 655:17 (filing altered); RSA 656:42 (rules); RSA 659:60 (duties); RSA 659:95 (securing ballots); RSA 666:1 (ballot tampering); RSA 669:7 (incompatibility of office); RSA 666:3 (official misconduct)	11
Alleged Campaign Finance Violation		0
TOTAL:		30

II.

**INVESTIGATIONS OPEN PRIOR TO THE
REPORTING PERIOD**

Alleged Violation	Date Opened	Date Closed	Bates No.
Wrongful Voting RSA 659:34 – Dismissed without prejudice by the court due to competency order pursuant to RSA 135:17-a	11/15/16	8/12/22	125-127
Wrongful Voting RSA 659:34 – charges filed	10/30/19		
Wrongful Voting RSA 659:34 – Found Not Guilty	12/3/19	9/23/22	129-131
Voter Suppression RSA 659:40	8/12/20		
Voter Suppression RSA 657:4	8/27/20		
Illegal Campaign Activity RSA 656:18	10/15/20		
False Names RSA 659:40 – Pled Guilty	4/23/21	4/24/23	211-216
Wrongful Voting RSA 659:34 – charges filed	4/26/21		
Voter Intimidation RSA 659:40	6/15/21		
Illegal Campaign Activity RSA 664:6	7/1/21		
Illegal Campaign Activity RSA 664:14	12/22/21		

III.

INDEX OF CLOSURE LETTERS/COMMUNICATIONS

Alleged Violation	Date Closed	Bates Page Number
RSA 640:2 – Bribery	1/24/2022	001-002
RSA 664:21 – Identification on advertising	1/28/2022	003-007
RSA 659:44 – Electioneering	1/28/2022	008-009
RSA 654:8 – Voting ward	2/7/2022	010-011
RSA 664:16 – Identification on advertising	2/7/2022	012-014
RSA 664:14 - Identification on advertising	2/11/2022	015-016
RSA 669:7 – Incompatibility of office	3/4/2022	017-018
RSA 664:14 – Identification on advertising	3/4/2022	019-020
RSA 654:1 – Candidate domicile	3/30/2022	021-023
RSA 664:14 – Identification on advertising	3/30/2022	024-027
RSA 659:60 – Moderator duties	3/30/2022	028-030
RSA 659:34 – Wrongful voting	4/6/2022	031-037
RSA 659:34 – Wrongful voting	4/25/2022	038-042
RSA 658:9 – Polling location	4/27/2022	043-048
RSA 657:23 – Delivery to moderator	4/28/2022	049-052
RSA 658:9 – Polling location	4/28/2022	053-059
RSA 655:17 – Filing deadline	4/29/2022	060-065
RSA 659:34 – Wrongful voting	5/5/2022	066-070
RSA 664:14 – Identification on advertising	5/12/2022	071-073
RSA 659:34 – Wrongful voting	5/12/2022	074-079
RSA 659:43 – Electioneering	5/24/2022	080-081
RSA 659:43 – Electioneering	5/24/2022	082-083
RSA 664:14 – Identification on advertising	6/10/2022	084-088
RSA 659:34 – Wrongful voting	7/7/2022	089-090
RSA 659:21 – Guardrail	7/25/2022	091-093
RSA 659:40 - threatening	7/29/2022	094

RSA 664:16 - Push-poll	8/9/2022	095
RSA 666:2 – official duties	8/19/2022	096-103
RSA 666:2 – official duties	8/19/2022	104-122
RSA 659:34 – wrongful voting	8/19/2022	123-124
RSA 659:34 – wrongful voting	8/24/2022	125-127
RSA 664:17 – theft of signs	8/26/2022	128
RSA 659:34 – wrongful voting	9/23/2022	129-131
RSA 664:6 – campaign finance	10/20/2022	132-138
RSA 666:3 – official misconduct	12/9/2022	139-151
RSA 669:2 – posting of the warrant	12/22/2022	152-156
RSA 664:14 – identification on advertising	1/5/2023	157-159
RSA 659:44-a – electioneering	1/5/2023	160-163
RSA 666:1 - term of office	1/5/2023	164-169
RSA 659:40 – voter suppression	1/5/2023	170-176
RSA 659:44-a – electioneering	1/10/2023	177-178
RSA 659:34 - wrongful voting	1/30/2023	179-180
RSA 659:9 – moderator duties	2/6/2023	181-186
RSA 656:42 – clerk duties	2/10/2023	187-194
RSA 659:44-a – electioneering	2/10/2023	195-198
RSA 659:34 – wrongful voting	2/10/2023	199-204
RSA 664:14 – identification on advertising	2/10/2023	205-206
RSA 656:42 – clerk duties	3/10/2023	207-210
RSA 666:6 – false names	4/23/2023	211-216

**Closure Letters, Settlement Agreements,
Cease and Desist Orders, Complaints Filed With A Court,
Or Other Official Communications**

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 24, 2022

John Yarmo

Candia, NH 03034

Re: Alleged Bribery in Official and Political Matters

Dear Mr. Yarmo:

The Attorney General's Office received a complaint dated September 11, 2020, regarding a potential bribery violation alleging that you offered to give \$200 to Representative Kevin Verville's campaign should he publish a letter calling for the resignation of another representative. This Office conducted an investigation, and warns you against further conduct that may constitute the felony offense of bribery.

On September 23, 2021, Investigator Scott Gilbert spoke with you. You stated that you remembered posting a comment on his Facebook page. The post read:

Kevin: I will donate \$200 to your campaign if you: publish a letter to: Gov Sununu, cc: House Leadership (D & R) and John Distaso (WMUR); Demanding the resignation of Rep James Spillane (R) denounce his racist comments and problematic past, (e.g. DUI arrests and spousal abuse). Deal expires 09/13/2020 11:00 AM (48 hours).

In your conversation with Investigator Gilbert you stated that your posting was flippant, spontaneous, and an attempt to get a reaction from Representative Verville. You denied any intent to give \$200 to Representative Verville's campaign.

On September 23, 2021, Investigator Gilbert also spoke with Representative Verville. He stated that he has never met you or had any contact with you other than your Facebook post and his follow-up comment. That comment read:

The decision is in the hands of the voters and will be decided on 3 November 2020. While I find his comments repugnant, it is not up to me to decide. As stated above I do fund raise. And I certainly would not agree to a quid pro quo for any reason! In fact, I find your offer repugnant, with all due respect, and it almost certainly runs afoul of the

John Yarmo
Page 2 of 2

law. Rest assured, any contribution you try to make to my campaign, now or in the future, shall not be accepted.

Representative Verville also indicated that while he did not believe that your comment was a serious offer of a bribe, he nevertheless felt he had to respond as he did, indicating that your comment was improper, could be illegal, and that he would not agree or accept anything from you.

New Hampshire RSA 640:2 Bribery in Official and Political Matters states that a person is guilty of a felony offense if he “promises, offers, or gives any pecuniary benefit to another with the purpose of influencing the other’s action, decision, opinion, recommendation, vote, nomination, or other exercise of discretion as a public servant, party official, or voter...” The statute definitions make clear that Representative Verville, as an elected legislator, is a public servant.

Based on the plain language of your post, you offered a pecuniary benefit to Representative Verville in the form of a \$200 contribution. At the same time, despite the clear statements in your Facebook post, you claim that you did not intend to *actually* influence his official action in any way. Although he indicated that he did not take your post as an actual bribe attempt, Representative Verville was concerned enough about the apparent intent of your post that he responded forcefully, indicating a rejection of any action or engagement related to your post.

RSA 640:2 and related laws codify the principle that corrupting the practices of public servants, party officials, or voters is prohibited. Bribing or attempting to bribe a public servant is feloniously criminal. Making public statements that appear to be an offer of a bribe also constitutes serious conduct and at the very least is inappropriate.

This Office in this circumstance accepts your claim that your post was made in jest—it was executed in a public forum in a manner not inconsistent of a flippant statement. Although we accept that your “offer” was not serious, under slightly different circumstances, similar conduct could constitute a bribe and would be subject to prosecution. As such, you are warned against making future communications that are, or risk being interpreted as, attempts to corrupt elected officials’ performance of their public duties.

This matter is closed.

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General’s Office
myles.b.matteson@doj.nh.gov

CC: Kevin Verville

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 28, 2022

Lisa Dillingham
President, Dover Teachers' Union
71 Tasker Road
Strafford, NH 03884

Re: Dover Teachers' Union, Alleged Illegal Campaign Activity

Dear Ms. Dillingham:

On May 30, 2021, this Office received a complaint alleging that the Dover Teachers' Union (the "DTU") was engaging in impermissible electioneering by public employees relating to Dover teachers handing out signs on May 28, 2021, and that the DTU used social media and email to advertise that the signs would be available for pickup at the Dover High School.

I. FACTUAL BACKGROUND

Based on records and communications received by this Office and interviews with parties involved, on May 27, 2021, at 7:11 pm, it appears that you emailed union representatives announcing that 500 lawn signs the DTU had purchased had recently arrived. Your email contained statements including the following:

- "Whether it's budget season or city elections, we now have a way to be even more visible within the Dover community."
- "Despite the short time remaining before the school and city budgets are determined, we want to get as many signs as we can out into the community now! If you live in Dover, have family or friends who live in town, or know of anyone who would be willing to place a sign on their lawn (especially in well-traveled and highly visible areas) we will begin distribution tomorrow during and after the Teacher Workshop."

In addition, you posted a message and photo of one of the signs on Facebook. The signs are the typical size of a political yard sign, it is green and white that reads as follows:

SUPPORT
DOVER PUBLIC
SCHOOLS

In your email you announced that the signs would be available for pick up on May 28, 2021, in the parking lot at Dover High School during lunch hours and at the conclusion of a teacher workshop. You further wrote that if individuals were not available to pick up a sign but still wanted one, they should email a request to communityactionteam@doverteachersunion.com.

On May 28, 2021, at 3:08 pm, Megan Fernandes posted a news article on the Fosters Daily Democrat website titled, "Dover teachers make a final push". The first line of the article read, "A small group of teachers stood outside Dover High School Friday during their lunch break, passing out green and white 'Support Dover Public Schools' yard signs to residents who want to show support for the Dover Teachers Union."

On June 2, 2021, the City Council voted on the Dover school budget, approving an amount of \$68 million, and declining to override the city's tax cap. Based on a June 3, 2021, Karen Dandurant article and accompanying pictures in the Fosters Daily Democrat titled, "Dover approves tax-cap compliant budget - after teachers' pleas for more school funds," you and other DTU members were present outside city hall, holding "Support Dover Public Schools" signs. You are quoted in the article as advocating for the Council to vote to maintain \$5.1 million in the default school budget—an amount the Council eventually voted down.

Chief Investigator Richard Tracy subsequently communicated with Sean List, an attorney representing the DTU. Attorney List wrote that no students were at Dover High School on May 28th, teachers were attending a workshop at the school, the DTU did make the Facebook post and sent the email described above, the signs were purchased from a third-party vendor, and that no school property or equipment was used to make the signs.

II. APPLICABLE LAW

a. Electioneering

Given its broad construction, and the potential First Amendment implications associated with this statute's regulation of speech, this Office has exercised its powers under RSA 7:6-c (authorizing the Attorney General to enforce election laws) to interpret RSA 659:44-a narrowly. Specifically, this office construes the term "electioneer" under RSA 659:44-a in conjunction with the definition of "electioneering" under RSA 652:16-h.

Although the language of RSA 659:44-a appears to have been constructed broadly, interpreting it in conflict with RSA 652:16-h would be in error.¹ The language of RSA 659:44-a was last updated on January 1, 2017. RSA 652:16-h was enacted on January 1, 2020. RSA 652:16-h defines “electioneering” as “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” (Emphasis added.)

“When interpreting two statutes which deal with similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general.” EnergyNorth Nat. Gas, Inc. v. City of Concord, 164 N.H. 14, 16 (2012).

Therefore, we conclude that in order to qualify as “electioneering” under RSA 659:44-a, the conduct in question must explicitly advocate for a question or office being voted upon consistent with RSA 652:16-h.

b. Electioneering by Public Employees

RSA 659:44-a provides that “[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.”

A public employee is defined as “any person employed by a public employer” with some limited exceptions. RSA 273-A:1, IX. Those exceptions are:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;
- (c) Persons whose duties imply a confidential relationship to the public employer;
or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

¹ See also Stenson v. McLaughlin, 2001 WL 1033614 (D.N.H. Aug. 24, 2001) (Holding that statutes can regulate political communications without violating the First Amendment “only if the communications used explicit words of advocacy of election or defeat of a candidate.”).

III. ANALYSIS

In this case, we conclude that the teachers participating in the sign distribution were public employees, but they were not electioneering at the school and were not acting while in the performance of their official duties. After careful consideration, we determine that there were no election law violations.

RSA 273-A:1, IX makes clear that the DTU members—teachers at the Dover High School—are public employees that do not fall within one of the enumerated exceptions to the electioneering statute. Public employees are prohibited from electioneering while in the performance of their official duties—that is, engaging in express advocacy for a candidate or measure.

The definition of express advocacy revolves around the concept that, based on the content of the communication alone, the communication has “no other reasonable interpretation” than advocating for support for or opposition against a candidate or measure. See Fed. Election Comm'n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 469–70 (U.S. 2007). Additionally, some “magic words” constitute express advocacy, though communications that do not contain “magic words” may still constitute express advocacy based on the communication content. See Fed. Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249 (U.S. 1986).

Although it is not immediately clear, the “Support Dover Public Schools” signs are not express advocacy. The communication does contain the “magic word” of “support.” However, based solely on the complete content of the communication, it is not clear that there is no reasonable interpretation other than advocacy for a specific candidate or measure. That is, the communication content itself does not advocate for a specific candidate or measure. Your email makes clear that the purpose of the signs was specifically to impact votes on the school and city budgets. However, while the *use* of the signs was clearly targeted at impacting a school budget measure, under the law the express advocacy test does not look past the content of the communication itself.

Therefore, DTU members were not electioneering by virtue of displaying and handing out yard signs. Additionally, our investigation indicates that the DTU members were handing out the signs during their lunch hour. The teachers were not at that time teaching. They were not at that time in a work-related training. They were distributing signs during the block of time that they were excused from engaging in their official duties.

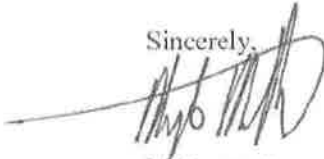
However, while the DTU members may not have been operating in their official duties, there are several aspects of this event that raise concerns. The DTU activities in handing out signs to be used to advocate for the passage of a budget measure were not only taking place on public property, but the very site that was an intended subject of the advocacy campaign. This gives the appearance of impropriety and partisanship.

The advocacy signs you were distributing, had they been posted on town property, would have been removed, as required by RSA 664:17. ("No political advertising shall be placed on or affixed to any public property"). While the evidence does not suggest DTU members posted these signs at the school, handing out these signs on public property is improper. To an uninformed observer, what happened at the event could give the appearance that public employees were engaging in electioneering at the school, in support of school funding, while on duty as teachers during a school day.

This Office urges you and the DTU to exercise caution when handling or distributing elections-related materials, particularly in any proximity to public property. The DTU and its members must exercise a higher degree of care and diligence to ensure their conduct does not violate electioneering laws or raise questions of integrity and impropriety.

This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Myles Matteson', with a long horizontal line extending to the left.

Myles Matteson
Deputy General Counsel
New Hampshire Attorney General's Office
(603) 271-1119
myles.b.matteson@doj.nh.gov

cc: Jeffrey T. Clay
Sean R. List, Esq.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 28, 2022

James Peck,
[REDACTED]

Plaistow, NH 03865

Charles Fowler,
[REDACTED]

Plaistow, NH 03865

RE: Alleged Illegal Campaign Activity in violation of RSAs 664:14

Messrs. Peck and Fowler:

On March 5, 2021, this Office received a complaint regarding political advertisements posted in Plaistow reading, "VOTE YES ARTICLE #19, HERITAGE COMMISSION." On March 9, 2021, this Office received an additional complaint regarding political advertisements posted in Plaistow reading, "VOTE NO #19." Both complaints alleged that the advertisements failed to contain identification information required under RSA 664:14.

As part of this Office's investigation, we spoke with both of you, Plaistow Town Clerk Martha Fowler, and Plaistow Moderator Robert Harb. Both complaints included photos of the political advertisements mentioned above. Neither advertisement included information identifying the individual or entity responsible for producing the signs. These advertisements concern the creation of a heritage commission and the related ballot measure.

On March 9, 2021, Chief Investigator Richard Tracy spoke with Mr. Peck. Mr. Peck stated that he is associated with the Plaistow Historical Society, acknowledged producing the "VOTE YES" signs, claims he paid for the signs and distributed them alone, and indicated that the Plaistow Historical Society is not responsible for the signs nor did he receive any assistance from anyone else. Investigator Tracy discussed the information requirements in RSA 664:14 with Mr. Peck, noting that an *individual* is not required to put identifying information on a political advertisement under some conditions. Mr. Peck provided a receipt to Investigator Tracy showing that he purchased 100 signs on February 3, 2021.

Also on March 9, 2021, Investigator Tracy spoke with Charles Fowler, the spouse of town clerk Martha Fowler. Mr. Fowler acknowledged that he alone was responsible for the "VOTE NO #19" signs. He paid for five signs and placed them at the Plaistow polls, then became upset when he saw that they had been laid on the ground. Investigator Tracy noted that signs cannot be on the grounds of the polls unattended and that they need to be manned by somebody in the electioneering zone.

James Peck and Charles Fowler
Page 2 of 2

We accept your claims as to each producing your respective signs individually. At the same time, we would like to take this opportunity to review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14.

First, RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or ~~implicitly~~ advocates the success or defeat of any party, measure or person at any election. With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term "implicitly" was unconstitutional. *Stenson v. McLaughlin*, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the name and address of the candidate, persons, or entity responsible for the advertising. Based on the forgoing, the signs in question would constitute political advertisements as they, respectively, expressly advocate for the success and failure of a measure, in this case, concerning ballot measure #19. As such, the signs trigger the identification requirements under RSA 664:14.

However, in 1995, the United States Supreme Court found that a "written election-related document...is often a personally crafted statement of a political viewpoint" and as such, "identification of the author against her will is particularly intrusive." *McIntyre v. Ohio*, 514 U.S. 334, 355, 357 (U.S. 1995). The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. *Id.* at 357. Consistent with *McIntyre*, and based on your statements, we conclude that the disclosure requirements in RSA 664:14 are not enforceable against a non-candidate-related individual responsible for designing, creating, and distributing signs in the manner you described.

In the twenty-six years since *McIntyre*, many courts—including one within our federal circuit—have narrowed the case's application and upheld advertising disclosure requirements, even against individuals. See *Bailey v. State*, 900 F. Supp. 2d 75, 85-87 (D. Me 2011); *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2009). You should be advised that the use of a wide-spread direct mailer, use of different media, or coordination with candidate campaigns or other non-campaign individuals are all factors, among others, that could bar you from claiming the *McIntyre* exception in the future. The simplest way to avoid a future violation is to insert an identifying name and address or email address on any such cards per RSA 664:14, I.

We will take no further action on this complaint at this time in light of *McIntyre*. This matter is closed. Please feel free to contact me if you have any questions.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General's Office
Myles.b.matteson@doj.nh.gov

Copied to: Ty Vitale

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

February 7, 2022

Kelly Walters, City Clerk,
City of Rochester
31 Wakefield St #105
Rochester, NH

Re: City of Rochester rejection of valid absentee ballots

Dear Clerk Walters:

On December 6, 2021, the Secretary of State's Office notified the Attorney General's Office of a call from a Rochester city election official about an absentee ballot issue. Our Office contacted you and discussed the mistaken rejection of two absentee ballots in the November 3, 2021, city election. We have determined that this was the result of clerical error and a subsequent mistake by a ward moderator.

As part of our investigation, Investigator Richard Tracy spoke with you on December 15, 2021. You explained that two voters, Richard & Katrina Parsons, of 18 Bovee Lane, Rochester, registered to vote after the Rochester Supervisors of the Checklist approved the final checklist for the November 3, 2021, city election. You noted that "informational documents" listed 18 Bovee Street as being in Ward 2 in Rochester, when in fact it is in Ward 1. Based on that erroneous information Ward 1 election officials sent the Parsons' ballots to Ward 2 to be processed on election day. However, the Ward 2 moderator, when assessing the Parsons' ballots, believed the correct action to take was to reject the ballots instead of sending them back to Ward 1 to be counted. This was a second mistake that led to the Parsons' ballots not being cast and counted on election day.

You stated you have corrected the Bovee Street information by updating it to correctly show that it is in Ward 1. You indicated that you also spoke with Ward 1 & 2 election officials and sent the Parsons an apology letter with an explanation as to what occurred.


We conclude that the rejection of the Parsons' ballots was the result of clerical error in the first instance, and a mistaken action by the Ward 2 moderator in the second instance. We appreciate what all election officials do for the voters in their respective communities, the amount of time they put in, and the stress they deal with especially on election day. We ask that you share the information from this investigation to use it as an opportunity for the moderators

Kelly Walters
Page 2 of 2

more carefully consider the how to handle absentee ballots that are marked as coming from another ward.

This matter is closed. Please contact us should you have any question or concerns. Thank you for all that you and your team of election officials do for the citizens of Rochester.

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-0445
myles.b.matteson@doj.nh.gov

cc: Richard & Katrina Parsons
David Scanlan, Deputy Secretary of State

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

February 7, 2022

Douglas Wilson

Greenland, NH 03840

Re: Greenland election of December 18, 2021, alleged illegal campaign activity

Mr. Wilson:

Between December 15 and 17, 2021, this Office received numerous complaints alleging violations of RSA 664:14 relating to identifying information and political advertising, and specifically, that a mailer sent to Greenland residents, directing the reader to "VOTE YES," failed to include the identification information required for political advertising under RSA 664:14. The advertisement in question was mailed out prior to the December 18, 2021, town election regarding the continued use of ballot counting devices.

The mailer included the following material on one side: "VOTE YES! To ban Greenland's voting machine. Safeguard our town's sovereignty. Vote at Greenland School Sat 12/18/21 8AM to 7PM. No More Third Party Software Reprogramming Services." The second side included four blocks of text with the heading, "Please consider these facts."

Nowhere on the mailer was there a signature "with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it." RSA 664:14.

On December 15, 2021, Attorney General's Office Chief Investigator Richard Tracy received a call from Greenland Town Clerk Marge Morgan. Ms. Morgan conveyed that a number of Greenland residents had called her office to complain about the mailer and the lack of identifying information. While Ms. Morgan stated that she did not know who was responsible for the mailer, she indicated that you were responsible for a petition to hold the December 18, 2021, special election regarding the use of ballot counting devices.

Investigator Tracy called you on December 15, 2021. You returned his call on the December 16th. You stated that you alone were responsible for the mailer. You indicated that you had paid Minuteman Press of Exeter, New Hampshire \$700 for the printing of approximately

Douglas Wilson
Page 2 of 3

2,000 post cards and postage. You later provided a copy of your receipt to Investigator Tracy. The receipt shows an expenditure of \$725 for printing and postage.

RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly advocates the success or defeat of any party, measure, or person at any election.

With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term "implicitly" was unconstitutional. *Stenson v. McLaughlin*, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidates, persons, or entity responsible for it.

In this case, based on the content, this mailer constitutes explicit advocacy within the meaning of RSA 664:2, VI, because it is directing the reader to vote "YES" on a specific ballot measure involving the continued use of ballot counting devices. Consequently, this would trigger the identification requirements for political advertising under RSA 664:14.

However, in 1995, the United States Supreme Court found that a "written election-related document...is often a personally crafted statement of a political viewpoint" and as such, "identification of the author against her will is particularly intrusive." *McIntyre v. Ohio*, 514 U.S. 334, 355, 357 (U.S. 1995). The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. *Id.* at 357.

Consistent with *McIntyre*, and based on your statements, we conclude that the disclosure requirements in RSA 664:14 are not enforceable against a non-candidate-related individual responsible for designing, creating, and distributing cards in the manner you described.

In the twenty-six years since *McIntyre*, many courts—including one within our federal circuit—have narrowed the case's application and upheld advertising disclosure requirements, even against individuals. See *Bailey v. State*, 900 F. Supp. 2d 75, 85-87 (D. Me 2011); *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2009). You should be advised that the use of a wide-spread direct mailer, use of different media, and coordination with candidate campaigns or other non-campaign individuals are all factors, among others, that could bar you from claiming the *McIntyre* exception in the future. The simplest way to avoid a future violation is to insert an identifying name and address or email address on any such cards per RSA 664:14, I.

We will take no further action on this complaint at this time in light of *McIntyre*. This matter is closed. Please contact me if you have any questions.

Douglas Wilson
Page 3 of 3

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General's Office

Cc: Marge Morgan, Greenland Town Clerk
Robert Paul
Albert Boucher
William and Linda Benham
Robin Bellantone
Arthur Thimann
Shirley Barron
Richard Fralic
Alice Passer
Nicola Dell Isola
Joseph Fredericks

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

February 11, 2022

Jonathan Szarek

██████████
Pelham, NH 03076

Re: Friends of Pelham, Alleged Campaign Finance Violation

Dear Mr. Szarek:

On March 4, 2021, this Office received a complaint, alleging violations of RSA 664:14, RSA 664:2, and 664:21, specifically, that a mailer sent to Pelham residents, directing the reader to "VOTE NO ON ARTICLE 2," failed to include the identification information required for political advertising under RSA 664:14. The advertisement in question was mailed out prior to the March 9, 2021, town election.

In the return address block of the advertisement is the following: "FRIENDS OF PELHAM, Informational Group, Pelham, NH 03076." There is also a postal permit identified as "Permit No. 1." The advertisement also contains a message to "PLEASE VOTE NO ON ARTICLE 2," and claims that voting "Yes" on this article will "show as big increases on your tax bill." The back of the advertisement displays four boxes containing a rationale for voting "No" on Article 2, before ending with the message, "PLEASE GO TO THE POLLS ON 3/9 AND VOTE NO ON ARTICLE 2."¹

On April 19, 2021, this Office received from Attorney Jamie Hage, your signed, notarized affidavit dated April 6, 2021. In the affidavit, you attest that you were the only person responsible for the creation and construction of the political advertisement. You also stated that you alone paid the \$1,550.00 to produce and mail the advertisement. You hired Mailways, Inc., a bulk mailing company, to send the advertisement to Pelham residents. You represented that approximately 5,250 advertisements were sent out to Pelham residents.

¹ The complainant also alleged that the advertisement contained "material misrepresentations that are verifiably false," specifically, the unclear subject of the term "administration" contained within the advertisement. This Office does not have enforcement authority over the accuracy of speech contained in political advertising. Furthermore, there is no evidence to suggest voter suppression contrary to RSA 659:40. Therefore, this determination will not delve into an analysis of the advertisement's alleged misrepresentations.

Jonathan Szarek
Page 2 of 2

RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly ~~or implicitly~~ advocates the success or defeat of any party, measure, or person at any election.

With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term “implicitly” was unconstitutional. *Stenson v. McLaughlin*, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidates, persons, or entity responsible for it.

In this case, this mailer with its content constitutes explicit advocacy within the meaning of RSA 664:2, VI, because it is directing the reader to vote “No” on a specific warrant article involving the renovation of the Pelham Memorial School. Consequently, this would trigger the identification requirements for political advertising under RSA 664:14.

However, in 1995, the United States Supreme Court found that a “written election-related document...is often a personally crafted statement of a political viewpoint” and as such, “identification of the author against her will is particularly intrusive.” *McIntyre v. Ohio*, 514 U.S. 334, 355, 357 (U.S. 1995). The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. *Id.* at 357. Consistent with *McIntyre*, and based on your sworn affidavit, we conclude that the disclosure requirements in RSA 664:14 are not enforceable against a non-candidate-related individual responsible for designing, creating, and distributing cards in the manner you described.

In the twenty-six years since *McIntyre*, many courts—including one within our federal circuit—have narrowed the case’s application and upheld advertising disclosure requirements, even against individuals. *See Bailey v. State*, 900 F. Supp. 2d 75, 85-87 (D. Me 2011); *Citizens United v. FEC*, 558 U.S. 310, 366-71 (2009). You should be advised that the use of a wide-spread direct mailer, use of different media, and coordination with candidate campaigns or other non-campaign individuals are all factors, among others, that could bar you from claiming the *McIntyre* exception in the future. The simplest way to avoid a future violation is to insert an identifying name and address or email address on any such cards per RSA 664:14, I.

We will take no further action on this complaint at this time in light of *McIntyre* and your sworn affidavit. This matter is closed. Please feel free to contact me if you have any questions.

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General’s Office

cc: Amy Spencer, Esquire
Jamie N. Hage, Esquire

3136731

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 4, 2022

Timothy P. Donovan Sr.
[REDACTED]
Berlin, NH 03570

Re: Berlin Police Chief Peter Morency, Alleged Election Official Misconduct

Mr. Donovan:

We reviewed your January 10, 2022, complaint alleging that former City of Berlin Police Chief Peter Morency violated RSA 669:7, I and 669:7, I-a, relating to the incompatibility of offices. Based on our review, including acquiring information related to his tenure as Chief, this Office concludes that Chief Morency did not violate RSA 669:7.

Your complaint alleged that Chief Morency violated RSA 669:7 by filing a notice of candidacy, on October 1, 2021, for the position of Berlin city councilor. He was elected to the position on November 2, 2021. At that time, Chief Morency was Berlin's Chief of Police. He remained Chief until his retirement on December 30, 2021. He did not take office until he was sworn in as a city councilor on January 17, 2022.

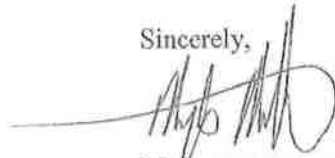
RSA 669:7, I-a states: "No person shall at the same time file a declaration of candidacy for any 2 or more elected offices that are incompatible under paragraph I." Chief Morency filed one notice of candidacy—for city councilor. There is no notice of candidacy for the position of police chief as it is not an elected position. As such, it is not incompatible to hold the position of chief of police and file a single notice of candidacy for an elected position. Chief Morency did not violate RSA 669:7, I-a.

Further, RSA 669:7, I states, in part: "No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of the town's police department on full-time duty...." Under the facts you allege and based on this Office's review, at no time did Chief Morency hold the position of the head of the police department and another of the enumerated positions. He retired from his position as Chief of Police prior to being sworn in as a city councilor. Therefore, he did not violate RSA 669:7, I.

This matter is closed.

Timothy P. Donovan Sr.
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Myles B. Matteson". The signature is stylized with a long horizontal line extending to the left and several vertical strokes.

Myles B. Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Peter Morency

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 4, 2022

Tri-County Republicans
Chairperson Elizabeth Varney
PO Box 702
Alton, NH 03809

RE: Alleged Illegal Campaign Activity in violation of RSA 664:14

Dear Chairperson Varney,

On March 3, 2022, this Office received a complaint regarding a political advertisement in the form of a letter advocating in support of some select board candidates and against other candidates. The complaint alleged that the mailed letter failed to contain the identification information required under RSA 664:14. This Office confirms that the mailers are not in compliance with RSA 664:14.

On March 3, 2022, Chief Investigator Richard Tracy spoke with you to discuss the mailers in question. You indicated you are the Chairperson of the Tri-County Republicans and verified that the organization created the political advertisements in question. The mailers support the candidacies of select board candidates Rudy Roseillo and Marc DeCoff, while opposing the candidacies of David Swenson and Ron Uyeno. You acknowledged that the mailers did not include the identifying information required by RSA 664:14—information identifying who is responsible for the political advertisement.

As your organization's mailers failed to identify who was responsible, including payment, for their content—and because your organization has not previously been investigated by this Office for this type of campaign violation—we will review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14.

First, RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly advocates the success or defeat of any party, measure or person at any election. The statute also uses the phrase “or implicitly advocates” which we cannot enforce. With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that enforcement against “implicit” political advertisement is unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001).

Tri-County Republicans
Page 2 of 2

As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. Our Office interprets RSA 664:14 as an email address or a website address on political advertising as being acceptable as long as the email or website identifies a contact person and an address/phone number where the contact person can be located.

Based on the forgoing, the mailers in question would constitute political advertisements as they expressly advocate for the success of two candidates, in this case, Rudy Roseillo and Marc DeCoff, while opposing the candidacies of David Swenson and Ron Uyeno. As such, the mailers trigger the identification requirements under RSA 664:14.

We anticipate that the Tri-County Republicans will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General's Office
(603) 271-3650
Myles.b.matteson@doj.nh.gov

Copied to: Scott Drummey

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 30, 2022

Christopher Cadreact
[REDACTED]

North Haverhill, NH 03774

Re: Nicole Woods, Alleged Election Official Misconduct

Dear Mr. Cadreact:

On February 6, 2022, this office received a complaint from you via email that raised concerns regarding SAU 23 School Board Candidate Nicole Woods. Specifically, your email alleged that Ms. Woods did not live in Haverhill, NH, instead lived in Newbury, VT, and therefore was not appropriately domiciled in Haverhill for the purposes of filing for a school board candidacy. After carefully reviewing this matter, we conclude that Ms. Woods did not violate New Hampshire's election laws.

Factual Background

In reviewing this complaint, we examined information provided to us by you, spoke with the Haverhill Town Clerk, an administrative assistant for SAU 23, the Grafton County Sheriff, and with Ms. Woods. Further, this office reviewed information from New Hampshire's ElectionNet system as well as information obtained via the State Police record system.

The Haverhill Town Clerk, Christine Hebert, spoke to Chief Investigator Richard Tracy on February 7, 2022. Clerk Hebert indicated that she is familiar with Ms. Woods and believes she spends about half of her time in Haverhill and the other half in Vermont.

The Administrative Assistant for SAU 23, Dawn Burelson, spoke to Investigator Tracy on February 14. Ms. Burelson explained that she is familiar with Ms. Woods and is aware that Ms. Woods' three children are enrolled in school in Haverhill. She understood that the father of the children lives in Haverhill as well. Ms. Burelson further explained that, while Ms. Woods at times may stay in Vermont, she lives with her mother at [REDACTED] in North Haverhill.

The Grafton County Sheriff, Jeffrey Stiegler, spoke to Investigator Tracy on March 15. Sheriff Stiegler explained that he is familiar with Ms. Woods and, that Ms. Woods has given [REDACTED] in Haverhill as her domicile address over the past three years.

Sheriff Stiegler provided Investigator Tracy with contact information for Ms. Woods so that he could get in touch with her directly.

On March 15, Ms. Woods spoke to Investigator Tracy. Ms. Woods told him that she lives in Vermont when she does not have custody of her children and at her mother's home in Haverhill when she does. Ms. Woods estimated that she lives in Haverhill approximately 60 percent of the time. Ms. Woods indicated that she explained all of this to town officials in Haverhill and planned to change her address on her driver's license and vehicle registration to her mother's address in Haverhill.

Finally, Investigator Tracy examined Ms. Woods' voting record on ElectionNet—New Hampshire's online voting database—and examined vehicle registrations through the State Police record system. Ms. Woods is registered to vote in Haverhill and has voted there eight times since 2012. Ms. Woods has a vehicle registered with her prior Haverhill address, [REDACTED]

Applicable Law

In New Hampshire, “[u]nless otherwise provided by law, no person shall hold elective town office who does not have his domicile within the town,” RSA 669:6. As the term “domicile,” does not have a separate or explicit definition within the context of RSA 669:6, we look to RSA 654:1, I to determine where an individual is domiciled. A “domicile for voting purposes is that one place where a person, *more than any other place*, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I (emphasis added).¹

“A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.” *Id.* RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.² See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement.

¹ Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016. The version of RSA 654:2 in effect in 2016 did not contemplate the concept of temporary presence, which was added by SB3.

² See also New Hampshire election Procedure Manual: 2020-2021, Pg. 176, “A homeless person's domicile may be the street or parking lot where a person living in a car parks/sleeps, more than any other place. The domicile may be the home of another where, more often than any other, the homeless person sleeps on a couch. The domicile can even be the park or area under a bridge where, more than any other place, the homeless person sleeps.”

Election officials have recognized public utility bills, such as an electric, telephone, water, or gas bills, bearing the applicant's name and domicile address as satisfactory documents.

Analysis

In this case, Ms. Woods manifested an intent to remain in Haverhill *more than any other place* by her own statements, and through her presence and connections to the community for civic purposes. Her representations were satisfactorily substantiated by the facts learned through Investigator Tracy's investigation. Based on all of this, we conclude that Ms. Woods is in fact domiciled in Haverhill under RSA 669:6.

When this Office is contacted with complaints or reports involving the domicile of a voter or elected official, it must review the totality of the circumstances to determine if a voter or official is in fact domiciled for voting purposes in the town or city where he or she has registered.

Ms. Woods' representation was substantiated by the Grafton County Sheriff, who understood her domicile address to be located in Haverhill. Further, both Ms. Burelson and Clerk Hebert understood that, while Ms. Woods does split her time between Vermont and New Hampshire, Ms. Woods does have significant ties to New Hampshire, with Ms. Burelson indicating that she understood Ms. Woods' domicile to be located in Haverhill.

Ms. Woods has a vehicle that is registered to a Haverhill address. She indicates that it is her desire to update her license to reflect her most current Haverhill address. Her three children are enrolled in a public school in Haverhill.

All of the above indicates that Ms. Woods has established a physical presence in Haverhill more than any other place and that it is her intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government as the law requires.

This matter is closed. Please feel free to contact me if you have any questions.

Sincerely,


Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov

cc: Nicole Woods
SAU 23
Christine Hebert

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 30, 2022

Representative Mark Alliegro

████████████████████
Campton, NH 03223

**Re: Political Advertisements and Identification, Registration, and Reporting
Requirements**

Dear Representative Alliegro:

On March 7, 2022, this Office received a complaint regarding a political advertisement received by households in the Town of Campton. Specifically, the complaint alleged that a political advertisement distributed in Campton violated RSA 664:14 for failing to provide required identifying information for the responsible person or entity. Based on our investigation, we find that while some identifying information was provided on the political advertising, it did not completely satisfy the requirements of the statute.

Factual Background

In reviewing this complaint, we examined information provided to us by Campton Town Clerk Hanna Joyce, and spoke with Ms. Joyce, Al Brandano, Roger Blake, and you.

On March 7, Clerk Joyce sent Assistant Secretary of State Bud Fitch an email with copies of two political advertisements that were being passed around town or left on the doors of Campton residents. Assistant Secretary Fitch forwarded this email to our office for review.

One of the advertisements was a door hanger that read, "HAS YOUR VOTE BEEN TRASHED BY THE MACHINE?" followed by a number of statements alleging the inaccuracy of vote counting machines. The advertisement ends with the statement, "Vote to discard machines, not your voice!" While the advertisement references the website HandCountNH.com, it does not otherwise identify who is responsible for the political advertising. Clerk Joyce indicated that this advertisement was in support of Article 11 in the upcoming town election as Article 11 called for doing away with the ballot counting machine.

On March 8, Chief Investigator Richard Tracy spoke with Clerk Joyce in person to discuss the complaint. Clerk Joyce discussed the two advertisements that were concerning to her. Clerk Joyce indicated that she believed that you were responsible for the first of these

advertisements as you had been seen distributing them to residents at various meetings in town. Clerk Joyce indicated that you had handed this advertisement to one of her coworkers. Investigator Tracy inspected this advertisement and concluded that it was purely informational and, therefore, not a violation of RSA 664:14.

The second advertisement, the "Trashed by the Machine" door hanger described above, clearly advocated for a political position on a pending question on the ballot and was subject to RSA 664:14. Clerk Joyce was not aware of who was responsible for this advertisement but told Investigator Tracy that Roger Blake, a Campton resident, gave it to her, telling her that he found it hanging on the door handle of his home. Clerk Joyce believed that several people in town had received these door hangers.

Investigator Tracy was aware that the website listed on the door hanger, HandCountNH.com, is operated by Al Brandano of Kensington, New Hampshire. On March 9, Investigator Tracy reached out to Mr. Brandano. Mr. Brandano responded, indicating that he was not responsible for the door hangers in Campton and does not know who was responsible for the flyers distributed that contained his website, HandCountNH.com.

On March 15, Investigator Tracy left a voicemail with Roger Blake. Mr. Blake called back later that day. Mr. Blake indicated that he did not know who left the flyer on his door.

On that same day, Investigator Tracy called you and left you a voicemail message. On March 16, you returned his call. Investigator Tracy explained the purpose of his call. You told Investigator Tracy that you were responsible for both of the advertisements at issue. Investigator Tracy explained that listing HandCountNH.com on the mailer was not sufficient information to comply with RSA 664:14. You stated that you believed that you were in compliance with state law based on a prior issue that had arisen with yard sign advertisements, and would review any correspondences regarding the application of RSA 664:14 to ensure compliance in any future political advertising.

Applicable Law

RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly advocates the success or defeat of any party, measure or person at any election. The statute also uses the phrase "or implicitly advocates," which we cannot enforce. With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that enforcement against "implicit" political advertisement is unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. The relevant sections:

I. All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it. Said signature shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of political advertising made on behalf of a political committee registered with the secretary of state pursuant to RSA 664:3 or a political advocacy organization registered with the secretary of state pursuant to RSA 664:3-a, the name and address on the advertisement shall match the name and address registered with the secretary of state.

II. Political advertising to promote the success or defeat of a measure by a business organization, labor union, or other enterprise or organization shall be signed. The name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address....

III. In the case of printed or written matter, the signature and address of signer shall be printed or written in a size of type or lettering large enough to be clearly legible.

RSA 664:14 (emphasis added). Of note, not only must the *name* of the organization responsible for the political advertising be clearly identified, *an individual* must also be identified. Under RSA 664:14, I, that must be “names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for” the political advertising. Under RSA 664:14, II, the “name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address” (emphasis added).

Additionally, our Office interprets RSA 664:14, VIII as a website address on political advertising being acceptable as long as the website clearly identifies a contact person for the group responsible for the advertising and an address or phone number where the contact person can be located.¹

The overarching obligations imposed by RSA 664:14 make clear that political advertising makes readily apparent to the recipient the individual or group responsible, and how to contact that responsible party. For a group or organization, that includes the organization’s name as well as an individual in a senior position—the chairman or treasurer.

Analysis

Based on the forgoing, the door hangers in question constitute political advertisements as they expressly advocate for an article on a ballot question being voted on March 8, 2022. As

¹ “VIII. Political advertising in the form of signs or placards may contain an Internet address in lieu of the signature and identification requirements of this section, if the Internet address is printed or written in a size of type or lettering large enough to be clearly legible and the website immediately and prominently displays all of the information required by this section through election day.” RSA 664:14, VIII

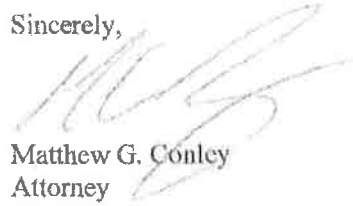
Representative Alliegro, Illegal Campaign Activity in violation of RSA 664:14
Page 4 of 4

such, the mailers trigger the identification requirements under RSA 664:14. Neither the door hangers nor the provided website contained all required elements of identification required by RSA 664:14. While Mr. Brandano is free to allow any organization to utilize his website URL as a reference, you are obligated to ensure that any political advertising that you are responsible for either contains the required identifying information on the mailer itself or at a referenced website. The information provided on the door hangers was insufficient as no individual associated with the group or organization was identified. Finally, the "paid for" information should be readily apparent—and compliant with the size requirements of RSA 664:14, III.

We anticipate that you will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov

cc: Clerk Hannah Joyce

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 30, 2022

Tammy Brooks

Manchester, NH 03103

Re: Alleged Election Official Misconduct

Dear Ms. Brooks:

On November 4, 2020, you emailed this Office with a complaint alleging election official misconduct in Manchester Ward 7. Specifically, you alleged the following:

1. You witnessed a poll worker going through a box of trash and pulling out at least 20 uncounted Question #1 ballots;
2. You witnessed these discovered Question #1 ballots being put into the counting machine;
3. You indicated that the moderator only provided half of the totals to those public observers watching the count; and
4. You witnessed the moderator pack up the machines and load them onto a truck without giving the public observers the final count.

This Office conducted an investigation into these allegations, including reviewing records and interviewing election officials. After careful consideration, we have concluded that no election law violations have occurred.

On April 27, 2021, this Office spoke with Moderator William Cote. Moderator Cote recalled that at one point that day Ward 7 officials were running low on ballots and they had to call for additional ballots. Ward 7 elections officials received additional ballots from the City Clerk, but they were given Ward 1 general election ballots in error instead of Ward 7 general election ballots. An election officials became aware of the mistake after an unknown number of voters marked the Ward 1 ballots, which the ballot counting machine repeatedly rejected. Once this mistake was discovered, Ward 7 officials began collecting all unmarked and cancelled Ward 1 ballots, which were not accepted by the balloting counting machine. Moderator Cote explained that any ballot not being accepted by the ballot counting machine would typically be marked as "cancelled" and the voter would receive another ballot to vote. He further explained that this is the same process that would have been used if a voter mistakenly voted for someone they did not intend to vote for, and notified an election official to request a new ballot.

Moderator Cote called the City Clerk's office, which then delivered the correct Ward 7 ballots. He stated that they collected all of the unmarked and marked Ward 1 ballots that they could find and gave them to the representative of the City Clerk's office who had delivered the correct Ward 7 ballots. Moderator Cote could not recall how many people voted on a Ward 1 ballot nor could he recall if everyone had the opportunity to vote on a Ward 7 ballot that had mistakenly marked a Ward 1 ballot. Moderator Cote believed that there were some voters who could not wait for the correct ballots to arrive and left without voting.

Moderator Cote had no recollection or explanation for your concern that an election official was seen pulling yellow Question #1 ballots out of a trash box, nor did he observe those ballots being cast into one of the ballot counting machines.

Moderator Cote described occasions throughout the day where Ward 7 election officials would remove counted ballots from the black box underneath the tabulator/counting machine, which they put in stacks of 100 to be counted at the end of the night.

Moderator Cote recalled that there were a half dozen people that stayed inside the polling place after the close of voting. He indicated that he announced the final numbers at the completion of work at the end of the night.

Moderator Cote indicated that he and Ward 7 election officials were inside the St. Anthony's gymnasium until approximately 5:30 AM. After giving the final count, they collected all of the ballots—those cast as well as unused ballots—which they secured and sealed in boxes. The outside of each box was marked indicating the contents. Once everything was secured in boxes, they delivered the boxes to the City Clerk's office.

On September 14, 2021, this Office spoke with Ward 7 Clerk Michael Reuschel. Clerk Reuschel said that he pulled Question #1 ballots out of a cardboard box that was located on the floor just past the ballot counting machines. Clerk Reuschel noted that some voters chose not to fill out the Question #1 (or the "municipal") ballot and tossed it into a box that contained trash. Clerk Reuschel stated that he didn't notice the yellow municipal ballots in the box of trash until later on election day. He described how he removed these discarded municipal ballots from this box and either put them through the ballot counting machine or secured them with other ballots to be hand counted at the end of the night. His recollection is that after his discovery of this box with the discarded yellow municipal ballots, he removed that box from the area.

At the end of the night, Clerk Reuschel said that all of the remaining election officials in Ward 7 worked on the hand count and running the tally for the machine count so they could secure the ballot counting machines to be returned to the City Clerk's office.

Clerk Reuschel stated that Ward 7 election officials closed the doors to the polling place at 7:00 PM, but it took a couple of hours to get everyone present at the polls at closing time through to vote. About fifteen minutes after the last person voted, Ward 7 election officials ran the numbers from the two individual ballot counting machines, and then announced those partial results to everyone present. He stated that they read each ballot counting machine's result independently and did not add them together prior to the announcement. Once they secured the

Tammy Brooks
Page 3 of 3

two tabulators, someone from City Hall arrived to pick up the two tabulators and transport them back to City Hall.

With respect to your complaint that Moderator Cote became frustrated, packed up the election items and left, Clerk Reuschel provided clarifying information. He explained that Moderator Cote did pick up everything from the work area (on one side of the gym), and made an announcement that the election items would be moved to the stage area where the hand count and paperwork completion would be conducted. Clerk Reuschel stated that when election officials moved to the stage area, they were still in plain view of the public and anyone who remained in the polling place.

This Office reviewed a floor plan of the polling place with Clerk Reuschel, who illustrated the locations of activities and indicated that the counting process at all times was in full view of the public. See Attachment A.

Professionalism and communication are hallmarks of New Hampshire's election officials, who have an extensive history of administering well-run elections. However, this Office's investigation has indicated that a Ward 7 election official was visibly frustrated, and in response took action in ways that also frustrated public observers. This is inappropriate and has been addressed with Ward 7 election officials.

It is important to keep in mind that the November 2020 general election, and the 2020 election cycle as a whole, was an unprecedented and challenging experience for election officials, who were having to address public health concerns in addition to historic voter turnout. In the case of Ward 7, these challenges were magnified by the delivery of the incorrect Ward's ballots when Ward 7's supply ran low. Election officials in New Hampshire worked hard in good faith to ensure the 2020 general election took place with the same level of consistency and integrity for which this State is known.

Based on the experience you related, it does appear that these frustrating circumstances could be attributed to a miscommunication between election officials and public observers. This Office concludes that the counting did not take place outside public observation. Furthermore, it appears that the results from each ballot counting machine were announced, albeit independently. We also learned that the hand count results were also announced subsequent to the ballot counting machine totals announcement.

Based on the forgoing, we have no basis to conclude that Ward 7 election officials engaged in misconduct. This matter is closed. Please feel free to contact us if you have any questions.

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General's Office

Enclosure

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: State v. Edward D Amirault
Case Number: 211-2021-CR-00652

Name: Edward D Amirault, [REDACTED] Sanbornton NH 03269
DOB: [REDACTED]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Vote in More than 1 State		1933811C	659:34-a	November 06, 2018

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

April 06, 2022	Hon. Steven M. Houran	Abigail Albee
Date	Presiding Justice	Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **Belknap County House of Corrections**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I DELIVERED THE DEFENDANT TO THE **Belknap County House of Corrections** and gave a copy of this order to the Superintendent.

Date Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney Ray Raimo, ESQ
 Sex Offender Registry Other _____ _____ Dist Div. _____

NHJB-2337-5e (08/06/2019)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Belknap Superior Court
Case Name: State v. Edward D. Amirault
Case Number: 211-2021-CR-00652 Charge ID Number: 1933811C
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: <u>Guilty</u>	
Crime: <u>Voting More than One State Prohibited</u>	Date of Crime: <u>11/06/2018</u>

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Felony

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____

OR A person similarly situated to _____

CONFINEMENT

- A. The defendant is sentenced to the House of Corrections for a period of 180 days.
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:

Stand committed Commencing _____
 Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____

All _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 2 years from today or release on charge ID number _____.

_____ of the sentence is deferred for a period of _____.
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

- C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

- D. The court recommends to the county correctional authority:

- Work release consistent with administrative regulations.
 Drug and alcohol treatment and counseling.
 Sexual offender program.

Case Name: State v. Edward D. Amirault
Case Number: 211-2021-CR-00652
HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ 4,000.00, plus a statutory penalty assessment of \$ 960.00 to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).
A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.
- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____
- C. **Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.**
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Edward D. Amirault

Case Number: 211-2021-CR-00657

HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform 100 hours of community service and provide proof to State within 12 months of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

Loss of the right to vote in New Hampshire pursuant to Part I, Article 11 of the New Hampshire Constitution

For Court Use Only

So ordered.



Honorable Steven M. Houran
April 6, 2022

211-2021-CR-652
Charge ID: 1933811C

THE STATE OF NEW HAMPSHIRE
INDICTMENT

BELKNAP, SS,

DECEMBER TERM, 2021

At the Superior Court, holden at Laconia, within and for the County of BELKNAP, upon the 16th day of December, in the year of our Lord two thousand and twenty-one

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

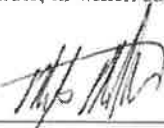
EDWARD D. AMIRAULT, SR.
[REDACTED]

of Sanbornton, New Hampshire, on or about November 6, 2018, New Hampshire in the County of Belknap, did commit the crime of

VOTING IN MORE THAN ONE STATE, PROHIBITED
RSA 659:34-a


in that, Edward D. Amirault, Sr., knowingly submitted an absentee ballot application, returned an absentee ballot to Sanbornton, New Hampshire election officials, was checked-off as having voted absentee on the checklist, and cast a New Hampshire ballot on which one or more federal or statewide offices or statewide questions were listed and also cast a ballot in the same election year in 2018 in Massachusetts where one or more federal or statewide offices or statewide questions were listed.

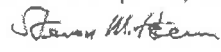
Said acts being contrary to the form of the Statute, in which case made and provided, and against the peace and dignity of the State.


Myles B. Matteson, NH Bar #268059
Assistant Attorney General

This is a true bill.

Plea of Guilty
Entered April 6, 2022


Foreperson


Honorable Steven M. Houran

Name: Edward D. Amirault, Sr.
DOB: [REDACTED]
Address: [REDACTED] Sanbornton, NH 03269
RSA: RSA 659:34-a
Offense level: Class B Felony
Dist/Mun Ct: N/A

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Edward D Amirault**
Case Number: **211-2021-CR-00652**

Name: **Edward D Amirault,** [REDACTED] Sanbornton NH 03269

DOB: [REDACTED]

Charging document: Indictment

Offense: Vote in More than 1 State	GOC:	Charge ID: 1933810C	RSA: 659:34-a	Date of Offense: September 08, 2020
--	-------------	-------------------------------	-------------------------	---

Disposition: Nolle Pros

Date: April 06, 2022

Action taken: By Prosecutor

Pursuant to plea agreement

Matthew G. Conley, ESQ.

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney Ray Raimo, ESQ
 Other _____ _____ Dist Div. _____

NHJB-2574-5e (08/06/2019)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Belknap Superior Court
Case Name: State v. Edward D. Amirault
Case Number: 211-2021-CR-00652
Charge ID Number(s): 1933810C

NOTICE OF NOLLE PROSEQUI

Reason for Nolle Prosequi: Pursuant to plea agreement

Other:

Matthew G. Conley
Prosecuting Attorney
Matthew G. Conley 268032
Name of Prosecuting Attorney Bar ID #

04/06/2022
Date

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT - HOUSE OF CORRECTIONS

Case Name: **State v. Todd Krysiak**

Case Number: **211-2019-CR-00350**

Name: **Todd Krysiak** [REDACTED] Alton NH 03809

DOB: [REDACTED]

Charging document: Indictment

Offense:
Vote in More than 1 State

GOC:

Charge ID:
1630698C

RSA:
659:34-a

Date of Offense:
November 08, 2016

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

April 22, 2022
Date

Hon. Amy L. Ignatius
Presiding Justice

Abigail Albee
Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **Belknap County House of Corrections**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I DELIVERED THE DEFENDANT TO THE **Belknap County House of Corrections** and gave a copy of this order to the Superintendent.

Date

Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Jessica A. King, ESQ; Myles Brand Matteson, ESQ Defendant
Defense Attorney David P. Bodanza, ESQ
 Sex Offender Registry Other _____ Dist Div. _____

NHJB-2337-Se (08/06/2019)

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: Belknap Superior Court
Case Name: State v. Todd Krysiak
Case Number: 211-2019-CR-00350 Charge ID Number: 1630698C
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	
Crime: Voting in More than One State	Date of Crime: 11/08/2016

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a **Felony** _____

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____

OR A person similarly situated to _____

CONFINEMENT

- A. The defendant is sentenced to the House of Corrections for a period of **90 days** _____.
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:

Stand committed Commencing _____

Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____

All _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends **2** years from today or release on charge ID number _____.

_____ of the sentence is deferred for a period of _____.
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

- C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

- D. The court recommends to the county correctional authority:

Work release consistent with administrative regulations.

Drug and alcohol treatment and counseling.

Sexual offender program.

Case Name: State v. Todd Krysiak
Case Number: 211-2019-CR-00350
HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. **Fines and Fees:**
Fine of \$ 4,000.00, plus a statutory penalty assessment of \$ 960.00 to be paid:
 Today
 By October 21, 2022
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. **Restitution:**
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

- C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.
 The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
 The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Todd Krysiak

Case Number: 211-2019-CR-00350

HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

Pursuant to Part I, Article 11 of the NH Constitution, the defendant shall not have the right to vote in New Hampshire. The NH Supreme Court may, on notice to the AG, restore the privilege to vote

For Court Use Only

This sentence does not presently include a prohibition on possession of a firearm, but the State is entitled within 30 days to request such a term, if there is a statutory basis to do so. The defense is entitled to request a hearing if it believes such a prohibition is not warranted. The defendant has stated he will abide by any such prohibition and amendment to the sentence that may be ordered.



Honorable Amy L. Ignatius
April 22, 2022

211-2019-CR-350

Charge ID# 1630698C

THE STATE OF NEW HAMPSHIRE
INDICTMENT

BELKNAP, SS.

AUGUST TERM, 2019

At the Superior Court, holden at Laconia, within and for the County of Belknap aforesaid, on the 8th day of August in the year of our Lord two thousand and nineteen

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

TODD KRYSIAK
[REDACTED]

of Alton, New Hampshire, in the State of New Hampshire, on or about November 8, 2016, did commit the crime of

VOTING IN MORE THAN ONE STATE PROHIBITED
(RSA 659:34-a)

in that, Todd Krysiak, knowingly checked in at the checklist in Alton, New Hampshire and cast a New Hampshire ballot on which one or more federal or statewide offices or statewide questions were listed and also cast a ballot in the same election year in 2016 in Massachusetts where one or more federal or statewide offices or statewide questions were listed.

Said acts being contrary to the form of the Statute, in such case made and provided, and against the peace and dignity of the State.

Nicholas A. Chong Yen
Nicholas A. Chong Yen, NII Bar #268425
Assistant Attorney General

This is a true bill.

Carole Davis

Foreperson

Name: Todd Krysiak
DOB: _____
Address: [REDACTED] Alton, NII 03809
RSA: RSA 659:34-a
Offense level: Class B Felony
Dist/Mun Ct: N/A

Plea of Guilty
Entered April 22, 2022

Amy Ignatius

Honorable Amy L. Ignatius

April 22, 2022

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

June 7, 2021

Town of Hudson Selectboard
12 School Street
Hudson, NH 03051

Re: Town of Hudson, Polling Place Traffic (2021148327)

Dear Hudson Selectboard:

In accordance with RSA 7:6-c, the Attorney General is charged with enforcing New Hampshire's election laws. During the November 3, 2020 general election, polling place inspectors visited 98% of New Hampshire's polling places, inspecting 302 out of 309 total locations.

During the 2020 general election, the Town of Hudson used the Hudson Memorial School located at 1 Memorial Drive off of Central Street as its polling place. This Office received reports on Election Day of significant vehicular traffic at this polling place, with lines of cars extending from the driveway of the polling place and in both directions on Central Street. This Office's polling place inspector, who was assigned to Hudson, reported that the line of cars waiting to enter the school's parking lot extended west along Central Street to its intersection with Route 3A and east towards Central Street's intersection with Route 111.

The polling place inspector reported he had to wait approximately 45 minutes in order reach the polling place's parking lot. The inspector also spoke with voters at the polling place about the length of their wait times. One voter reported it took two hours just to drive into the parking lot. Another voter reported that it took one hour and ten minutes to wait in the line of cars, park, and vote.

In addition, there were also reports of a significant number of Hudson residents seeking to register to vote during the 2020 general election. By 5:45 p.m. our inspector observed a line of approximately 150-200 people waiting to register to vote. At approximately 6:30 p.m., the inspector indicated the line for registration had not abated, and wait times of 40-50 minutes continued.¹

¹ In reviewing the inspection checklist from the 2020 general election, it was noted that all newly registered voters were directed into a single check-in line. This check-in line was responsible for the portion of the voter checklist at

Fortunately, through the efforts of the Hudson Police Department, resources were deployed to better manage vehicular traffic and ease congestion into and out of the polling place. However, throughout the Election Day, significant lines of both voters and vehicles persisted. This is not the first election in which the Town experienced traffic issues.

During the 2020 February Presidential Primary election, the Town used the Hudson Community Center as its polling place. This Office's inspector similarly observed significant access issues during this election. The entrance and exit of the polling place used the same driveway causing traffic jams. Additionally, this polling location also contended with school traffic as classes were still in session.

We understand that the November 3, 2020 general election presented unprecedented challenges, a high degree of voter engagement, and increased voter turnout. Indeed, in reviewing Hudson's inspection checklist from the 2020 September primary election, wait times for obtaining a ballot during this election was two minutes. Similarly, registering to vote during this election took one minute.

The Selectboard is responsible for designating and equipping the town's polling place, pursuant to RSA 658:9.

RSA 658:9, I states in relevant part –

“The selectmen of each town and ward shall provide for a suitable place in which to hold state elections and shall see that the same is warmed, lighted, and furnished with proper supplies and conveniences. [...] Each place in which state elections are held shall be easily accessible as provided in RSA 658:9-a to all persons including persons with disabilities and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election.”

Part I, Article 11 of the New Hampshire Constitution provides that “polling places shall be easily accessible to all persons[.]” Traffic delays – both pedestrian and vehicular – such as those observed and experienced during the 2020 general election hinder voters' access to the polls and show that your polling place is not “easily accessible to all persons.” Recurring traffic delays of this nature are a good indicator that the Town needs to establish additional polling places for State general elections or that the polling place is no longer suitable for the Town. *See* RSA 658:10.

The Alpha Voter List for the Town of Hudson shows it has a total of 20,308 registered voters as April 1, 2021.

the end of the alphabet. This meant that this check-in line was exceedingly lengthy, while officials responsible for the checklist at the beginning of the alphabet sat idle.

Town of Hudson
Page 3 of 3

The Town has now tried two different locations for its polling place: first the Hudson Community Center, then the Hudson Memorial School, which is a larger space. Ultimately, during a high volume election, both locations have proven inadequate to accommodate the number of voters in Hudson.

We are requesting the Town of Hudson initiate a corrective action plan to address this issue prior to the next State Election and provide a copy of the plan to this Office within six months after receipt of this letter.

Please contact me if you have any questions.

Sincerely,



Nicholas A. Chong Yen
Assistant Attorney General
Election Law Unit
(603) 271-3650
nicholas.chongyen@doj.nh.gov

cc: David Scanlan, Deputy Secretary of State
William Avery, Chief of Police Hudson Police Department



TOWN OF HUDSON
Office of the Town Administrator
12 School Street
Hudson, New Hampshire 03051



Stephen A. Malizia, Town Administrator – smalizia@hudsonnh.gov – Tel: 603-886-6024 Fax: 603-598-6481

April 18, 2022

Deputy Attorney General Myles Matteson
Attorney Generals' Office
33 Capitol Street
Concord, NH 03301-6397

RE: *Town of Hudson, Polling Place Traffic (2021148327)*

Dear Attorney Matteson,

Please accept this letter as the Town of Hudson's response to the Attorney General's office regarding traffic concerns at the Town of Hudson polling place. The Board of Selectmen have taken the following steps to alleviate both the traffic concerns and the amount of time that Hudson residents spend at the polls.

The Board of Selectmen presented a warrant article on the March 9, 2021 Town Meeting ballot to add an additional polling location to the Town (warrant article #18). The voters approved the addition of an additional polling location by a vote of 2219 in favor to 719 opposed. The Board of Selectmen then engaged the Nashua Regional Planning Commission (NRPC) to review 2020 U.S. Census data to determine two (2), approximately equal, voting wards for the Town. NRPC reviewed the 2020 U.S. Census data and the registered voter database to determine the two (2), approximately equal, voting wards. The Board of Selectmen voted to approve the formation of two voting wards on November 9, 2021. Ward 1 was for all voters south of Ferry Street, Burnham Road and Central Street and Ward 2 was for all voters north of Ferry Street, Burnham Road and Central Street. Ward 1 has approximately 8,028 voters and Ward 2 has approximately 7,638 voters. The Board of Selectmen then voted on December 14, 2021 to establish the Hudson Community Center at 12 Lions Avenue as the Ward 1 Polling Location and Alvirne High School at 200 Derry Road as the Ward 2 Polling location.

Postcards were mailed to every registered voter in Hudson, notifying them of their ward and their voting location. On March 8, 2022, the Town held its annual Town meeting at the two polling locations and Ward 1 had 2,275 voters and Ward 2, had 1,984 voters vote

at that election. Neither location reported any traffic issues and the election proceeded without any issues.

At this time, the Board of Selectmen believe that the addition of the additional polling location and the assignment of voters to either Ward 1 or Ward 2 has resolved the issue. At this time no further action is contemplated or planned.

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Malizia", written over the word "Sincerely,".

Stephen A. Malizia
Town Administrator

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

April 27, 2022

Town of Hudson Selectboard
12 School Street
Hudson, NH 03051

Re: Town of Hudson, Polling Place Traffic

Dear Hudson Selectboard:

This Office is in receipt of the Hudson Town Administrator's remediation plan dated April 18, 2022, relative to this matter.

We have reviewed the remediation plan and it is accepted. This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Myles Matteson".

Myles Matteson
Deputy General Counsel
Attorney General's Office

cc: David Scanlan, Secretary of State
William Avery, Chief of Police Hudson Police Department

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 21, 2020

Lorraine Anderson, Town Clerk
Town of Nottingham
139 Stage Road
P.O. Box 114
Nottingham, NH 03290

Re: Town of Nottingham, Absentee Ballots (2020146026)

Dear Clerk Anderson:

On November 16, 2020, this Office was notified by the Secretary of State's Office that you called to report the discovery of three absentee ballots after the November 3, 2020 General Election, which had not been processed nor counted. In reviewing this matter, this Office concludes that these three votes would not have impacted the outcome of any of the races on the ballot in Nottingham during the 2020 General Election.

This year presented unprecedented challenges for election officials. We understand that you and your colleagues were under immense pressure to carry out Nottingham's elections in a manner that closely resembled the election experience before the public health crisis, while also balancing compliance with protective public health measures. We are grateful to your service and commitment to the Nottingham voters.

However, this situation must still be addressed, and is an opportunity to refine Nottingham's processes to ensure that this does not occur again.

In reviewing this matter, we spoke with you, former Deputy Town Clerk Teresa Bascom, and Supervisor of the Checklist Dee Decker. We understand the situation as follows:

On October 31, 2020, Nottingham election officials conducted partial processing of absentee ballots received prior to this date. Any newly registered voter's absentee ballot received after October 28, and any previously registered voter's absentee ballot received on or after October 31, was placed in a designated folder, which was contained inside a box, and was to be processed on the day of the election. This box containing these folders was secured in the town clerk's safe after business hours and was monitored by election officials at all other times.

The box was brought to the Nottingham polling place on Election Day, November 3, 2020. On Election Day, the box remained on your (the town clerk's) table, which was located beside the moderator's table. The box was monitored by election officials throughout the day.

In speaking with Chief Investigator Richard Tracy, you reported that you went through all the folders inside the box seven or eight times during Election Day. This was to ensure that all the absentee ballots and voter registration applications contained inside the box were processed. Given the number of times you thoroughly checked the box, you were uncertain how these three absentee ballots could have been missed.

The three absentee ballots in question were all submitted after October 28, 2020, the day the Supervisors finalized and approved the Election Day checklist. The three absentee ballots in question were all newly registered voters and not on the checklist approved by the Supervisors on October 28. You explained to Investigator Tracy that according to Nottingham's procedure, these three absentee ballots should have been placed in a folder inside the box. However, following the 2020 General Election, as you were going through the Election Day materials to include the box, you discovered these three absentee ballots. There is insufficient evidence to identify whether a specific person or persons made an error in failing to place these three absentee ballots in the designated folder of the box. There is similarly no evidence that a specific person or persons intended to withhold these three absentee ballots on purpose, and again, these three absentee ballots were not outcome determinative.

Based on the forgoing, the Nottingham town clerk's office must:

1. Contact the three voters whose absentee ballots were not processed nor counted, and explain the situation to them; and
2. Provide this Office within 30 days of receipt of this letter with a written remediation plan on tracking absentee ballots received prior to Election Day, and include any other measures to ensure that all properly submitted absentee ballots are processed and counted.

Please feel free to contact me if you have any questions.

Sincerely,



Nicholas A. Chong Yen
Assistant Attorney General
Election Law Unit
(603) 271-3650
nicholas.chongyen@doj.nh.gov

cc: William M. Gardner, Secretary of State

TOWN OF NOTTINGHAM
P.O. Box 114
NOTTINGHAM, N.H. 03290
October 8, 2021



603-679-9598
(fax) 603-679-1013

Nicholas A. Chong Yen
Assistant Attorney General
Election Law Unit
NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397

RE: Town of Nottingham Absentee Ballots (2020146026)

Dear Mr. Chong Yen:

I am in receipt of your letter pertaining to the completion of the investigation regarding the three absentee ballots that were located after the 2020 General Election and therefore, not counted.

I have sent letters to each of the voters and described that their ballots were found after the election occurred and unfortunately were not counted. I have also offered to speak with them if they would like to discuss the events that led up to this event.

Upon reviewing the processes that my office can take in order to avoid such an oversight happening in the future, I propose the following:

Traffic control of the general public during normal operating hours before an election needs to be refined. While no appointment was or will be necessary when it pertains to voting, customers and voters will be asked to wait their turn.

Time will be set aside on a daily basis, while there are no customers or voters, in order to review the requests received and/or fulfilled. This should happen as close to the end of day as possible in order for memories to be fresh and outstanding issues be resolved.

Simple tasks, such as alphabetizing requests and returns of ballots should be done on an ongoing basis.

Placement of all ballots at end of day needs to be refined and done in a step by step manner, with all personnel present.

A method of capturing all ballots received on Election Day has been developed. A similar method of inputting data and placement of ballots received beforehand will be put in place.

Please let me know if you require anything further.

Sincerely,


Lorraine Anderson
Town Clerk

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

88 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

April 28, 2022

Lorraine Anderson, Town Clerk
Town of Nottingham
139 Stage Road
P.O. Box 114
Nottingham, NH 03290


Re: Town of Nottingham, Absentee Ballots

Dear Clerk Anderson:

This Office is in receipt of the town's remediation plan described in an email dated April 28, 2022, relative to this matter.

We have reviewed the remediation plan and it is accepted. This matter is closed.

Sincerely,



Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: David Scanlan, Secretary of State

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

June 7, 2021

Town of Swanzey Selectboard
620 Old Homestead Highway
P.O. Box 10009
Swanzey, NH 03446

Re: Town of Swanzey Polling Place Traffic (2020145934)

Dear Swanzey Selectboard:

In accordance with RSA 7:6-c, the Attorney General is charged with enforcing New Hampshire's election laws. During the November 3, 2020 general election, polling place inspectors visited 98% of New Hampshire's polling places, inspecting 302 out of 309 total locations.

During the 2020 general election, this Office received reports from its polling place inspectors about complaints regarding the wait times at Swanzey's polling place. The inspector assigned to Swanzey's polling place described long lines, with voters waiting over an hour to vote. The lines were so long that a Swanzey voter approached our polling place inspector assigned to Keene, and asked if the voter could vote there instead.

The Swanzey Police Department was not contacted by election officials until the afternoon to help direct vehicular traffic, and ease congestion in the polling place's parking lot. By 4:45PM, this Office was notified that these long lines and significant wait times persisted throughout the day.¹ Our inspector confirmed this, having been present at the Swanzey polling place from 3:45PM-7:30PM, with the longest wait time reported by some voters as being one hour and fifteen minutes. The shortest wait time reported during this period was at 5:00PM, and was forty-five minutes.

In addition, we understand that in order to enter the voting area, voters had to line up in a narrow hallway. During the 2020 general election, two lines stretched down this hallway, one for

¹ In addition, on September 1, 2020, this Office received a complaint about the polling location being inside of the Christian Life Fellowship Church. The complainant alleged that given the comments by the church's pastor on social media, voters felt unwelcomed and uncomfortable entering this building in order to vote. On September 11, 2020, I spoke with Town Administrator Michael Branley, who stated that town officials were actively reviewing the concerns raised by this complainant to identify potential solutions.

voters checking-in and another for voters registering to vote. Given the public health crisis, with one of the protective health measures being social distancing, we also received a complaint about voters being in close proximity to one another while waiting at the polling place.

The inspection checklist from the 2020 general election identified the below concerns. Copies of both checklists are enclosed.

1. Complaints from voters of a narrow hallway serving as both the entrance and the exit for the polling place;
2. There were sufficient parking spots, but insufficient space for vehicles to enter causing crowding, and leading to some voters parking on the street;
3. The line management caused an entire line of voters who were checking-in to have to wait until one of two officials assigned to their section of the alphabet became available. Lines were unable to form at the table assigned to a voter's corresponding section of the alphabet. This meant that even if a check-in table for a voter's alphabet group was available, they would not know until they were at the front of the line. Eventually, officials began calling out the availability of their given alphabet section so those qualifying voters waiting could immediately walk to the front of the line;
4. Registration took place in a small room adjacent to the voter check-in line. This room was not clearly marked;
5. Only one of two doors at the entrance/exit was opened, causing voters leaving and entering to take turns at the door.

We understand that the November 3, 2020 general election presented unprecedented challenges, a high degree of voter engagement, and increased voter turnout. Indeed, in reviewing the inspection checklist from the 2020 September primary election, wait times for obtaining a ballot during this election was less than five minutes. Similarly, registering to vote during this election took less than five minutes.

However, pursuant to RSA 658:9, the Selectboard is responsible for designating and equipping the town's polling place.

RSA 658:9, I states in relevant part –

“The selectmen of each town and ward shall provide for a suitable place in which to hold state elections and shall see that the same is warmed, lighted, and furnished with proper supplies and conveniences. [...] Each place in which state elections are held shall be easily accessible as provided in RSA 658:9-a to all persons including persons with disabilities and elderly persons who are otherwise qualified to vote in the choice of any officer or officers to be elected or upon any question submitted at such election.”

Part I, Article 11 of the New Hampshire Constitution provides that “polling places shall be easily accessible to all persons[.]” Traffic delays – both pedestrian and vehicular – such as those observed and experienced during the 2020 general election hinder voters' access to the

Town of Swanzey
Page 3 of 3

polls and show that your polling place is not "easily accessible to all persons." Recurring traffic delays of this nature are a good indicator that the Town needs to establish additional polling places for State general elections or that the polling place is no longer suitable for the Town. *See* RSA 658:10.

We are requesting the Town of Swanzey initiate a corrective action plan to address this issue prior to the next State Election and provide a copy of the plan to this Office within 6 months after receipt of this letter.

Please contact me if you have any questions.

Sincerely,



Nicholas A. Chong Yen
Assistant Attorney General
Election Law Unit
(603) 271-3650
nicholas.chongyen@doj.nh.gov

Enclosure

cc: David Scanlan, Deputy Secretary of State
Michael Branley, Swanzey Town Administrator

From: [Town Clerk](#)
To: [Matteson, Myles](#)
Subject: FW: Follow-up from the Attorney General's Office
Date: Thursday, April 28, 2022 1:43:09 PM

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

From: Town Clerk
Sent: Thursday, April 28, 2022 11:25 AM
To: Michael T. Branley <mbranley@swanzeynh.gov>
Subject: RE: Follow-up from the Attorney General's Office

Good Morning Miles,

Below is how we plan to address the concerns that were raised after the 2020 general election. The numbers correspond with the document that you sent.

1. The new voting location has a separate entrance and exit for voters.
2. Voting will take place at the Monadnock Regional High School which provides ample parking spaces as well as handicap spaces to accommodate all voters.
3. The set-up for the alphabetical voter check-in stations are more spread out more allowing greater visibility. We will also have people helping the voters get to their appropriate check-in station.
4. Registration at the new location is in the same space as the voter check-in and the voting booths. At the entrance we will also have someone there to assistance and direct the voters to where they need to go.
5. With having a separate entrance and exit this will not be an issue moving forward.

If you have any questions or concerns please let us know.

Thank-you

Heather Estrella

Town Clerk

Town of Swanzey
PO Box 10009
Swanzey, NH 03446
603-352-7411 x101
www.swanzeynh.gov

From: Matteson, Myles [<mailto:Myles.B.Matteson@doj.nh.gov>]
Sent: Wednesday, April 27, 2022 11:07 AM
To: Town Clerk <townclerk@swanzeynh.gov>
Cc: Tekin, Jill <jill.Tekin@doj.nh.gov>
Subject: RE: Follow-up from the Attorney General's Office

Heather,

Thank you for the update. We would appreciate a bit more explanation as to how this change will address the concerns identified in our prior letter. Specifically, are all five of the checklist

items on page two of our letter addressed using this new location? Additionally, what impact will the new location have on traffic management and wait times?

Thank you.

Myles

From: Town Clerk <townclerk@swanzeynh.gov>
Sent: Wednesday, April 20, 2022 2:52 PM
To: Matteson, Myles <Myles.B.Matteson@doj.nh.gov>
Subject: RE: Follow-up from the Attorney General's Office

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Myles,
We do not use this voting location anymore, the elections will take place at the Monadnock Regional high School gym.

Thank you,

Heather Estrella
Town Clerk

Town of Swanzey
PO Box 10009
Swanzey, NH 03446
603-352-7411 x101
www.swanzeynh.gov

From: Matteson, Myles [<mailto:Myles.B.Matteson@doj.nh.gov>]
Sent: Friday, April 15, 2022 9:15 AM
To: Ashley Patnode <apatnode@swanzeynh.gov>; Town Clerk <townclerk@swanzeynh.gov>
Cc: Tekin, Jill <jill.Tekin@doj.nh.gov>
Subject: Follow-up from the Attorney General's Office

Good morning,

I am writing to request a status on an elections corrective action plan. On June 7, 2021, this Office sent the Selectboard a letter (attached) concerning the Town of Swanzey's polling place. The letter requested the town initiate a corrective action plan to address the identified issues and provide a copy of that plan to our Office with six months.

To date, we do not appear to have received the corrective action plan. Can you please provide an update on when we can expect to receive the plan or direct me to an individual who can respond?

Thanks,

Myles

Myles Matteson
Deputy General Counsel
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
Phone: (603) 271-1119
Myles.B.Matteson@doj.nh.gov

STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to justice@doj.nh.gov if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6897

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

April 28, 2022

Town of Swanzezy Selectboard
620 Old Homestead Highway
P.O. Box 10009
Swanzezy, NH 03446

Re: Town of Swanzezy Polling Place Traffic

Dear Swanzezy Selectboard:

This Office is in receipt of the town's remediation plan described in an email dated April 28, 2022, relative to this matter.

We have reviewed the remediation plan and it is accepted. This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Myles Matteson".

Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-3650
myles.b.matteson@doj.nh.gov

Enclosure

cc: David Scanlan, Secretary of State
Michael Branley, Swanzezy Town Administrator

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 3, 2022

Superintendent David Ryan
SAU 16
30 Linden Street
Exeter, NH 03833

Re: Exeter Elementary School Board filings, Alleged Election Official Misconduct

Dear Superintendent Ryan:

SAU 16's filing processes were deficient and resulted in detriment to candidates for the Exeter Elementary School Board races that are up for election on Tuesday, March 8, 2022. While there is insufficient evidence for this Office to find a violation of a specific statute, at a minimum a clerical error resulted in candidates mistakenly relying on faulty information, changing the seat for which they intended to run prior to the filing period ending, and ultimately being faced with an unexpected group of opponents when the clerk altered the filing list after the filing deadline passed. Although there is insufficient evidence to determine that anything other than a clerical error precipitated this chain of events, the SAU's filing processes are clearly inadequate and must be revised to protect against future filing errors.

As you know, there are three seats on the Exeter Elementary School Board up for election on March 8th. Two seats are for a three-year term and one seat is for a two-year term. On February 16, 2022, this Office received a complaint that candidate Susan Drinker's filing was altered after the filing period for school board candidates had closed, resulting in one candidate running unopposed for the two-year term, and five candidates running for the three-year term seats.

This Office has reviewed documentation and interviewed the complainant and parties involved: Susan Shanefaris, Gregory Cochran, Kayla Moore, Talia King, and Susan Drinker.

Those seeking to file to run for an Exeter Elementary School Board seat were required to file a notice of candidacy at the SAU 16 office. In an interview, one candidate noted that the filing form did not appear to look official, and instead merely required a candidate to put down a name and address on a piece of paper. Notably, there was no location or text for a candidate to record the term for which the candidate was filing.

As of January 27, 2022, one day before the filing deadline, candidates Susan Drinker, Talia King, and Heather Ikemire were all listed as candidates for the two-year term seat. As of January 31, 2022—after the filing deadline—a list of candidates showed that Ms. King had switched to be a candidate of the three-year seat. However, when SAU 16 released the official list of candidates, Ms. Drinker was switched and listed as a candidate for a three-year seat, leaving only one candidate, Heather Ikemire, running for the two-year seat.

SAU 16 Superintendent Administrative Assistant Kayla Moore processed candidate Susan Drinker's candidacy filing. There was no location on the form to select a term, and Ms. Drinker did not mark her filing indicating the term for which she was filing. Instead, Ms. Moore asked Ms. Drinker which term she was running for and Ms. Moore believed that Ms. Drinker said she was running for the two-year seat. Ms. Moore wrote that on the filing, but did not confirm the term or hand the filing back to Ms. Drinker to verify. At the point of filing as a candidate, Ms. Drinker was listed as a two-year seat candidate.

Talia King originally filed for the two-year seat on January 24, 2022. In an interview with Attorney General Chief Investigator Richard Tracy, Ms. King noted that nowhere on the filing paperwork did it ask for the term the candidate was selecting to run. After discussing with a friend the number of candidates running for each seat, but before the end of the filing period, Ms. King called the SAU office and told the clerk that she wanted to switch her filing from the two-year term to the three-year term. Ms. King states that the clerk told her she did not have to appear in person to make the filing change or otherwise verify her identity. Ms. King was subsequently listed as a candidate for a three-year seat.

Investigator Tracy also interviewed Ms. Drinker. She stated that she filed on January 19, 2022, and was adamant that she had chosen to run for a three-year seat, as she had no intention of running against the incumbent in the two-year seat. Ms. Drinker had shared her candidacy for a three-year seat with others, and indicated that she was surprised when a State Representative called her on the night of February 3rd and informed her that she was listed as running for the two-year seat. Ms. Drinker stated that she called the SAU office immediately the next day, but it was closed due to a snow storm, so she left a message. Ms. Drinker received a phone call back the next business day. Ms. Moore stated that she had made a clerical error in listing the term on the filing, and would change Ms. Drinker's candidacy to run for a three-year seat.

After hearing Ms. Drinker's message that she was listed for the wrong term, Ms. Moore and SAU staff consulted with SAU legal counsel. The SAU also called the Secretary of State's Office and received instruction that the filer's intent should govern in a case where there is a clerical error. Based on this information, the SAU listed Ms. Drinker for a three-year seat, leaving the candidate list as it stands today: five candidates running for the two three-year seats and a single candidate running for the two-year seat.

Neither the Attorney General nor the Secretary of State has the authority, at this time, to alter the filing results or ballots for the Exeter Elementary School Board seats at issue. Additionally, a candidate or election official is not permitted to change the race or term for which a candidate filed after the deadline has passed—such a change would constitute a filing submitted after the deadline, and it would be invalid. *See* RSA 671:19 and RSAs 669:19-669:22.

However, at issue here is whether a clerical error in recording the information on a filing form may be corrected after the filing deadline has passed.

Acknowledging the consistency of information provided by multiple parties, this Office has no grounds to reject the statements made by the SAU, Ms. Moore, and Ms. Drinker. Therefore, there is insufficient evidence for this Office to find that the initial term-listing information on Ms. Drinker's filing was anything other than a clerical error. While the consequences here are serious—competing candidates shifting their campaign strategies and the seats for which they decided to run in reliance on the information provided by the SAU—there is insufficient evidence for this Office to find a violation of law when Ms. Moore corrected Ms. Drinker's filing after the filing deadline, in good faith, and based on the feedback from the Secretary of State's Office.

However, even a clerical error would not likely have occurred had the SAU utilized a sound filing practice with checks and redundancies. Any process that has a clerk recording essential information about a candidate's filing—through a Plexiglas shield where all individuals might also be wearing masks—and without verification by the candidate that the information recorded on the filing form is correct, is at great risk of error. While the candidate is responsible for providing essential information to file for office, the SAU's forms must be drafted so that the candidate is required to select and provide that essential information, rather than relying on verbal communications after the filing form had been submitted to the clerk. This was exacerbated in this case when the clerk failed to have the candidate verify and initial any information added.

The SAU's filing processes were ripe for error and collateral consequences. The SAU must revise its filing procedures to ensure that avoidable errors are in fact avoided. Filing procedural improvements are essential to protect the democratic processes by which voters elect those to represent them. The SAU shall provide the Attorney General's Office with an updated candidate filing form and procedure for how to handle such filings by March 31, 2022.

This matter will be closed upon this Office's receipt and approval of an updated candidate filing form and procedure.

Sincerely,


Myles B. Matteson
Deputy General Counsel
Attorney General's Office

CC: - Susan Shanefaris
- Susan Drinker
- Talia King
- Greg Cochran
- Patrick O'Day
- Laura Knott
- Dave Scanlan, Secretary of State



30 Linden Street • Exeter, NH 03833-2622
tel: 603.775.8400 fax: 603.775.8673

www.sau16.org

DAVID RYAN, Ed.D.
Superintendent of Schools

HEATHER MURRAY, MPA
Director of Human Resources

RENEE BENNETT, Ed.D.
Director of Student Services

ESTHER ASBELL, Ed.S.
Associate Superintendent

CHRISTOPHER M. ANDRISKI, Ed.S.
Assistant Superintendent for
Curriculum and Assessment

MOLLIE O'KEEFE, MBA, MSF
Executive Director of Finance and Operations

March 25, 2022

Myles Matteson, Deputy General Counsel
New Hampshire Attorney General's Office
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397


Dear Deputy Matteson:

Thank you for your correspondence of March 3, 2022 and we offer our sincere apology for the events that led to your assertion that "[t]he SAU's filing processes were ripe for error and collateral consequence". As a School Administrative Unit, we do not believe that we should be serving as a public service filing location and only inherited the practice that had been carried on for well before our team arrived. While this is no excuse for the error(s) that took place, it is a statement of how we will be moving forward.

In light of this most recent mishap, we have remedied the situation by eliminating the practice and relocating all jurisdictional filing services to the Town of Exeter Town Office. In accordance with instructions provided by Attorney General Chief Investigator Richard Tracy, our School District Clerk Susan Bendroth coordinated with Town of Exeter Town Clerk Andrea Kohler to move all duties and responsibilities of filing for public office to the Town of Exeter Town Offices located at 10 Front Street in Exeter. This process was completed on March 3, 2022 and as a result, we will no longer be involved in the candidate filing process. I have enclosed a copy of the filing form that has been provided by the Town of Exeter.

Once again, we apologize for this inconvenience and the resulting feelings that it generated with our candidates. We look forward to an error-free election next year and beyond. If there are any unresolved components of your office's requirements related to this matter, please direct us to them so that we may resolve them promptly.

Sincerely,


David Ryan, Ed.D.
Superintendent of Schools

CC: Dave Scanlan, Secretary of State
Russ Dean, Town Manager, Town of Exeter
Dawn Bullens, Chair, Exeter School Board

EQUAL OPPORTUNITY EMPLOYER – EQUAL EDUCATION OPPORTUNITIES

Each graduate demonstrates engaged learning and citizenship through the ability to solve problems independently and collaboratively with perseverance and resilience, and communicates solutions with confidence and empathy.



TOWN OF EXETER CANDIDATE FILING FORM

Date: _____

I, _____, being a qualified voter of Exeter,
Residing at _____, Hereby file as a candidate for
the Office of _____, and I hereby request
my name be printed as shown below on the official non-partisan ballot of the Town of
Exeter.

Signature: _____

Address: _____

Email: _____

Phone: _____ Cell: _____

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

April 29, 2022

Superintendent David Ryan
SAU 16
30 Linden Street
Exeter, NH 03833

Re: Exeter Elementary School Board filings, Alleged Election Official Misconduct


Dear Superintendent Ryan:

This Office is in receipt of the town's remediation plan dated March 28, 2022, transferring all filing obligations to the Town of Exeter Town Office.

We have reviewed the SAU's plan and it is accepted. At the same time, we note that the Town of Exeter's Candidate Filing Form includes a space to list the office for which a candidate is filing, but not a space to list or confirm the *term* for which a candidate is filing. Although not relevant in most circumstances, we anticipate that the Town will amend its filing form where multiple terms for the same office will be listed on the ballot to avoid the situation that occurred in this matter. The filing form should be completed *by candidates* to contain all information necessary to identify the office and term for which they are filing, and the form itself should be constructed to indicate all required fields.

This matter is closed.

Sincerely,


Myles B. Matteson
Deputy General Counsel
Attorney General's Office

CC: Susan Shanelaris
Susan Drinker
Talia King
Greg Cochran
Patrick O'Day
Laura Knott
Dave Scanlan, Secretary of State
Town of Exeter Town Clerk

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: State v. Sigmund J Boganski
Case Number: 211-2020-CR-00509

Name: Sigmund J Boganski, [REDACTED] New Hampton NH 03256
DOB: [REDACTED]

Charging document: Indictment

Offense: Vote in More than 1 State GOC: Charge ID: 1805799C RSA: 659:34-a Date of Offense: November 08, 2016

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Felony

Sentence: see attached

May 04, 2022 Hon. Elizabeth M. Leonard Abigail Albee
Date Presiding Justice Clerk of Court

MITTIMUS

In accordance with this sentence, the Sheriff is ordered to deliver the defendant to the **Belknap County House of Corrections**. Said institution is required to receive the Defendant and detain him/her until the Term of Confinement has expired or s/he is otherwise discharged by due course of law.

Attest: _____
Clerk of Court

SHERIFF'S RETURN

I DELIVERED THE DEFENDANT TO THE **Belknap County House of Corrections** and gave a copy of this order to the Superintendent.

Date Sheriff

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney Timothy E. Bush, ESQ
 Sex Offender Registry Other _____ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Belknap Superior Court
Case Name: State of New Hampshire v. Sigmund Boganski
Case Number: 211-2020-CR-00509 Charge ID Number: _____
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict:	
Crime: <u>VOTE IN MORE THAN ONE STATE</u>	Date of Crime:

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Felony

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____
OR A person similarly situated to _____

CONFINEMENT

- A. The defendant is sentenced to the House of Corrections for a period of 90 _____
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:

- Stand committed Commencing _____
- Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
- ALL of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 2 years from today or release on charge ID number MAY 4, 2024
- _____ of the sentence is deferred for a period of _____

The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____

Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

- C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

- D. The court recommends to the county correctional authority:

- Work release consistent with administrative regulations.
- Drug and alcohol treatment and counseling.
- Sexual offender program.
- _____

Case Name: State of New Hampshire v. Sigmund Boganski

Case Number: 211-2020-CR-00509

HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

- A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.
- B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

- A. Fines and Fees:
Fine of \$ 1000, plus a statutory penalty assessment of \$ ~~600~~ 240 to be paid:
 Today
 By _____
 Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
 \$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

- B. Restitution:
The defendant shall pay restitution of \$ _____ to _____
 Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.
 At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.
 Restitution is not ordered because: _____

- C. Appointed Counsel: NOTE: Financial Obligations, Section C is NOT a term and condition of the sentence.

- The Court finds that the defendant has the ability to pay:
counsel fees and expenses in the amount of \$ _____
payable through _____ in the amount of \$ _____ per month.
- The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State of New Hampshire v. Sigmund Boganski


Case Number: 211-2020-CR-00509

HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____.
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____.
- D. The defendant shall perform _____ hours of community service and provide proof to _____ within _____ of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:
Pursuant to Part I, Article 11 of the New Hampshire Constitution the defendant shall no longer have the right to vote in New Hampshire under the Constitution of this State.

For Court Use Only


Honorable Elizabeth M. Leonard
May 4, 2022

**THE STATE OF NEW HAMPSHIRE
INDICTMENT**

BELKNAP, SS.
STATEWIDE GRAND JURY
HOLDEN AT CONCORD

OCTOBER TERM, 2020

At the Superior Court, holden at Concord, convened a statewide grand jury, upon the 4th day of November, in the year of our Lord two thousand and twenty

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

SIGMUND J. BOGANSKI



of New Hampton, New Hampshire, on or about November 8, 2016, at New Hampton, New Hampshire in the County of Belknap, did commit the crime of

VOTING IN MORE THAN ONE STATE, PROHIBITED
RSA 659:34-a

in that, Sigmund J. Boganski, knowingly checked in at the checklist in New Hampton, New Hampshire and cast a New Hampshire ballot on which one or more federal or statewide offices or statewide questions were listed and also cast a ballot in the same election year in 2016 in Arizona where one or more federal or statewide offices or statewide questions were listed.

Said acts being contrary to the form of the Statute, in which case made and provided, and against the peace and dignity of the State.

Nicholas A. Chong Yen, NH Bar #268425
Assistant Attorney General

This is a true bill.

Plea of Guilty
Entered May 4, 2022

Honorable Elizabeth M. Leonard

Foreperson

Name:	Sigmund J. Boganski
DOB:	[REDACTED]
Address:	[REDACTED] New Hampton, NH 03256
RSA:	RSA 659:34-a
Offense level:	Class B Felony
Dist/Mun Ct:	N/A

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

83 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

May 12, 2022

New Hampshire Voter Integrity Group
c/o Marylyn Todd
[REDACTED]
Stratham, NH 03885

RE: Alleged Illegal Campaign Activity in violation of RSA 664:14

Ms. Todd:

Beginning on March 3, 2022, this Office received a number of complaints regarding a political advertisement in the form of a mailer advocating against the use of ballot counting devices in elections in Hampton, Hudson, and Campton. The complaints alleged that the mailer failed to contain the identification information required under RSA 664:14. This Office confirmed that the mailers are not in compliance with RSA 664:14.

On March 4, 2022, Chief Investigator Richard Tracy spoke with you to discuss the mailers in question. You indicated you are the point of contact for the New Hampshire Voter Integrity Group (NHVIG) and verified that the organization created the political advertisements in question.

In summary, the mailers oppose the use of ballot counting devices. Hampton residents received a mailer that began with, "HAMPTON: VOTE YES ON QUESTION #39." Hudson residents received a mailer that began with, "HUDSON: VOTE YES ON QUESTION #25." Campton residents received a mailer that included, "VOTE FOR ARTICLE 11 ON MARCH 9th [sic]."

In addition to the advocacy language, the bottom right quadrant of the mailer contains recipient address information, a U.S. postage "PAID" stamp, and a "PAID FOR BY NHVIG" line, with a Post Office Box address listed below it. The mailer did not otherwise indicate additional information identifying who was responsible, including payment, for the political advertisement. Instead, the mailers included two website URLs. Neither website had information identifying who was responsible for the mailers in question.

One of the websites on your mailer, www.handcountnh.com, is run by Al Brandano, who is associated with Hand Count NH LLC. Mr. Brandano sent his own political advocacy mailers to Kensington voters. Those mailers included Mr. Brandano's name and address, in compliance

with RSA 664:14. However, www.handcountnh.com contained no information about NHVIIG or the contact information required by RSA 664:14.

As your organization's mailers failed to adequately identify who was responsible, including payment, for their content—and because your organization has not previously been investigated by this Office for this type of campaign violation—we will review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14.

First, RSA 664:2, VI defines “political advertising” as any communication, including buttons or printed material attached to motor vehicles, which expressly advocates the success or defeat of any party, measure or person at any election.¹

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. The relevant sections are:

I. All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it. Said signature shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of political advertising made on behalf of a political committee registered with the secretary of state pursuant to RSA 664:3 or a political advocacy organization registered with the secretary of state pursuant to RSA 664:3-a, the name and address on the advertisement shall match the name and address registered with the secretary of state.

II. Political advertising to promote the success or defeat of a measure by a business organization, labor union, or other enterprise or organization shall be signed. The name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address....

III. In the case of printed or written matter, the signature and address of signer shall be printed or written in a size of type or lettering large enough to be clearly legible.

RSA 664:14. Of note, not only must the *name* of the organization responsible for the political advertising be clearly identified, *an individual* must also be identified. Under RSA 664:14, I, that must be “names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for” the political advertising. Under RSA 664:14, II, the “name of the enterprise or organization shall be

¹ The statute also uses the phrase “or implicitly advocates” which we cannot enforce as the United States District Court for New Hampshire held that enforcement against “implicit” political advertisement is unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address” (emphasis added).

Additionally, our Office interprets RSA 664:14, VIII as a website address on political advertising being acceptable as long as the website clearly identifies a contact person for the group responsible for the advertising and an address/email address/phone number where the contact person can be located.²


The overarching obligations imposed by RSA 664:14 are to make clear to the recipient which individual or group is responsible for the political advertising and how to contact that responsible party. For a group or organization, the organization’s name as well as an individual in a senior position—the chairman or treasurer—must be provided.

Based on the forgoing, the mailers in question constitute political advertisements as they expressly advocate for a ballot question that was being voted on during the March 8, 2022 town elections. As such, the mailers trigger the identification requirements under RSA 664:14. Neither the mailers nor the provided websites contained all the elements of identification required by RSA 664:14. While Mr. Brandano is free to allow NHVIC to utilize his website URL as a reference, NHVIC is obligated to ensure that political advertising paid for either contains the required identifying information on the mailer itself or at the referenced website. All of the required identifying information for NHVIC was not in either location. While “PAID FOR BY NHVIC” does appear on the mailer with a Post Office Box address, that information is insufficient under the statute as no individual associated with NHVIC is also identified. Finally, the “paid for” information should be readily apparent—and compliant with the size requirements of RSA 664:14, III—as associated with the political advocacy content, and not confused with postage paid stamps.

We anticipate that NHVIC will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General’s Office

² “VIII. Political advertising in the form of signs or placards may contain an Internet address in lieu of the signature and identification requirements of this section, if the Internet address is printed or written in a size of type or lettering large enough to be clearly legible and the website immediately and prominently displays all of the information required by this section through election day.” RSA 664:14, VIII

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITAL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

May 12, 2022

Matthew Mowers

[REDACTED]
Gillford, NH 03249

Re: Matt Mowers, Alleged Wrongful Voting

Mr. Mowers:

Our Office conducted an investigation into questions of wrongful voting regarding your conduct in 2016 and 2020 raised by press accounts and complaints we received. You cooperated with our inquiry and supplied a significant number of documents per our requests. Based on that investigation, we conclude that you did not commit any New Hampshire election law violations.

Our review considered two issues: (1) were you properly domiciled in New Hampshire at the times you voted in New Hampshire elections; and (2) did you violate New Hampshire law prohibiting voting in more than one state by voting here and in another jurisdiction during the same election year. We conclude, based on a review of extensive documentary evidence, that you established domicile in New Hampshire for voting purposes during the time periods in which you voted here. We also conclude that your 2016 votes in the presidential primaries in New Hampshire and New Jersey do not constitute a violation of New Hampshire election law as you established domicile in New Jersey prior to voting there, entitling you to safe harbor under RSA 659:34-a, IV. This letter summarizes our investigation and conclusions.

INVESTIGATION

On April 5, 2022, the Associated Press filed an article alleging that you potentially violated federal and state law by voting in the New Hampshire Presidential Primary on February 9, 2016, and then also voting in the New Jersey Presidential Primary on June 7, 2016. Following that publication, we also received complaints regarding your voting from New Hampshire voters referencing that Associated Press article.

On April 5, 2022, you were interviewed for a New Hampshire Journal podcast entitled, "Matt Mowers on Voting Twice in 2016: I did not break the law."¹ To summarize, you stated that you moved to Manchester, New Hampshire in 2013 to serve as director for the NH GOP,

¹ URL: <https://nhjournal.com/podcast-matt-mowers-on-voting-twice-in-2016-i-did-not-break-the-law/>

then joined the presidential campaign of then-New Jersey Governor Chris Christie. You indicated that when Governor Christie dropped out of the presidential race, you had no employment and moved back to New Jersey. You were subsequently asked to work for the Donald Trump presidential campaign and also become a New Jersey convention delegate for then-candidate Trump.

On April 6, 2022, you were interviewed on Jack Heath's "The Pulse of New Hampshire" radio show.² In summary, you stated that you moved between New Hampshire and New Jersey for work and that you voted where you lived. You acknowledged that you voted in the February 9, 2016 New Hampshire Presidential Primary and then in the June 7, 2016 New Jersey Presidential Primary. You again stated that, after moving to New Jersey, you began working for the Trump campaign and were asked to represent then-candidate Trump as a New Jersey convention delegate. You also indicated that you sought legal counsel regarding your statuses and conduct in New Hampshire and New Jersey, and that you acted in conformity with the advice received.

Chronological Review of Documentation

You rented an apartment on Hanover Street in Manchester from November 7, 2013, to March 17, 2016. On November 18, 2013, you first registered to vote in New Hampshire, listing a Hanover Street address. On your voter registration application, you listed an East Brunswick, New Jersey address as the last place at which you were registered to vote. You used your New Jersey driver license when registering to vote in Manchester.

You first applied for a New Hampshire driver license on January 10, 2014, utilizing your Manchester address. You indicated on your application that you was surrendering a New Jersey driver license, and used a January 10, 2014 car registration showing your Manchester address as proof of residency.

A review of ElecNet, the State's elections database, shows that you first voted in New Hampshire in the September 9, 2014 State Primary. You voted a total of five times in Manchester from that date including the February 9, 2016 Presidential Primary.

You stated that following the February 9, 2016 New Hampshire Presidential Primary, Governor Christie suspended his presidential campaign, on which you were working. At that point, you had no employment and returned to New Jersey.

You acquired a New Jersey driver license on March 22, 2016. New Hampshire records indicated that you surrendered your New Hampshire license to New Jersey officials when receiving your New Jersey license.

On March 22, 2016, you registered to vote in New Jersey, listing an address on Washington Street in Hoboken. You supplied a New Jersey driver license number. On April 4, 2016, Mercury LLC issued a press release announcing that you were joining the company as a

² URL viewed 4/6/22, available at: <https://theoutlookmag.com/news/2022/04/matt-mowers-why-i-did-not-join-trump/>

vice president working out of the New Jersey office. The release noted that you had most recently worked as New Hampshire State Director for Chris Christie for President.

You were listed on a lease for the Washington Street, Hoboken address from June 1, 2016, to August 17, 2016. However, we reviewed documentation indicating that you sub-let the apartment from March 17, 2016, to May 31, 2016, when you took over the lease.

Hudson County New Jersey records show that you voted in Hudson County in the June 7, 2016 Presidential Primary. On September 8, 2016, you registered to vote in Middlesex County, using an East Brunswick address. You voted in Middlesex County in the November 8, 2016 General Election. That Middlesex registration was removed on March 5, 2022, as you were an inactive voter in the county at that point in time.

In 2017 and 2018, you worked for the United States Department of State. In 2017 and 2018, you lived at an address on Corcoran Street, Washington, DC, and purchased a property on Girard Street in Washington, DC, on August 20, 2018.

You moved back to New Hampshire in August 2019. You reapplied for a New Hampshire driver license on November 1, 2019, listing a Bedford residence. The application indicated that you surrendered a Washington, DC driver license, and presented a Bedford address lease agreement that started on August 1, 2019. You rented an apartment on Hawthorne Drive in Bedford from December 30, 2019, to January 1, 2021. You rented an apartment on Cooper Lane in Bedford from January 1, 2021, to July 12, 2021. On January 4, 2021, you submitted a United States Postal Service change of address request moving your address from Hawthorne Drive to Cooper Lane.

You did not vote in New Hampshire in 2017, 2018, or 2019. As an inactive voter, you were removed from the Manchester checklist on November 5, 2019. You re-registered to vote in New Hampshire on August 21, 2020, in Bedford. You voted in New Hampshire in the February 11, 2020 Presidential Primary. You voted a total of five times while registered in Bedford from February 2020 to March 2021.

You purchased a Gilford house on June 21, 2021. On July 9, 2021, you submitted a United States Postal Service change of address request moving your address from Cooper Lane to your Gilford residence. On July 29, 2021, you registered to vote with your residential address in Gilford. On August 10, 2021, you submitted an address change request to the State of New Hampshire, Division of Motor Vehicles, updating your driver license address to your Gilford residence. You registered a vehicle in Gilford on August 19, 2021. You voted for the first time at your Gilford address on March 8, 2022.

Finally, our Office reviewed your filed tax returns and tax documents. We are satisfied that the information contained therein regarding employment and claimed residences is consistent with the documentation otherwise reviewed during the course of our investigation.

ANALYSIS

Domicile

In New Hampshire, in order to vote in a town, ward, or unincorporated place a person must be domiciled there. A "domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government." RSA 654:1, I.³ "A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves." *Id.*

RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified. See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement. Among those documents, election officials have recognized that a New Hampshire driver's license or non-driver ID showing the applicant's current domicile address is satisfactory proof of domicile. Similarly, a New Hampshire resident motor vehicle registration showing the applicant's domicile address is also satisfactory proof of domicile.⁴

However, the question of domicile is a continuing analysis that is not isolated to the proof provided at the time a voter registers to vote. When this Office is contacted with complaints or reports involving the domicile of a voter, it must review the totality of the circumstances to determine if a voter was in fact domiciled for voting purposes in the town or city in which he/she registered and voted.

In your case, our assessments related to your domiciles considered your own statements, voter registration records, voting history, driver license documents, rental and lease agreements, property closing documents, property records, vehicle registrations, correspondences, press notices, public records, and tax records. The totality of circumstances indicates that you established domiciles at your New Hampshire residences sufficient for the purposes of voting in New Hampshire during the times when you voted in New Hampshire.

³ Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 295 (also known as "SB3") was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016. The version of RSA 654:2 in effect in 2016 did not contemplate the concept of temporary presence, which was added by SB3.

⁴ "A document showing that the applicant owns the place the applicant is domiciled at, such as a deed, property tax bill, or other similar document that has the applicant's name and address" would also constitute satisfactory proof of domicile. See New Hampshire Election Procedure Manual: 2020-2021, Pgs. 173-74.

Voting In More Than One State

RSA 659:34-a makes criminal voting in the same election year in another state “where one or more federal or statewide offices or statewide questions are listed.”⁵ Essentially, the question as it relates to your voting history is whether the 2016 primary elections in which you voted in New Hampshire and New Jersey are “elections” within the definition in RSA 659:34-a. This Office concludes that they are, however. RSA 659:34-a, IV specifically states: “If the election in New Hampshire and the other state or territory are held on different dates, it is an affirmative defense that the person legitimately moved his or her domicile to or from the other state or territory between the dates when the elections were held.”

To begin the analysis on voting twice in the same “election year,” RSA 652:1 defines election:

“Election” shall mean the choosing of a public officer or of a delegate to a party convention or the nominating of a candidate for public office by voters by means of a direct vote conducted under the election laws. The term does not include caucuses or conventions. The types of elections are further defined in this chapter.

RSA 652:1. RSAs 652:2-10 define various elections: state, state general, state primary, presidential primary, town, city, school district, and village district. However, RSA 659:34-a broadly includes elections by looking at the types of offices up for a vote, not the particular name of the election, such as those listed in RSA 652:2-10. For our purposes, the operative phrase from RSA 652:1 is voting to “[nominate] a candidate for public office by voters by means of a direct vote.”

Both the February 9, 2016 New Hampshire Presidential Primary and the June 7, 2016 New Jersey Presidential Primary included the same race—for a party candidate for United States president. While the primary elections in New Hampshire and New Jersey were not held on the

⁵ 659:34-a Voting in More Than One State Prohibited.

I. A person is guilty of a class B felony if, at any election, such person knowingly checks in at the checklist and casts a New Hampshire ballot on which one or more federal or statewide offices or statewide questions are listed if the person also casts a ballot in the same election year in any election held in any other state or territory of the United States where one or more federal or statewide offices or statewide questions are listed. For federal or statewide offices and statewide questions, neither the candidates nor the questions need be the same in both jurisdictions for a violation to occur. The titles for offices need not be identical, but must serve an equivalent role in government, for a violation to occur.

II. Two or more elections occur with the same election year if:

(a) The election for federal or statewide office or on a question being voted on statewide in another state or territory is held on the same day that New Hampshire holds its general election; or

(b) The term of office for any office listed on the ballot in the other state or territory starts in the same year as the term of office for that office or its equivalent in New Hampshire.

III. The state shall not be required to prove that the person actually marked the ballot for a candidate for any specific office; it shall be sufficient to prove that the person cast a ballot. Evidence that a person was checked off on the checklist, or the equivalent record in another state or territory, as having voted is prima facie evidence that the person cast a ballot in that election.

IV. If the election in New Hampshire and the other state or territory are held on different dates, it is an affirmative defense that the person legitimately moved your or her domicile to or from the other state or territory between the dates when the elections were held.

Matt Mowers, Alleged Wrongful Voting
Page 6 of 6

same day, they were nevertheless in the "same election year" as they both concerned the 2016 presidential election.

As noted earlier, RSA 659:34-a, IV specifically provides a safe harbor against voting in more than one state if a person moved his or her domicile to another state between the dates when the elections were held. As provided above, the totality of circumstances indicates that you established a domicile in New Jersey in 2016 prior to voting in the June 7, 2016 Presidential Primary. As such, you are entitled to the RSA 659:34-a, IV affirmative defense as a matter of New Hampshire law.


Our investigation and conclusions are limited to compliance with New Hampshire law. The complaints we received also reference 52 U.S.C. § 10307(e). Since we are not authorized to enforce New Jersey or federal law, we take no position on whether your conduct was in compliance with either New Jersey or federal law.

CONCLUSION

We conclude that you did not commit any New Hampshire election law violations. We conclude, based on a review of extensive documentary evidence, that you established domicile in New Hampshire for voting purposes during the time periods in which you voted here. We also conclude that your 2016 votes in the presidential primaries in New Hampshire and New Jersey do not constitute a violation of New Hampshire election law as you established domicile in New Jersey prior to voting there, entitling you to safe harbor under RSA 659:34-a, IV.

This matter is closed.

Sincerely,



Miles B. Malleson
Deputy General Counsel
Attorney General's Office

CC: Keith Cota

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

May 24, 2022

David Testa

[REDACTED]
Tamworth, NH 03886

Re: **CEASE AND DESIST ORDER**
Violation of RSA 659:43

Mr. Testa:

On November 12, 2020, the New Hampshire Secretary of State received a report alleging unlawful electioneering by an individual wearing clothing bearing campaign slogans inside the Tamworth polling place during the November 2020 general election. The Secretary of State referred this matter to the New Hampshire Attorney General's Office. Following our investigation, we have determined that you wore electioneering clothing inside a polling place. You are ordered to cease and desist from engaging in further electioneering inside a polling place in future elections.

The Tamworth town moderator, Chris Canfield, alleged that, during the 2020 General Election, you refused to remove a hat supporting President Trump, who was a candidate on the ballot, while inside the polling place. Mr. Canfield further indicated that you refused to honor three requests—one from a greeter and selectboard member, one from the Chief of Police, and one from Mr. Canfield—to remove your hat which had an electioneering slogan on it. You were informed that electioneering was only allowed in a designated area outside, but that it was not permitted under the law to wear electioneering material into the polling place. When you refused to remove your hat, Mr. Canfield informed you that he would be notifying the Secretary of State or Attorney General of your conduct. Subsequently, in the polling place you removed your jacket to reveal more electioneering slogans on your shirt. You were not prohibited from entering the polling place or prevented from voting during this election.

On August 9, 2021, Investigator Anna Brewer-Croteau attempted to speak with you. She left a message for you asking that you return her call. You did not. Investigator Brewer-Croteau called you again and left messages on your phone on August 12 and August 16. You failed to answer or respond to any of her requests.

RSA 659:43 states, in relevant part, that "[e]lectioneering shall be prohibited within the polling place building." "Electioneering" means "visibly displaying or audibly disseminating

information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h. This includes, but is not limited to, wearing clothing that displays a candidate’s name or an identifiable slogan. RSA 652:16-h, I.

The law further contemplates penalties for violations, which include –

- Whoever violates any of the provisions of this section shall be guilty of a violation.
- Whoever violates any of the provisions of this section shall be subject to a civil penalty not to exceed \$1,000.

RSA 659:43, VIII and IX.

In this case, you wore a hat and shirt supporting a candidate on the November 2020 General Election ballot. As such, your clothing constitutes “electioneering” within the meaning of RSA 652:16-h, and was prohibited from being displayed or worn inside the polling place.

The purpose of RSA 659:43 is to ensure that inside the polling place—and the casting of ballots to select our elected officials—is free from the pressure of explicit advocacy *for any* candidate or ballot measure. Voters must be able to cast their ballots free from such advocacy, whether it is by poll officials or other voters.

Pursuant to RSA 659:43, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from engaging in further electioneering inside the polling place in future elections**. Failure to do so could constitute a violation of RSA 659:43 and result in further enforcement action by this Office.

This matter is closed.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General’s Office
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: Chris Canfield, Town of Farmington Moderator
Dana Littlefield, Town of Tamworth Police Chief

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

May 24, 2022

Dennis Wagner

Littleton, NH 03561

Re: CEASE AND DESIST ORDER REGARDING ELECTIONEERING
Violation of RSA 659:43

Dear Mr. Wagner:

On November 3, 2020, our Office received a report alleging unlawful electioneering by an individual wearing clothing bearing campaign slogans inside the Littleton polling place during the November 2020 general election. Following our investigation, we have determined that you wore electioneering clothing inside a polling place. You are ordered to cease and desist from engaging in further electioneering inside a polling place in future elections.

The Littleton Chief of Police, Paul Smith, alleged that during the 2020 General Election, you refused to remove a hat supporting President Trump, who was a candidate on the ballot, while inside the polling place. Chief Smith further indicated that you refused to honor multiple requests—one from Deputy Chief Christopher Tyler, and again from Chief Smith—to remove your hat that had a campaign message on it. You were informed that under the law individuals were prohibited from wearing electioneering material into the polling place. While you did cover the “Trump” name on the back of your hat with tape, you refused to cover the “Keep America Great” slogan on the front. When you refused to remove or cover your hat, Chief Smith informed you that he would be notifying the Attorney General of your conduct. You were not prohibited from entering the polling place or prevented from voting during this election.

On August 25, 2021, Investigator Anna Brewer-Croteau attempted to speak with you. You did not answer your phone. Investigator Brewer-Croteau confirmed your number with the Littleton Police Department, which matches your number and address found in State records. She called you again multiple times over the following months. You failed to answer or respond to any of her messages asking you to return her call.

RSA 659:43 states in relevant part that “[e]lectioneering shall be prohibited within the polling place building.” “Electioneering” means “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h. This includes, but is not

Dennis Wagner
Page 2 of 2

limited to, wearing clothing that displays a candidate's name or an identifiable slogan, RSA 652:16-h, I.

The law further contemplates penalties for violations, which include:

- Whoever violates any of the provisions of this section shall be guilty of a violation.
- Whoever violates any of the provisions of this section shall be subject to a civil penalty not to exceed \$1,000.

RSA 659:43, VIII & IX.


In this case, you wore a hat with a readily identifiable slogan supporting a candidate on the November 2020 General Election ballot. As such, your clothing constituted "electioneering" within the meaning of RSA 652:16-h, and was prohibited from being displayed or worn inside the polling place.

The purpose of RSA 659:43 is to ensure that inside the polling place—and the casting of ballots to select our elected officials—is free from the pressure of explicit advocacy *for any* candidate or ballot measure. Voters must be able to cast their ballots free from such advocacy, whether it is by poll officials or other voters.

Pursuant to RSA 659:43, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from engaging in further electioneering inside the polling place in future elections**. Failure to do so could constitute a violation of RSA 659:43 and result in further enforcement action by this Office.

This matter is closed.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General's Office
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: Paul Smith, Town of Littleton Police Chief

3429860

083

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

June 10, 2022

Dane Rota, Planning Board
Town of Mason
[REDACTED]
Mason, NH 03048

Re: Mason Planning Board Mailers, Alleged Illegal Campaign Activity

Dear Mr. Rota:

On February 13, 2022, Jon Bryan of Mason, New Hampshire emailed a complaint to this Office expressing concern over a political mailer he received in the mail. Following our investigation, we conclude that you did not improperly electioneer and you removed political advertising signs that were improperly placed on town property. However, you distributed mailers that did not comply with the legal notice requirements. We discuss the facts and laws at issue and anticipate your compliance with all applicable obligations in the future.

This Office received and reviewed the political mailer received by Mr. Bryan. The return address on the mailer was the Mason Planning Board, 16 Darling Hill Road, Mason, NH 03048. The mailer encouraged residents in Mason to "Vote Yes on March 8! Protect Mason's Precious Natural Resources on the Wetlands Ballot Question." In addition to the address of the recipient and the return address for the Planning Board, on the front side of the mailer, at the bottom, was the following: "NH Office of Strategic Planning Wetlands Protection Survey, NH Association of Conservation Commissions (NHACC)." The placement of the two organizations on the flyer implied involvement by the entities in the creation of the mailer or support of the ballot question. Mr. Bryan believed that the mailer was a violation of RSA 664:14, II and VIII and RSA 659:44.

On February 28, 2022, Mr. Bryan emailed additional information to this Office that included a photograph of a sign and a copy of a Facebook post. The sign in the photograph read "VOTE YES PROTECT OUR WATER" and appeared to be attached to a bulletin board enclosed in a glass and wood framed kiosk at an entrance to a park or trail in Mason. The Facebook post appeared to have been made by you, showing you with your dog standing next to a brook and one of the signs described above. The post was captioned, "The March 8th Town Election Ballot includes a warrant (#2) article question. To download the official copy of the proposed changes to the existing Mason Planning (Zoning) Ordinance, Article XVI WETLANDS CONSERVATION DISTRICT ORDINANCE, click on: <https://www.masonnh.us/.../town-office-meetings.aspx>." Mr. Bryan indicated that he believed the signs and the Facebook post were

made in violation of RSA 664:17 and 659:44. Mr. Bryan urged this Office to intervene and issue a cease and desist order immediately.

On that same date, Chief Investigator Richard Tracy asked Mr. Bryan what was written at the bottom of these signs as they were illegible in the provided photographs. Mr. Bryan indicated that the phone number was that of the printing company that made the signs and that these particular signs were being placed on town property that included the Mason Railway Trail kiosk. Mr. Bryan further pointed out that the Mason Conservation Committee had posted similar signs but the organization had properly identified itself on its signs.

On that same date, Investigator Tracy reached out to the Mason Board of Selectmen and spoke to Administrative Assistant Jennifer Tenney regarding the signs. Ms. Tenney did not believe that the Board of Selectman was responsible for the signs and was under the impression that the Board asked the highway department to remove the signs.

Based on this, Investigator Tracy reached out to Mason Chief of Police Kevin Maxwell and the two spoke several times on that same date. Chief Maxwell represented that Selectman R. Peter McGinnity ordered the highway department to remove the signs from town property. Selectmen Charles Moser and Kate Batcheller overruled McGinnity, stating that the signs could remain up.

A short time later, Investigator Tracy then spoke with Selectman Moser who verified what Chief Maxwell had said. Selectman Moser indicated that he was not aware of RSA 664:17 and asked Investigator Tracy to email him a copy of the statute. Selectman Moser told Investigator Tracy that you were responsible for the signs and provided Investigator Tracy with your contact information.

Investigator Tracy spoke to you later that same day. You acknowledged you were responsible for the signs and that you would take steps to address those that did not have the correct language and would remove any that were on town property.

You also admitted that you were primarily responsible for creating and paying for 500 copies of the mailer at issue. You assured Investigator Tracy that town funds had not been used in its creation. You explained that some citizens in attendance at a recent Planning Board meeting regarding the ordinance change had expressed displeasure that there was not enough information on the issue. You told them that you would take steps to better inform them about the proposed ordinance change and felt that you were doing the right thing. You also pointed out to Investigator Tracy that the return address was that of the Planning Board.

Investigator Tracy explained that the mailer made it seem as if town funds were used to pay for it. He further explained that the information and formatting could give the impression that the New Hampshire Office of Strategic Initiatives and the New Hampshire Association of Conservation Commissions were responsible for the mailer when they were not. Finally, Investigator Tracy pointed out that the language advocating for a "yes" vote required the "paid for by" language to be added to the mailer per RSA 664:14. You then apologized for the confusion and assured Investigator Tracy that this would not happen in the future.

On March 1, 2022, Investigator Tracy spoke to Chief Maxwell again who verified that Selectman McGinnity had again ordered that the signs be removed from town property and this had been accomplished. Chief Maxwell further inspected some of the signs at issue and found that they contained the language required by RSA 664:14.

LAW

As your mailers failed to adequately identify who was responsible, including payment, for their content—and because you have not previously been investigated by this Office for this type of campaign violation—we will review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14.

Under RSA 664:14, I and II,

All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it. Said signature shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of political advertising made on behalf of a political committee registered with the secretary of state pursuant to RSA 664:3 or a political advocacy organization registered with the secretary of state pursuant to RSA 664:3-a, the name and address on the advertisement shall match the name and address registered with the secretary of state. Political advertising to promote the success or defeat of a measure by a business organization, labor union, or other enterprise or organization shall be signed. The name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address. Nothing in this section shall be construed to permit contributions which are prohibited under RSA 664:4.

Under RSA 659:44-a, I “[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties.” This statute includes a prohibition on the use of government property or equipment to facilitate such electioneering with “electioneering” defined as “to act in any way specifically designed to influence the vote of a voter on any question or office.” RSA 659:44-a, II-III. Individuals elected by popular vote and those appointed to office by the chief executive or legislative body are exempt from this definition of public employee. RSA 273-A:1, IX¹.

¹ Additionally, New Hampshire courts have found that government officials may urge support for their government proposals. See *ORDREB, Epping Res. for Principles Civ. v. Epping School Board, et al.*, Rockingham Sup. Ct.

"Electioneering" is defined as "visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." RSA 652:16-h.

RSA 664:17 reads, in relevant part, that "[n]o political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent."

ANALYSIS

a. Electioneering

To constitute an electioneering violation under RSA 659:44-a, I, the following facts must be established: (1) a public employee, (2) that is not exempt under RSA 273-A:1, IX, (3) must electioneer, (4) while in the performance of his or her duties.

Concerning element (3) listed above, your mailer and your Facebook post represent explicit advocacy and constitute electioneering as the clear and repeated message -- support this resolution -- directs the reader to vote a particular way on a specific ballot measure. This is the "explicit advocacy" contemplated under RSA 652:16-h, and is not "implicit advocacy," the regulation of which has been recognized by courts as being unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976). See also Stenson v. McLaughlin, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

We need not reach conclusions regarding element (4) listed above as you are an appointed member of the Planning Board. As such, you are an exempt employee who is "elected by popular vote [or] appointed" under RSA 273-A:1, IX. Further, as there is no evidence at this point that you utilized public resources with either the mailer or with posting on your own Facebook page, we do not need to engage in an analysis of the use of public resources under RSA 659:44-a, II.

b. Posting Political Signs

Acknowledging that you were responsible for the posted signs in this case, we address this here only to note that the issue appears moot. While the signs at issue were posted on public land, the Board of Selectmen corrected this problem by having the signs removed when notified of the obligations of RSA 664:17 by this Office. No further guidance or corrective measures will be taken on this issue at this time.

c. Mailed political advertising

As Investigator Tracy explained to you, the mailers that you were responsible for did not contain the required language under RSA 664:14 as described above. Additionally, the mailers

June 15, 2005 ("Thus, the court finds that the First Amendment does not prevent the School Board Chairman or the Police Chief from urging support for their governmental proposals in the Town and School Annual Report.")

could reasonably give the impression of being produced or endorsed by organizations that were not responsible for the content, potentially supplying misinformation to voters. The overarching obligations imposed by RSA 664:14 make clear that the entity responsible for political advertising must be readily apparent to the recipient of the advertising, and must also provide contact information, such as an address/email address/phone number, for that responsible party. For a group or organization, that includes the organization's name as well as an individual in a senior position—the chairman or treasurer.

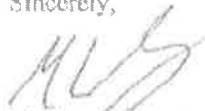
CONCLUSION

Based on the foregoing, you did not engage in illegal electioneering and the signs at issue in this complaint, though unlawfully placed, were appropriately removed upon notice that they posed a problem. However, you did create, fund, and send out mailers that did not comply with the legal notice requirements of RSA 664:14. While you are free to place the Planning Board's mailing address as the return address so that residents could send responses to you there, this did not satisfy the requirement that you appropriately notice who paid for the mailers and how voters should contact you.

We anticipate that you will adhere to all appropriate advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov

cc: Jon Bryan
Town of Mason Board of Selectmen
Town of Mason Planning Board

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

July 7, 2022

Kathleen Cavalaro

[REDACTED]
Rochester, NH 03867

Re: TikTok Video and Possible Voter Misinformation

Ms. Cavalaro:

Yesterday this Office received complaints concerning a TikTok video you posted where you made statements regarding Massachusetts residents being able to vote for you in your campaign for a New Hampshire state representative seat. Having reviewed the video, your comments to the social media post, and interviewed you, we accept your claim that the statements were made in jest and do not constitute criminal solicitation to wrongfully vote. We ask that you consider the risk of voter misinformation—particularly as you are a candidate for elected office seeking to win votes—in your future communications. We also ask that you take steps to mitigate the possible effects of your communications, even if they are being misinterpreted.

The complaints we received concerned a May 23, 2022, video you posted on the social media platform, TikTok. Those complaints alleged that you provided directions for people to vote for you in Rochester by taking a bus from Massachusetts. When we viewed your video on TikTok, we heard your statement, "You can actually vote for me. Just get on one of those buses that comes in from Massachusetts and go to Ward 2 in Rochester and vote for me."

As with most social media platforms, TikTok allows users to comment on content. The top comment on your video is a "pinned" comment from yourself, also made on May 23, 2022, reading, "For legal reasons and be Repubs are not funny, this is a joke. I am making fun of Republicans." "Pinned" comments are those that the writer purposefully places at the very top of a thread or comments section so that they will be read first.

Yesterday the Attorney General's Chief Investigator Richard Tracy interviewed you by phone. You maintained that the post was made with humorous intent, evidenced by your demeanor and subsequent comments.

It appears clear from social media commentary that consumers have viewed your post either as humor, an attempt at humor, or a serious invitation to commit voter fraud. We recognize

Kathleen Cavalaro

Page 2 of 2

that consumers viewing your video at its original location on TikTok may see your pinned comment clarifying that the communication was a joke. We also recognize that any sharing of your video post—rendering it beyond your control—is likely to remove your clarifying comment from the communication, increasing the risk of misinterpretation. Additionally, we recognize that a wide swath of communications, including your video post, is protected speech under the First Amendment.

As the entity responsible for enforcement of our state's election laws, this Office appreciates opportunities to improve voter education. Understanding that it is still your prerogative to leave your May 23 video post as is, but given that there is a risk that your communication could result in voter confusion—or a criminal act if a Massachusetts resident votes in New Hampshire—we ask that you consider removing your May 23 video post from your TikTok account. If you will not do so, we request that you use your social media platform(s) to clarify that registering to vote in New Hampshire requires being *domiciled* here in our state.

Finally, we note that there are circumstances where a communication can constitute criminal solicitation to wrongfully vote in violation of RSA 659:34. Criminal solicitation is a communication that commands, solicits, or requests another person engage in criminal conduct where the communicator has a purpose that another individual engage in that criminal conduct. *See* RSA 629:2. RSA 659:34 concerning wrongful voting includes voting where a person is not qualified to vote. Therefore, soliciting individuals to vote where they are not qualified is a crime. As such, we note that it is very important that a speaker, who asserts that they are making a joke, ensure that the substance and context of a communication are very clear in showing that the communication is in jest.

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Attorney General's Office
Election Law Unit

CC: Terese Grinnell

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

July 25, 2022

BY EMAIL ONLY

Re: **CEASE AND DESIST ORDER**
Joe Hart, Alleged Illegal Campaign Activity

Mr. Hart:

On November 2, 2021, you observed the Manchester city elections at various wards. During your time at Ward 3 you passed beyond the guardrail of the polling place—despite the warnings from election officials that you were not permitted to do so—which is a violation of RSA 659:21. You are free to exercise your First Amendment rights in public meetings, such as an election, but you are warned to cease and desist from entering polling place areas that are restricted by law.

I. BACKGROUND

On the morning of November 2, 2021, this Office received a complaint from Emma Mintz that an unknown individual was open carrying a firearm and intimidating poll workers and observers in Manchester's Ward 3. Attorney General Investigator Richard Tracy was in the vicinity of Ward 3 and spoke with you at the polls. Investigator Tracy also spoke with election officials at Ward 3 and reviewed your recorded live stream that you posted to YouTube.

Within minutes of you entering the polling place, the moderator, Patty McKerley, asked you to stay inside the designated observer area. You repeatedly declined, insisting that you were free to roam the polling place. At one point approximately twenty minutes after entering the Ward 3 polls, you proceeded behind the guardrail into the area of the polling place that is restricted by law. An election official politely informed you that you were in a restricted area. You continued on. Another election official then clearly stated that state law prohibited you from being in the voting area. You were asked to leave the area multiple times. You rejected each instruction to leave the area. You told an election official that you were going to "observe" the ballot counting device vote count, to which he responded, "Are you going to shoot me too?" You stated, "Are you going to get to the point where I have to use a gun? No. Please do not do that. Please do not threaten me."

You subsequently left the restricted area beyond the guardrail and continued your observing in the public area of the polling place, though mostly outside of the designated observer area. Shortly after returning to the public area of the polling place a voter asked you to be quiet as she indicated that your running commentary was being disruptive to the voter check-in process.

Subsequent to your intrusion into the restricted area behind the guardrail, you and Investigator Tracy spoke about a number of subjects, including the requirement to remain outside the polling place guardrail. You indicated that the copies of polling place RSAs you were given did not apply to you, and were instead meant to govern the conduct of election officials. Shortly thereafter, you stated that you could recognize the registration tables as a guardrail as it pertains to its function in the RSAs you reviewed, however, you earlier stated that there was no guardrail in the polling place. At multiple times you insisted that you had a right to record the number count on the ballot counting device, voting machinery that is properly situated behind the guardrail. From your comments on your video you also appear to be aware of the requirements of RSA 659:37 relating to interfering with voters, and RSA 659:40 relating to bribing, suppression, and intimidation of voters.

II. ANALYSIS

As an initial matter, the New Hampshire Constitution provides that “[a]ll persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.” Part 1, Article 2-a. There are no state election laws governing the carrying of a firearm in a polling place. Voters and those lawfully in the polling place should not be prevented from voting or observing based on the possession of a firearm.

Relating to the individuals permitted in a polling place and how they may behave, the New Hampshire Elections Procedure Manual describes the status of observers:

Anyone can come and watch the casting of ballots and the counting of ballots to see for himself or herself whether the election is conducted in accordance with the law. These individuals can best be understood as “Observers.” They have no special status in law and like all members of the public are entitled to silently observe the election as long as they are not disruptive.

2020 New Hampshire Elections Procedure Manual, p. 140. These instructions arise in part from RSAs 654:7-c and 659:13-a.¹ The statute makes clear that while observers have a right to observe in-person voter registration and check-in—subject to restrictions such as “where the physical layout of a polling place makes it impractical to position challengers or interested voters who are registered at that polling place where they can hear the announcement at the check-in table...”—observers are prohibited from interfering with the operations of the polling place.

¹ 654:7-c Observation to Voter Registration. — Any person shall have a right, as safety, welfare, and rights of voters permit, to observe in-person voter registration, wherever it is conducted, provided however, that the person may not be positioned within 5 feet of the voter registration table where the exchange of nonpublic information between the applicant for registration and the election official receiving the application may be heard or seen. When a person registers to vote on election day, the ballot clerk, upon adding the person's name to the checklist at the check-in table, shall publicly announce the person's name 2 times and shall publicly announce the address the person has registered as his or her domicile one time. These announcements shall be made in a manner that allows any person appointed as a challenger to hear the announcement. Where the physical layout of a polling place makes it impractical to position challengers or interested voters who are registered at that polling place where they can hear the announcement at the check-in table, the moderator shall arrange an alternative means for challengers or interested voters who are registered to vote at that polling place to be informed of the new voter's name and domicile address and be afforded an opportunity to challenge the voter at the check-in table.

659:13-a Observing Voter Check-In. — No person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator.

It is the duty of the moderator to ensure the observance of polling place obligations and management.² Consistent with that duty, and to ensure that voters are in no way inconvenienced, intimidated, or subjected to a violation of their right to protect non-public information, moderators may designate areas for observers to watch the public meeting. The Ward 3 moderator established just such an observer area, which was pointed out to you frequently. You repeatedly declined to stay in the designated area.

In addition to the RSAs governing the management of the public areas of polling places, the law prohibits unauthorized intrusion into the area containing voting booths, ballots, and ballot boxes.

No person other than the election officers, the voters admitted or those admitted to aid a voter pursuant to RSA 659:20 shall be permitted within the guardrail except by the authority of the election officers and, then, only for the purpose of keeping order and enforcing the law.

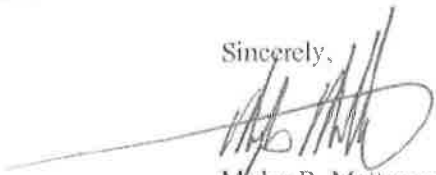
RSA 659:21 Admittance Within Guardrail. You clearly proceeded past the Ward 3 guardrail into the area covered by RSA 659:21. You ignored repeated requests by election officials to leave the restricted area of the polling place.

III. CONCLUSION

After reviewing the video footage and interviewing election officials, this Office concludes that you proceeded behind the guardrail without authorization. However, given this first known instance and your confusion as to what constituted a guardrail, this Office has also declined to proceed with a violation against you. That said, you are now aware of the laws governing the management of polling places and your obligations to remain in the areas authorized by law. Failure to do so in the future may result in enforcement action. As such, you are hereby ordered to **Cease and Desist from entering polling place areas without authorization under the law.**

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Attorney General's Office

CC: Emma Mintz
Patty McKerley, Manchester Ward 3 Moderator

² 659:9 Moderator to Oversee Voting. -- It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.

Note to File

Carolyn Carr, Alleged Illegal Campaign Activity

2021152090

7/29/2022

Case Notes

8:42:00 AM

Closing this matter - note to file

Initially ELU did not open a matter after reviewing Carr's comments, which did not appear to be a violation of the NH Criminal or Election Law Statutes. After receiving additional calls from at least three citizens we did open a matter since the complaints were all about the same candidate. The comments were personally critical, but not threatening or impacting voters. As such, we are closing this matter.

Note to File

Clear Insight push-polling, Alleged Illegal Campaign Activity 2022156754 8/9/2022
10:42:00 AM Case Notes

CLOSE OUT MATTER - federal preemption under Bass

Bass Victory order clarifies that federal law preempts enforcement of NH's push polling statute for federal candidates. As the complainants indicate that the push poll only involved federal candidates, we have no enforcement authority.

Closing out matter with this case note after conversations with all complainants explaining the outcome.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Deputy Town Clerk Jeanette Stewart
Town of Ashland
[REDACTED]
Ashland, NH 03217

Re: **CEASE AND DESIST ORDER**
Violation of Official Duties and Responsibilities

Dear Deputy Clerk Stewart:

On July 7, 2021, this Office received a complaint alleging that you and Assistant Town Moderator Sandra Coleman unlawfully rejected Susan Longley's absentee ballot in the March 2021 Ashland Town Election. This investigation followed. This Office concludes that you are responsible for the improper invalidation of Susan Longley's absentee ballot in violation of your responsibilities as an election official and Ashland Town Officials have been directed to not allow you any role in future Ashland elections.

I. FACTUAL BACKGROUND

a. Initial Complaint and Interview with Susan Longley

On July 7, 2021, Chief Investigator Richard Tracy received a call from Sherrie Downing, an Ashland resident. Ms. Downing reported what she believed was unlawful activity on the part of election officials in the Town of Ashland, namely you and Assistant Town Moderator Sandra Coleman. Ms. Downing alleged that you and Assistant Moderator Coleman had challenged and subsequently rejected Susan Longley's absentee ballot in the March 2021 Ashland Town Election. Ms. Downing explained that Ms. Longley had spent a great deal of time out of town helping her son, who was critically ill, and that she had voted by absentee ballot as a result. Ms. Downing said that you and Assistant Moderator Coleman claimed that Ms. Longley no longer lived in Ashland. Ms. Downing believed that Ms. Longley had been staying in Somersworth, Massachusetts, close to her son and would then stay with a friend in Campton, New Hampshire, when she was back in the area rather than returning to her home as she had a friend living in and caring for her home in Ashland located on North Ashland Road.

Ms. Downing indicated that only one other absentee ballot was challenged in the March 2021 Ashland Town Election. This ballot was ultimately accepted as the individual was serving in the military.

Investigator Tracy called Ms. Longley on July 7, 2021. Ms. Longley told Investigator Tracy that she had been temporarily staying in Boston, Massachusetts, Greenland, New Hampshire, and Campton, with the intention of returning to Ashland. Ms. Longley indicated that her son was hospitalized in Boston from December 2020 through April 2021. During this time, Ms. Longley would stay in one of three places: in Boston to be near her son, in Greenland to help her daughter-in-law take care of her grandchildren, or with a friend in Campton.

Because of her long absences, Ms. Longley asked John Morrill if he would stay at her home in Ashland and look after the property. Ms. Longley stated that she would stay at her friend's home in Campton because Mr. Morrill was staying at her home and she did not want to impose on him.

Ms. Longley recounted that she requested an absentee ballot for the March 9, 2021 Ashland Town Election on February 25, 2021, and the ballot was mailed to her on March 1. Ms. Longley said that she hand delivered the ballot to the Ashland Town Clerk's Office where she turned in her absentee ballot and envelope to a woman she believed was named Ann. Ms. Longley explained that Ashland Town Clerk Pat Tucker had recently broken her leg and Ann from the Plymouth Town Clerk's Office was working in Ashland to assist Clerk Tucker.

It was not until sometime after the election that Ms. Longley learned that her absentee ballot had been rejected. Ms. Longley stated that she was not able to get a response or speak to any town officials when she reached out. Ms. Longley approached the Supervisors of the Checklist, at a June 12, 2021, meeting, to inquire why her ballot had been rejected. Supervisor Beverly Ober confirmed that her ballot had been rejected, telling her that you and Deputy Moderator Coleman had challenged whether Ms. Longley was domiciled in Ashland and you and Deputy Moderator Coleman determined that she was not.

Ms. Longley later spoke to Clerk Tucker about her ballot rejection. In that conversation, Ms. Longley explained that she was not renting her home and that Mr. Morrill had been helping her out by staying in her home. Ms. Longley also showed Clerk Tucker utility bills that she continued to pay for the Ashland home's operation. Clerk Tucker explained that Ms. Longley would not have any more issues voting in Ashland as long as she was clerk and present at the elections.

Ms. Longley expanded on her connections to Ashland while speaking with Investigator Tracy. Ms. Longley has lived in Ashland for over 50 years. Both her now-deceased husband and her son were born and raised in her Ashland home. Investigator Tracy was later able to verify, through ElectionNet – New Hampshire's online voting database – that Ms. Longley has voted in Ashland more than thirty times since the database was implemented in 2006.

Ms. Longley provided contact information for John Morrill before the interview with Investigator Tracy ended.

b. Interview with Town Clerk Pat Tucker

On January 12, 2022, Investigator Tracy spoke with Clerk Tucker. Clerk Tucker explained that she fell and broke her leg a week prior to the Town Election and was not able to work at that time. You filled in during her absence until Tucker returned to work on March 17, 2021. Clerk Tucker indicated that, in a discussion prior to the election, you insisted that Ms. Longley no longer lived in Ashland. Clerk Tucker told you that, based on what she knew and the fact that Ms. Longley was still on the checklist, she should be allowed to vote in the upcoming election.

Clerk Tucker explained that she later found out that you spoke to Supervisor Ober and Assistant Moderator Coleman in her absence and convinced them that Ms. Longley did not live in Ashland, convincing them to reject Ms. Longley's absentee ballot.

c. Interview with Town Moderator Roberta "Bobbi" Hoerter

On January 13, 2022, Investigator Tracy spoke with Moderator Hoerter. Moderator Hoerter recalled that, on March 9, 2021, you organized the absentee ballots into alphabetical order and told her that Ms. Longley had moved and no longer lived in Ashland. Moderator Hoerter remembered that you told her that Ms. Longley had moved away from Ashland and rented her house in Ashland to someone else. She further indicated that she had never dealt with a Voter Challenge Affidavit before and, after referring to the Election Procedure Manual, the decision was collectively made to reject Ms. Longley's ballot.

Investigator Tracy asked if there was any animosity between you and Ms. Longley. Moderator Hoerter said she believed there was and apologized if she had made a mistake, but believed she was doing the right thing at the time.

d. Interview with Assistant Town Moderator Sandra Coleman

On January 13, 2022, Investigator Tracy spoke with Assistant Moderator Coleman. She recalled that a conversation took place between her, Moderator Bobbi Hoerter, you, and possibly others regarding the domicile of two registered voters in Ashland, Ms. Longley and another individual. Assistant Moderator Coleman remembered that second individual was allowed to vote following the conversation and that you presented information about Ms. Longley that led to the Moderator's decision to reject Ms. Longley's absentee ballot. Assistant Moderator Coleman also noted that that Ms. Longley was a long time Ashland resident and that she served on the historical society and helped out in past elections.

e. Follow up with Ms. Longley

Investigator Tracy followed up with Ms. Longley several times after his investigation started. On January 20, 2022, Ms. Longley told Investigator Tracy that, after one of these follow ups, John Morrill, Sr. called her and asked her what was going on and said that you had confronted him to ask if he lived at Ms. Longley's home in Ashland.

f. Interview with John Longley

On February 10, 2022, Investigator Tracy went to 585 North Ashland Road looking for John Morrill. A young man answered the door identifying himself as John Longley, Ms. Longley's son. Investigator Tracy explained his purpose at the home. Mr. Longley indicated that his mother had been pretty upset about her ballot being rejected. Mr. Longley said that he did not know whether John Morrill was recently staying at the home, but he did know that Mr. Morrill has been keeping an eye on the home. Mr. Longley indicated that Mr. Morrill may sometimes stay at the home because his work was right down the road and closer to his mother's home than Mr. Morrill's.

g. Interview with John Morrill, Sr. and John Morrill, Jr.

On February 11, 2022, Investigator Tracy spoke with John Morrill, Sr. Mr. Morrill Sr. explained that his son, John Morrill, Jr., lives with him at 227 Wadleigh Road in Ashland, but he takes care of Ms. Longley's home because she has been away a lot helping her son and her son's family. Mr. Morrill, Sr. stated that his son makes sure the furnace is on, plows the driveway, and clears snow from the roof at Ms. Longley's home.

Investigator Tracy asked him if you had confronted him about whether he was living at Ms. Longley's home. Mr. Morrill, Sr. told him no, and that he must be thinking about his son. Mr. Morrill, Sr. explained that he recently saw you where you work when he went in to ask about his insurance. Mr. Morrill, Sr. said you and he talked about his son, with him explaining that his son was keeping an eye on Ms. Longley's home.

Investigator Tracy asked Mr. Morrill, Sr. to have John Morrill, Jr. call him. Later that day, Mr. Morrill, Jr. called Investigator Tracy. Mr. Morrill, Jr. explained that he does not live at Ms. Longley's home, but he does stop by regularly to check on it when Ms. Longley is away, especially in the wintertime.

h. Interview with Supervisor of the Checklist Beverly Ober

On February 14, 2022, Investigator Tracy spoke to Supervisor of the Checklist Beverly Ober. Supervisor Ober stated that she was at the Ashland Town Hall and entered absentee ballot information during the March 9, 2021 election. She remembered that you kept "sputtering" about Ms. Longley no longer living on North Ashland Road and that she had been living in Campton. Supervisor Ober remembered that you called the Campton Town Clerk to see if Ms. Longley had registered to vote there and you were told that she had not.

Supervisor Ober explained that Clerk Tucker was not available on election day and that you spoke with Supervisor Ober and Moderator Hoerter, insisting that Ms. Longley no longer lived in Ashland and that she was renting her home to someone. Supervisor Ober stated that she did not call Ms. Longley and she was not sure if anyone else did. Supervisor Ober stated that the Moderator then made the decision to reject the ballot.

Supervisor Ober sent Ms. Longley a 30-day-letter and recalled that Ms. Longley came to see her on June 12, 2021. Ms. Longley tearfully explained her situation to Supervisor Ober and Supervisor Ober followed up by writing a letter to the supervisors. Ms. Longley's name was not removed from the checklist.

Supervisor Ober also noted that Ms. Longley has been a long-time ballot clerk and that it was unusual that Ms. Longley was not at the polls on the March 9 election.

i. Attempts to contact you

On January 21, 2022, Investigator Tracy left a message for you on a phone number that Clerk Tucker verified was your cell phone number. On February 7, Investigator Tracy left a second message at that number.

On February 10, Investigator Tracy knocked on your door at 94 Depot Street at 8:30 a.m. No one answered despite the fact that there were three vehicles in the driveway, one of which was registered to you. Investigator Tracy left his business card with his contact information on the door. Prior to leaving Ashland on February 10, Investigator Tracy spoke with both the Ashland Police Department and Clerk Tucker to ask you to call him if they had any contact with you.

On February 11, Investigator Tracy left a third message on your cell phone.

On March 8, Investigator Tracy stopped by the Ashland Elementary School, where the Town Elections were being held, and approached Clerk Tucker. Clerk Tucker indicated that she had not seen you yet. Investigator Tracy handed Clerk Tucker his business card, added his cell phone number to the information provided, and asked her to give it to you. As he did, he explained that if you did not want to speak to him, you did not have to, but he would just prefer that you leave a message indicating that you did not want to speak to him. Clerk Tucker indicated that she would pass all of this information along to you.

On March 16, Investigator Tracy called Clerk Tucker and asked if she had seen you after he left the polls on March 8. Clerk Tucker said that she had seen you the next day, she handed you the business card, she had asked you to call Investigator Tracy, and she explained to you that Investigator Tracy had been trying to contact you.

To date, you have not responded to any of this Office's attempts to contact you.

II. APPLICABLE LAW

The Constitution of the State of New Hampshire provides, in relevant part, that, "[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election." N.H. Const. Part 1, art. 11th. "Every personal shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile." *Id.* The only exceptions to this precept outlined by the Constitution

are those individuals who have “been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States.” Id.

A “domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I (emphasis added).¹ Voters who are absent from the jurisdiction where they are domiciled may vote by absentee ballot. See RSA 567:1. A “domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile.” RSA 654:2 (emphasis added). “Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes.” Id.

In the ordinary course of events, election officials have a duty to ensure that all legal ballots are counted. See RSA 666:2. If there are facts indicating that someone has voted illegally, a vote may be challenged. See RSA 659:27. While any registered voter may challenge another voter in the same town or ward where an election is held, the moderator may only reject a vote on the basis of a well-grounded challenge. Id. A voter who is challenging another voter is required to do so via sworn affidavit. See RSA 659:27-a.

RSA 659:40, III(a) provides that

[n]o person shall engage in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information. Prohibited acts of voter suppression include challenging another person’s right to register to vote or to vote based on information that he or she knows to be false or misleading.

“Whoever violates the provisions of this section or whoever conspires to violate the provisions of this section shall be guilty of a class B felony.” RSA 659:40, IV.

RSA 666:2, II provides that “[a] moderator, supervisor of the checklist, selectman or town clerk shall be guilty of a misdemeanor if at any election he shall knowingly omit to receive and count any legal vote.”

¹ Pursuant to an order issued by the Hillsborough Superior Court, in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016. The version of RSA 654:2 in effect in 2016 did not contemplate the concept of temporary presence, which was added by SB3.

III. ANALYSIS

Based on our review of the facts, Susan Longley was qualified to vote in the town of Ashland in the March 2021 Town Election. She was over 18 years of age and all of the facts indicate that Ms. Longley was in 2021 and is currently domiciled in Ashland. She has lived there for over 50 years. Her family has lived in Ashland for decades. She has been an active member of the community. Every individual whom Investigator Tracy contacted and who was familiar with Ms. Longley indicated that she lived in Ashland but, due to her son's health, she had been temporarily absent from Ashland for several months helping her son and his family. Multiple individuals with knowledge of the situation confirmed that John Morrill, Jr. was stopping by to take care of Ms. Longley's home in order to help her, not living there, and not subject to any kind of rental agreement. Ms. Longley continued to pay all of the utility bills for her Ashland home despite a temporary physical absence.

Despite all of these facts clearly demonstrating an Ashland residence, you initiated action and convinced Ashland town election officials to wrongfully reject Ms. Longley's absentee ballot.

Given your conversations with Ashland election officials and your intentional act of contacting Campton town officials, it is clear that you questioned whether Ms. Longley was domiciled in Ashland in 2021. However, prior to your decision to challenge Ms. Longley's 2021 town election ballot, Clerk Tucker gave you information regarding Ms. Longley's circumstances at that time with Clerk Tucker, your direct supervisor, informing you that Ms. Longley was a resident of Ashland. Your refusal to respond to the repeated attempts by this Office to contact you resulted in us being unable to gain further insight into why you held such a belief despite all of the contrary evidence and instructions.

IV. CONCLUSION

Your clear intent was to avoid speaking to this Office regarding this incident and the question of whether Ms. Longley was entitled to vote in the March 2021 Ashland Town Election. We conclude that Ms. Longley's ballot was improperly invalidated. The evidence also indicates that you failed in your fundamental responsibility as an election official and ignored your obligations to a voter to whom you owed a duty as an elected official.

Pursuant to the Constitution of the State of New Hampshire, the above cited statutes, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from engaging in official misconduct relating to challenging ballots**. Failure to comply with this Cease and Desist order could constitute violations of the Constitution and the above cited statutes and result in further enforcement action by this Office. **Additionally, this Office is directing Ashland Town Officials to not allow you to work in any appointed role involving elections.**

Finally, this Office advises Ashland election officials that additional efforts must be made to verify a voter's domicile in the future where there are inconsistent claims or evidence. Though not practicable or possible in every case, Ms. Longley was known in the community and had

Deputy Town Clerk Jeanette Stewart, Cease and Desist Order
Page 8 of 8

worked with election officials for years. It is conceivable that this matter could have been avoided with a phone call to Ms. Longley.

This matter is closed. Please contact me if you have any questions.

Cease and Desist Order Issued

By Authority of:

John M. Formella
Attorney General



Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov
(603) 271-6765

cc: Susan Longley
Ashland Town Clerk Patricia Tucker
Ashland Board of Selectmen
Sherrie Downing

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

June 23, 2022

Regis Roy, Supervisor of the Checklist
Town of Haverhill
[REDACTED]
Woodsville, NH

Re: **CEASE AND DESIST ORDER**
Violation of Official Duties and Responsibilities, Electioneering

Dear Supervisor Roy:

On March 15, 2021, this Office received a complaint alleging that you were engaging in unlawful electioneering during the March 13, 2021, Haverhill Town Election by asking people walking into the voting area where you were working as an election official to "vote no on Article 2." This investigation followed. You are ordered to Cease and Desist from any further improper actions.

I. **FACTUAL BACKGROUND**

a. **Initial Complaint**

On March 15, 2021, Haverhill Selectboard Vice-Chair Matthew Bjelobrk emailed this Office indicating a desire to file a formal complaint regarding actions that he observed during the March 13, 2021, Haverhill Town Election. In that complaint, Selectman Bjelobrk wrote that he saw you outside "in the parking lot" asking people walking "into the building" for the election to "vote no on Article 2." He further indicated that this occurred around noontime and that he observed you holding ballots, at times for thirty to forty five minutes after a voter had driven away in direct contradiction of the plan that the moderator had briefed town officials on in the final town virtual pre-meeting on March 11.

b. **Contact with Moderator Holden**

On March 16, 2021, this Office sent Selectman Bjelobrk's written complaint to Haverhill Town Moderator Alfred "Jay" Holden and asked him to respond within fifteen days. On March 25, 2021, Moderator Holden asked for more time to respond to the letter before following up days later with a report of the follow-up that he had conducted. In that report, he indicated that the allegations against you were completely false, noting that other election officials referred to

you as a “one man band” with how busy you appeared that day and recounting that he spoke with School Board Member Sabrina Brown who indicated that she worked with you for four hours on March 13, 2021 and did not observe you electioneering.

On February 23, 2022, Chief Investigator Richard Tracy met with Moderator Holden at the Grafton County Sheriff’s Office. The two discussed, among other things, the process for drive-up voting. Moderator Holden stated that they had set up a buzzer system where a voter could push the buzzer, which would alert election officials inside that someone outside wanted to vote. He stated that the buzzer was rarely used that day as you spent most of the time outside helping with the drive-up process. Moderator Holden explained that as voters drove up, you would take their identification inside to the polls to verify that they were registered with the ballot clerk and obtain the four ballots that were placed inside an envelope supplied by the Secretary of State’s Office. You would then direct the voter to pull up, fill out their ballots, and stick their arm out of the car when they were done. This often took a considerable amount of time to finish as there were over thirty articles on the town ballot alone. Once the voter finished voting and stuck an arm out the window, you would retrieve the envelope with ballots from the voter and deliver the envelope inside.

Moderator Holden stated that he did not hear any electioneering by election officials at the polls on the day of the election, but he acknowledged that he was inside most of the day while you were outside. Moderator Holden also indicated that you moved to Haverhill around 1969, that you were a long-time teacher in town, and that you were one of the most honest people that he knew.

c. Contact with Town Manager Codling

On March 18, 2021, Brigitte Codling emailed the Secretary of State’s Election Division, State Senator Bob Giuda, and Department of Revenue Director of the Municipal and Property Division James Gerry. In that email Manager Codling noted that the months leading up to the election were contentious, especially regarding HB 1129. Manager Codling wrote that she was present at the election on March 13, 2021, and that she heard you verbally telling voters to vote “[n]o on Article 2 so they could have an in-person Town Meeting in the summer.” Moderator Codling also noted that multiple people, including former Selectman Darwin Clogston, heard you telling people to vote “no” on Article 2 and to vote for Michael Graham as Selectman.

d. Contact with Office Administrator Aldrich

On March 19, 2021, Office Administrator LorieAnn Aldrich emailed this Office, raising a number of concerns that she witnessed while acting as an observer in the March 13 election. On September 24, 2021, Investigator Tracy met with Administrator Aldrich. In the course of that conversation, Administrator Aldrich indicated that, while she did not hear it when she went to vote, others told her that you were heard by more than one person telling voters to “vote no” on town warrant Article 2.

e. Contact with Assistant Town Manager Boucher

On September 24, 2021, Investigator Tracy spoke to Assistant Town Manager Jennifer Boucher. Assistant Manager Boucher indicated that she was at the polls on March 13, 2021 and saw you assisting voters who did not or could not enter the polls. She noted that you were having a lot of “in window” conversation with voters, describing you as sticking your head in the windows of vehicles as you handed people their ballots. While Assistant Manager Boucher could not hear from where she was standing, she found this behavior to be inappropriate.

f. Contact with Darwin Clogston

On or around March 17, 2021, former Haverhill Selectman Darwin Clogston spoke with Assistant Attorney General Nicholas Chong Yen to discuss concerns that Mr. Clogston had regarding the March 13, 2021, Haverhill Town Election. On November 10, 2021, Investigator Tracy spoke to Mr. Clogston. Mr. Clogston indicated that he spent nearly the entirety of election day outside at the polls in the electioneering zone. He explained how you were handling identification and ballots and said you were a “real trooper” for being the one to do that. Mr. Clogston noted that, on multiple occasions, he heard you tell voters to vote “no” on Article 2 as you were handing them their voting packet. He clarified that he did not hear you tell anyone to vote for Mike Graham and that he did not know who to bring his concerns to as Moderator Holden was also against Article 2.

g. Contact with Don and Kathleen Vaillancourt

On March 19, 2021, Don and Kathleen Vaillancourt sent an email to this Office expressing their concerns with the March 13, 2021, Haverhill Town Election. Investigator Tracy spoke to the Vaillancourts regarding their concerns. They explained that they did not go to vote until 6:15 pm because they were staying after the polls closed to assist with ballot counting. The Vaillancourts noted that you were assisting a voter outside who was sitting in a car but did not see or hear anything unusual about the occurrence and that you did not tell the voter how to vote.

h. Contact with Paul Forcier

On November 17, 2021, Investigator Tracy spoke with Paul Forcier over the phone as a follow-up to prior concerns that Mr. Forcier had raised with this office. Mr. Forcier explained that he voted in person on March 13, 2021, and that he saw you—his aunt—standing outside assisting voters. Mr. Forcier stated that you and he saw each other but did not have any kind of lengthy conversation. He stated that you did not tell him how to vote and he did not hear you tell anyone else how to vote, though he was only there for a short time as he walked in and out of the polls.

i. Contact with Selectman Bjelobrk

On December 7, 2021, Investigator Tracy spoke with Selectman Matthew Bjelobrk on the phone. Among other things, the two discussed your activity on March 13, 2021. Selectman Bjelobrk thought there were supposed to be two people assisting with the drive-up voting process

that had been put in place for the day but, from what he saw, you handled it alone. Selectman Bjelobrk indicated that at one point he heard you talking with two voters and telling them to vote “no” on Article 2. He noted that you and Dick Guy were the most vocal opponents of Article 2.

j. Contact with you

On February 23, 2022, Investigator Tracy met with you at the Grafton County Sheriff’s Office to conduct an interview regarding this matter. In the course of that conversation, you explained some of the recent, contentious politics in town and what you did on the day of March 13, 2021. You insisted that you never told a voter to vote no on Article 2 and stated that you often said “no problem” that day. You indicated how upset you were over this incident, especially with everything that you had done and continue to do for the town.

k. Contact with Assistant Town Moderator Ballam

On February 23, 2022, Investigator Tracy met with Assistant Town Moderator Ed Ballam at the Grafton County Sheriff’s Office regarding this investigation. Assistant Moderator Ballam indicated that he was not aware of any electioneering taking place at the polls on election day. Even though he was rarely outside on March 13, 2021, he believed you were a trusted election official and did not believe you would electioneer and tell voters how to vote on election day.

l. Contact with Mary Patridge-Jones

On March 18, 2021, Mary Patridge-Jones emailed this Office indicating that she went to vote on March 13, 2021, and heard you tell multiple voters entering the building to vote “no” on Article 2 and to vote for Mike Graham for selectman. On April 1, 2022, Investigator Tracy spoke to Ms. Patridge-Jones on the telephone, who stated that she hung around after voting on March 13, 2021 and spoke with Darwin Clogston and others as they came and went. She indicated that she had stepped aside for a moment and that was when she heard you telling a group of five or six voters to vote “no” on Article 2 and to support Michael Graham as they stepped into the polling area. Ms. Patridge-Jones further stated that she heard you repeat this to a second group of people a short time later. Finally, she indicated that she saw you help some drive-up voters and was not able to hear what you said to those individuals, but she did specifically hear you tell the groups mentioned above to vote against Article 2 and to support Michael Graham. She indicated that this whole incident had been disturbing to her.

m. Contact with Marilyn Blaisdell

On March 18, 2021, Marilyn Blaisdell emailed some concerns she had about the March 13, 2021, election to the New Hampshire Secretary of State. On March 24, 2022, Investigator Tracy spoke with Ms. Blaisdell. She voiced her frustration about Haverhill’s politics and told Investigator Tracy what she remembered from the March 13, 2021, election. Ms. Blaisdell went to the middle school to vote, bringing 80-year-old Lorraine Prescott with her. As they were both walking into the school, they could hear you yelling “vote no” on Article 2. She indicated that there was no mistake in what she heard and that you were not being discrete about it. Ms. Blaisdell further indicated that she did not realize until after the election that anything was

wrong. She saw your picture in a local newspaper and realized you were working as an election official at that time.

II. APPLICABLE LAW

RSA 659:43 states in relevant part that “[e]lectioneering shall be prohibited within the polling place building.” “Electioneering” means “visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h. This includes, but is not limited to, wearing clothing that displays a candidate’s name. RSA 652:16-h, I.

The law further contemplates penalties for violations, which include –

- Whoever violates any of the provisions of this section shall be guilty of a violation.
- Whoever violates any of the provisions of this section shall be subject to a civil penalty not to exceed \$1,000.

RSA 659:43, VIII & IX.

RSA 659:44 states that “[n]o election officer shall electioneer while in the performance of his official duties. For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.”

Finally, RSA 652:14 provides that “[e]lection officer’ shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.” (Emphasis added).

III. ANALYSIS

In this case, you are a supervisor of the checklist, and election official identified in RSA 652:14. That means that you are subject to the prohibition on electioneering in RSA 652:44. Multiple individuals observed hearing you advocate either for voting “no” on Article 2 or voting for Mike Graham. While you indicated to Investigator Tracy that you were saying “no problem” on March 13, 2021, implying that people simply misheard you, no fewer than four individuals came forward alleging that they heard you telling voters how to vote. The Town Manager contacted this office in the days following the election as multiple people had told her that they had heard you electioneering. As the above facts indicate, the Town Manager was not the only person to hear these reports. All of this occurred while you were working as an election official at a polling place on election day. As such, the allegations against you constitute “electioneering” within the meaning of RSA 652:16-h.

IV. CONCLUSION

The purpose of RSA 659:43 is to ensure that the polling place—and the casting of ballots to select our elected officials—is free from the pressure of explicit advocacy *for any* candidate or ballot measure. Voters must be able to cast their ballots free from such advocacy, whether it is by poll officials or other voters.

This Office investigated serious allegations against you and revealed evidence supporting those allegations. Based on our investigation, we find that your conduct was grossly inappropriate and antithetical to your duties as an election official. As an elected official you swore an oath to faithfully and impartially discharge and perform all the duties of your office and act consistent with the rules and regulations of the New Hampshire Constitution and state law. The evidence concerning your advocacy at the polls indicates that you failed in that fundamental responsibility and ignored your obligations to the voters to whom you owed a duty as an elected official.

You are hereby ordered to **Cease and Desist from engaging in misconduct relating to electioneering in the polling place.** Failing to do so could constitute violations of the aforementioned statutes and result in further enforcement action by this Office.

This matter will be closed. Please contact me if you have any questions.

Sincerely,



Matthew G. Conley

Attorney

Civil Bureau

matthew.g.conley@doj.nh.gov

cc: Matthew Bjelobrk
Darwin Clogston
Haverhill Town Clerk
Haverhill Board of Selectmen

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Paul Forcier

[REDACTED]
Haverhill, NH (Woodsville) 03785

Re: Haverhill Electioneering Facebook Post

Dear Mr. Forcier:

On March 8, 2021, you contacted this Office alleging improper or unlawful activity regarding a Facebook ad prior to the March 13, 2021, Haverhill Town Election. This investigation followed. This Office concludes that no unlawful activity took place in this instance.

I. FACTUAL BACKGROUND

a. Contact with you

You emailed this Office on March 8, 2021, concerning a post made to the Town of Haverhill website. The post itself explained the effects of voting on Article 2 but also expressly advocated for Haverhill residents to "vote YES on Article 02." You believed that the post violated RSA 659:44-a and concerned that a municipal employee had made the posting.

In emails exchanged with Attorney Nicholas Chong Yen, you indicated that what you had seen was in a Facebook post put up by Town Manager Codling on the Town of Haverhill's Facebook page. The post was titled "Understanding Article 2 – Optional Meeting Procedures and why you should vote YES..."

On November 17, 2021, Investigator Tracy spoke with you over the phone regarding the complaints that you made to this Office. You felt strongly that the Facebook post was illegal electioneering.

b. Contact with Brigitte Codling

On July 18, 2022, Investigator Tracy reached out to Town Manager Brigitte Codling to speak with her regarding the Facebook post. She confirmed that she and her staff had created the Facebook post. Manager Codling also told Investigator Tracy that the content of the post had

also been published as an advertisement in the March 4, 2021 edition of the Bridge Weekly. Manager Codling noted that Sherri Sargent, one of her appointees to work on public relations at the time, requested the advertisement be placed and paid for it. Manager Codling provided an invoice to verify this claim.

On July 28, 2022, Manager Codling sent an email to Investigator Tracy describing the procedural history of Article 2 and providing documentation demonstrating that Article 2 was placed on the ballot with the approval of the Board of Selectman following discussions of procedures and recommendations that she made so that the town could comply with HB 1129.

II. APPLICABLE LAW

RSA 652:14 provides that “[e]lection officer’ shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.”

Under RSA 652:16-h, “[e]lectioneering means visibly or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” This definition includes “any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure...” *Id.*

RSA 659:44 states that “[n]o election officer shall electioneer while in the performance of his official duties. For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.”

RSA 659:44-a prohibits “public employees,” as defined under RSA 273-A:1, IX from engaging in electioneering. As a general principle, these employees must not use government property or equipment to engage in electioneering. RSA 659:44-a, II. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute “public employees.” Relevant here is the exception for those appointed by the chief executive or legislative body of any political subdivision. RSA 273-A:1, IX(b). Town managers are appointed by the board of selectmen. RSA 37:2.

However, the government may use public funds to support its own measures. Epping Residents For Principled Government v. Epping School Board, No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Marketing Association, 544 U.S. 550, 559 (2005). New Hampshire courts have specifically addressed statements “made by elected public officials speaking on behalf of their respective public entities” where “[t]he public officials recommended residents support warrant articles that their respective public entities believed would benefit residents’ education and safety.” Epping Residents for Principled Government, No. 05-E-0094, Pg. 3. In such instances, “the statements were made in furtherance of a public purpose and not private statements...” in violation of the law. *Id.*

III. ANALYSIS

Manager Codling admitted to posting this letter on the Town of Haverhill's Facebook page while in the performance of her official duties. Sherri Sargent arranged for this same information to run as an ad in the Bridge Weekly at her direction and in the course of official duties. Therefore, both constitute electioneering and would trigger the prohibition under RSA 659:44-a *if* they were carried out by non-exempt public employees.

Manager Codling falls squarely into the appointed persons exception RSA 273-A:1. Therefore, she is not subject to the prohibition on electioneering mandated by RSA 659:44-a.

It is unclear if all of Manager Codling's employees are non-exempt employees. As indicated above, those appointed by "the chief executive or legislative body of the public employer" are exempt employees. RSA 273-A:1, IX(b). The New Hampshire Supreme Court has previously ruled that city managers are chief executives. In re Town of Litchfield, 147 N.H. 415 (2002) (citing American Federation of State, County, and Municipal Employees, AFL-CIO v. City of Keene, 108 N.H. 68 (1967)). In so finding, the court noted that "the city manager is the 'chief executive officer of the city' and has 'general supervision of the property or business affairs of the city. He has 'charge, control, and supervision, subject to direction of the governing body', of the Public Works Department of Keene." 108 N.H. at 70.

Manager Codling's powers and duties echo this finding in that she is "the administrative head of all departments of the town and [is] responsible for the efficient administration thereof, except as herein otherwise provided. [She] shall have general supervision of the property and business affairs of the town and of the expenditure of moneys appropriated by it for town purposes..." RSA 37:5. Extending the Supreme Court's prior reasoning to the case at hand, Manager Codling is the chief executive of the town. Therefore, it appears that employees that she appoints are exempt employees under RSA 273-A:1.

Additionally, even if a non-exempt employee had acted in this case, we are left with the general principle that the government may use public funds to support its own measures. Epping Residents For Principled Government v. Epping School Board, No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Marketing Association, 544 U.S. 550, 559 (2005). This Office has previously communicated with agencies and organizations regarding possible violations of RSA 659:44-a, II, in circumstances where government employees were using government property or equipment to engage in electioneering. However, in those instances, the electioneering materials were not centered on government speech supporting its own measures.

That is not the case here. Article 2 was a government measure, one that was specifically designed to carry on the business of government in accordance with the law. As in the Epping Residents case, the statements at issue here were made with the belief that they would help residents understand the government measure and were made to advance a public interest as opposed to a private interest. Therefore, Manager Codling or her employees posting the advertisement was not in violation of RSA 659:44-a.

IV. CONCLUSION

Manager Codling's actions were permissible under the laws of the State of New Hampshire, and do not constitute impermissible electioneering.

This matter will be closed. Please contact me if you have any questions.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov
(603) 271-6765

cc: Haverhill Board of Selectmen
Town Manager Brigitte Codling
Former Town Moderator Albert Holden

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Fred Garofalo, Chair of the Haverhill Selectboard
Town of Haverhill

Woodsville, NH

Re: Haverhill March 13, 2021 Election, Alleged Illegal Activity

Dear Selectman Garofalo:

Beginning on March 15, 2021, this Office received a number of complaints alleging improper or unlawful activity during the March 13, 2021, Haverhill Town Election. This investigation followed. This Office notes that complaints relating to Supervisor of the Checklist Regis Roy was addressed in a separate letter. This Office concludes that no unlawful activity otherwise took place.

I. FACTUAL BACKGROUND

a. Initial Complaint

On March 15, 2021, Haverhill Selectboard Vice-Chair Matthew Bjelobrk emailed this Office indicating a desire to file a formal complaint regarding a number of actions that he observed during the March 13, 2021, Town Election. Mr. Bjelobrk wrote that Haverhill Town Moderator Alfred "Jay" Holden told Police Sgt. Cam Elliot on the morning of the election to remove several campaign signs belonging to candidate Darwin Clogston that were posted on private property "nearly one-half mile away from the polling place." Specifically, the signs were removed from along Airport Road and Route 16.

Mr. Bjelobrk expressed concern that some of the volunteers counting school ballots at the end of the night migrated over to the town ballot counting side of the room while ballots were still being counted. Mr. Bjelobrk noted that Vickie Wyman was one of these volunteers. He then noted that one of the ballot observers reportedly saw a town ballot volunteer counter erasing marks from a ballot.

Mr. Bjelobrk also questioned Moderator Holden swearing in Assistant Town Moderator Ed Ballam since Mr. Ballam was a vocal critic against Article 2 and Darwin Clogston for selectman. Mr. Bjelobrk expressed concern with Mr. Ballam's handling of ballots during the

ballot count. Mr. Bjelobrk also noticed that Moderator Holden was seen looking at ballots and making notes on a piece of paper prior to placing the ballot in the ballot box.

Mr. Bjelobrk noted that the election was contentious and people used the Woodsville Precinct electric billing process to send residents a letter asking voters to vote "no" on Article 2 and to endorse Michael Graham for selectman.

Finally, Mr. Bjelobrk wrote Woodsville officials allowed for a Mike Graham sign to be placed on town property in front of the fire department, of which he provided a photo.

b. Contact with Moderator Holden

On March 16, 2021, this Office sent Mr. Bjelobrk's written complaint to Mr. Holden and asked him to respond within fifteen days. On March 25, 2021, Mr. Holden asked for more time to respond to the letter before following up days later with a report of the follow-up that he had conducted.

In that report, he indicated the accusation that he had removed signs from private property was "categorically...false" and noted that the signs were placed along the sides of Morrill Drive, the road off of Route 116 leading to the polling location. Mr. Holden explained that, drawing from his prior experience as a moderator, he was aware that those signs were illegal in accordance with New Hampshire RSA 664:17. He further explained that, after arriving at the polling place, he spoke to Mr. Ballam and the two agreed that the signs should be removed. Mr. Holden contacted Grafton County Dispatch to request that the on-call duty officer to contact him regarding the signs. Moderator Holden then spoke to Sgt. Elliot and explained what he was requesting and why. After looking into the appropriate procedure, Sgt. Elliot called Mr. Holden back and explained that either he would remove the signs himself or have Darwin Clogston do it. Both Mr. Holden and Mr. Ballam then spoke with Sgt. Elliot at the polling location where they explained to him that they only wanted the signs removed from Morrill Drive and nowhere else. Sgt. Elliot then did this, recording the process on his body worn camera. Mr. Holden commented that while he was concerned about campaign signs in the polling areas, he was not involved with signs in the rest of the town. He questioned why Mr. Bjelobrk had not contacted the Woodsville Precinct or the Haverhill Police Department to have the signs removed as Mr. Holden had.

Mr. Holden appeared to agree that Vickie Wyman had "migrated" as Mr. Bjelobrk had indicated and spoke to Robin Irwin and Brenda Jewett. Both individuals indicated that they had completed counting their ballots as had most of the rest of that table. He noted that Vickie did ask what they thought the results of the race might be and the two told her that they believed Michael Graham would defeat Darwin Clogston and Article 2 would be defeated as well.

Mr. Holden noted that, while there was one individual having trouble figuring out how to tally the ballot, no one was "erasing ballots." Tammy Fortier had a question regarding the absentee ballots and asked her father if he could check her tally sheet. She spoke with her father and Mr. Holden, asking questions and explaining her concerns. After doing so, Mr. Holden had Michael Marshall recount her ballots separately. The two came up with identical numbers except

for disagreement over the placement of one over-counted vote that should have been recorded as an under-counted vote.

In recounting Mr. Ballam's swearing in, Mr. Holden noted that Mr. Ballam already had been sworn in as the Assistant Town Moderator on January 21, 2021. However, Mr. Holden was aware that he would need help with the school part of the election on March 13, 2021. Therefore, Mr. Holden conducted a second swearing in before the polls opened to ensure that Assistant Moderator Ballam could assist.

Mr. Holden indicated that Mr. Ballam had moved ballots at Mr. Holden's request. Mr. Ballam began to place ballots inside of a cardboard box. When ballot observers asked Mr. Ballam what he was doing and why, he asked Mr. Holden how to proceed. Mr. Holden told him to have the ballot counters remain in control of their respective ballots.

In answering the allegation that he was looking at ballots and writing on a pad of paper, Mr. Holden wrote that he "couldn't help but look at the ballots" as there were four ballots handed to him in ballot sleeves, two for the town and two for the school. Mr. Holden sorted these ballots into their respective boxes. He also stated that he was writing notes. Specifically, he was "compiling a list of ballot counters for both the town and school votes." Mr. Holden wrote that more ballot counters were needed and insisted that he was using the pad of paper to keep track of who had volunteered throughout the day to help and who to put where in order to avoid conflicts of interest.

On February 23, 2022, Chief Investigator Richard Tracy met with Mr. Holden at the Grafton County Sheriff's Office. The two discussed many of the topics that Mr. Holden had addressed in his written reply to this Office, with Mr. Holden repeating the written representations that he had made. Mr. Holden provided Investigator Tracy with the pad of paper that he had used on the night of the election. Investigator Tracy made a copy of a page that Mr. Holden represented was the page of volunteers for the 2021 election. Investigator Tracy observed that the page was titled "2021 Ballot Counters" and contained forty names, some with telephone numbers, below two subheadings: "Town" and "School."

c. Contact with Town Manager Codling

On March 18, 2021, Brigitte Codling emailed the Secretary of State's Election Division, State Senator Bob Giuda, and Department of Revenue Director of the Municipal and Property Division James Gerry. In that email Ms. Codling addressed a number of complaints regarding the March 13, 2021 election. She noted that the months leading up to the election were contentious, especially regarding HB1129. Ms. Codling wrote that she was present at the election on March 13, 2021, and that she observed Mr. Holden "unfolding the Alternative ballots and reviewing them" prior to placing them in the ballot box and making notes on a pad of paper.

Ms. Codling further indicated that she believed that the signs that Sgt. Elliot removed were on land that was privately owned or leased.

d. Contact with Office Administrator Aldrich

On March 19, 2021, Office Administrator LoricAnn Aldrich emailed this Office, raising a number of concerns that she witnessed while acting as an observer in the March 13 election. Ms. Aldrich wrote that she “observed several counters writing on and erasing other counters’ tally sheets” and that she saw Mr. Ballam move piles of ballots several times.

Ms. Aldrich said that after the vote, she saw one of the ballot counters first pumping in celebration when the results of Article 2 were announced, noting that this individual was the same one that she had observed writing on and erasing on another ballot counters tally sheet.

On September 24, 2021, Investigator Tracy met with Ms. Aldrich to discuss the concerns she had raised. Ms. Aldrich provided Investigator Tracy with an email exchange between the town manager and Sgt. Elliot regarding his removal of the Darwin Clogston signs. Ms. Aldrich also provided a copy of Sgt. Elliot’s body camera footage documenting his removal of the signs.

e. Contact with Assistant Town Manager Boucher

On September 24, 2021, Investigator Tracy spoke to Assistant Town Manager Jennifer Boucher. Ms. Boucher indicated that she was at the polls on March 13, 2021, and saw Mr. Holden and Mr. Ballam opening ballots prior to placing them in the collection box then writing something down on a piece of paper. Ms. Boucher also noted that Mr. Ballam oversaw the school ballot counting while Mr. Holden was supposed to oversee the town ballot counting process, but he had his back to the town counting table and, in her opinion, Mr. Holden was not properly watching the process.

Ms. Boucher added that the counting for the school ballots finished first with some of the school ballot counters moving to comingle with the town ballot counters and engaging in conversation that she could not hear.

f. Contact with Darwin Clogston

On or around March 17, 2021, former Haverhill Selectman Darwin Clogston spoke with Assistant Attorney General Nicholas Chong Yen to discuss concerns that Mr. Clogston had in regard to the March 13, 2021, Haverhill Town Election. On November 10, 2021, Investigator Tracy spoke to Mr. Clogston. Mr. Clogston believed that Mr. Holden had only Mr. Clogston’s signs removed on the day of the election, noting that Mr. Holden had publicly endorsed Mr. Graham.

g. Contact with Don and Kathleen Vaillancourt

On March 19, 2021, Don and Kathleen Vaillancourt sent an email to this Office expressing their concerns with the March 13, 2021, Haverhill Town Election. Investigator Tracy spoke to the Vaillancourts regarding their concerns. They explained that they did not go to vote until 6:15 pm because they were staying after the polls closed to assist with ballot counting. The Vaillancourts noted that about forty people took part in ballot counting and those people were

divided into two groups, one for the school ballots and one for the town ballots. The group counting the school ballots finished first. The Vaillancourts did not notice anybody marking, erasing, or destroying ballots but they did notice that the school ballot counters comingled with the town ballot counters after they had finished which they found inappropriate.

h. Further Contact with Selectman Bjelobrk

On December 7, 2021, Investigator Tracy spoke with Mr. Bjelobrk on the phone. Among other things, the two discussed the removal of Mr. Clogston's campaign signs by Sgt. Elliot. Investigator Tracy informed him that Investigator Tracy reviewed the police report and Sgt. Elliot's video recording of the sign removal. Investigator Tracy noted that they all appeared to be on the access road or long driveway leading from Route 116 to the middle school, which the moderator was within his rights to have removed. Investigator Tracy told him that signs other than Mr. Clogston's were removed as well. Mr. Bjelobrk disagreed with Investigator Tracy's assessment of the property, saying that the land is private property owned by Howard Hatch. Investigator Tracy explained that Morrill Drive is an access road that leads to the school with no other homes, businesses, or driveways on that section of roadway and that the signs that Sgt. Elliot had removed were just a few feet off the paved portion of the road.

Mr. Bjelobrk told Investigator Tracy that he assisted with the counting of the school ballots after the closing of the polls. That group finished its task before the group counting the town ballots finished. Mr. Bjelobrk stated that about six of the school ballot counters left the school side and comingled with the town ballot counters while they were still counting town ballots. Mr. Bjelobrk stated that an observer reportedly heard Mr. Ballam leaning over a table where ballots were being counted stating "make it no, make it no."

A local physical therapist in town by the name of Marie told Mr. Bjelobrk that some of her patients were told to vote "no" on Article 2 by election officials on election day as they walked into the polls to vote and that doing so would allow them to have in person meetings. Investigator Tracy asked Mr. Bjelobrk if any of them would be willing to come forward, but Mr. Bjelobrk expressed concerns that Marie would be violating patient confidentiality by providing names.

i. Contact with Assistant Town Moderator Ballam

On February 23, 2022, Investigator Tracy met with Assistant Town Moderator Ed Ballam at the Grafton County Sheriff's Office regarding this investigation. Mr. Ballam recalled how, on the day of the election, he and Mr. Holden had discussed the political signs that had been posted on Morrill Drive and how both he and Mr. Holden believed that they had been illegally placed. He and Mr. Holden eventually contacted the Haverhill Police department and coordinated with Sgt. Elliot to have the signs removed.

During that day Mr. Ballam did what Mr. Holden needed him to do, primarily collecting and depositing school ballots into the proper box. Mr. Ballam explained the voting procedure and noted that he and Mr. Holden would separate the ballots, make certain they were correctly folded, and place them into the appropriate box. Mr. Ballam noted that Mr. Holden always has a

yellow note pad with him and Mr. Holden used it to write down questions from voters and to write down the name and number of individuals who had volunteered to help count ballots at the end of the night.

Mr. Ballam noted that the school ballot counters finished first and a few of them walked around. He did not recall if any of them mingled with the town ballot counters.

j. Contact with Vickie Wyman

On February 23, 2022, Investigator Tracy met with Vickie Wyman. Ms. Wyman confirmed that she had volunteered to assist with counting ballots at the end of the night during the March, 2021 town election. Ms. Wyman stated that Mr. Holden divided the counters into two groups, one for school voting and the other for town voting with the school voting counters finishing about ten minutes before the town counters did. Ms. Wyman acknowledged that she walked over from the school side of town to speak with Brenda Jewett and Robin Irwin who were counting town ballots. She asked them about how they thought the election was going with respect to Article 2. They said that they believed Article 2 would be defeated and Clogston would not be reelected.

Ms. Wyman admitted that she stayed for the final count and that she let out a cheer and threw her arms up in the air when she learned that Article 2 had been defeated.

k. Contact with Bookkeeper and Administrative Assistant Diane Thompson

On March 19, 2021 Bookkeeper Thompson emailed this Office raising a number of concerns related to the March 13, 2021 election. First, she expressed concern that she had seen Vickie Wyman approach one of the ballot counters and saw the two of them whispering together. When Ms. Wyman walked away, the ballot counter could be seen "erasing items on the ballot tally sheet." Ms. Thompson indicated that she reported this observation to Ms. Codling. On April 8, 2021, Ms. Thompson emailed this Office again indicated that she had been contacted by Mr. Holden who told her that he was looking into the matter.

On September 24, 2021, Investigator Tracy spoke with Ms. Thompson and explained to her that this Office had asked Mr. Holden to look into this matter and some the complaints that had been raised, something that was not uncommon in such cases. She responded that she had not spoken to Mr. Holden so as to not interfere with this Office's investigation.

Ms. Thompson then explained that she acted as an independent observer on March 13, 2021. Ms. Thompson explained that during the ballot count there were two groups of ballot counters. On one side of the room people were counting school ballots and on the other side they were counting town ballots. Ms. Thompson saw Vickie Wyman, who was counting on the school ballot side, get up and walk over to the town ballot side and whispered with one of the ballot counters seated there. Wyman walked away and then Ms. Thompson saw the ballot counter erasing something from the ballot tally sheet. Ms. Thompson notified the town manager and the town clerk and then went back to observing.

Ms. Thompson went on to say that she observed Mr. Holden moving ballots multiple times, saying that he appeared disorganized and that every movement of the ballots was an opportunity for a ballot to be lost or misplaced.

II. APPLICABLE LAW AND PROCEDURE

RSA 652:14 provides that “[e]lection officer” shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.”

Under RSA 652:16-h, “[e]lectioneering means visibly or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” This definition includes “any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure...” *Id.*

RSA 659:44 states that “[n]o election officer shall electioneer while in the performance of his official duties. For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.”

RSA 659:44-a states that “[n]o public employee...shall electioneer while in the performance of his or her official duties.”

RSA 664:17 states, in relevant part, that “[n]o political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner’s consent....Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel.”

Per RSA 666:3, “[a]ny public officer upon whom a duty relating to elections is imposed who shall knowingly fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects thereof shall be guilty of a misdemeanor if no other penalty is provided by law.” As the New Hampshire Election Procedure Manual: 2020-2021, p. 153, provides:

The moderator may select volunteers to assist election officers in counting ballots. These volunteers must be voters in the town or ward or 17-year-olds who would be qualified as a voter were they 18 years old. RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. Swear in these volunteers as election officers pro tem. As election officers, the volunteer ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3. Written oaths must be completed and filed with the clerk. RSA 42:1; RSA 42:7, RSA 42:8; RSA 658:4.

Finally, the New Hampshire Election procedure manual repeatedly emphasizes that elections must be neutral process in which the public can place its trust: "This process reinforces the neutrality and enhances the legitimacy of the counting process." p. 359.

III. ANALYSIS

a. Posting Political Signs

The political signs that Sgt. Elliot removed were unlawfully placed along public property. Morrill Drive is an access road connecting Benton Road and Airport Road. With the exception of the Haverhill Cooperative Middle School, there are no other homes, driveways, or businesses along it. The signs at issue were placed just a few feet off of a road that serves no other purpose than as a public access way to the school. Therefore, these signs had been placed in violation of RSA 664:17. After speaking to Haverhill officials and reviewing Sgt. Elliot's body camera footage, this Office concludes that these signs were appropriately and lawfully removed. Therefore, this point is moot and no further action will be taken.

b. Swearing in Ed Ballam

Per RSA 658:7, Moderator Holden had the lawful authority to swear in volunteers to assist with the election process. According to multiple witnesses, Mr. Ballam was sworn in as required by the law and assisted Mr. Holden at Mr. Holden's direction. Nothing about this constitutes unlawful activity. Therefore, no further action will be taken.

c. Cheering of volunteers and the intermingling of volunteers

Though the moderator possesses the lawful authority to appoint such election officials as he or she deems necessary, such election officials have a responsibility to execute their duties lawfully. *See* New Hampshire Election Procedure Manual: 2020-2021, p. 153. In this case we do not find that any election officials engaged in unlawful conduct such as electioneering or tampering with votes. However, the processing of our elections must be a neutral process in which the public can participate with trust and confidence. We urge all New Hampshire election officials to sufficiently train assisting volunteers as to what their duties are as well as their responsibility to be neutral and unbiased in the course of executing those duties. Such training ensures that election officials do not run afoul of unlawful activity and helps to inspire public confidence in our elections.

d. Note taking and modification of tallies

After investigating allegations that Mr. Holden was making unlawful notes and that volunteers were unlawfully modifying ballots or tally sheets, we find that no such violations occurred. Mr. Holden presented our Office with physical evidence of what he had been writing that night. Mr. Ballam confirmed that Mr. Holden had been writing the names of volunteers and a number of witnesses confirmed that volunteers were divided into two groups as appeared on Mr. Holden's writing pad. Though there was some confusion as the counting progressed, those volunteers were supervised and had their questions answered when such confusion arose. We do not find that any

volunteers were unlawfully erasing or modifying votes in the course of the election. Both Mr. Holden and Mr. Ballam further explained that some ballots had to be refolded and placed into the appropriate box. We do not find that any ballots were inappropriately handled in this instance.

IV. CONCLUSION

All election officials in New Hampshire should strive to conduct their elections in a manner that is organized, efficient, and instills public confidence in our democratic process. The New Hampshire Department of State provides a number of resources to this end in the form of trainings and the New Hampshire Election Procedure Manual. While we find that no violations of New Hampshire State law occurred in the items addressed here, we urge you to take advantage of the resources that are publicly and freely available to train election officials and reduce confusion on the day of the election. Doing so ensures that our officials are executing their duties responsibly and promotes the public trust that is so necessary for our elections and institutions to function.

This matter will be closed. Please contact me if you have any questions.

Sincerely



Matthew G. Conley
Attorney
Civil Bureau
matthew.g.conley@doj.nh.gov

cc: Matthew Bjelobrk
Darwin Clogston
Haverhill Town Clerk
Haverhill Board of Selectmen
Vickie Wyman
Town Manager Brigitte Codling
Former Town Moderator Albert Holden

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Judge James Barry

[REDACTED]
Gilford, NH 03249

Re: Michael Sylvia, Alleged Wrongful Voting

Judge Barry:

On July 27, 2022, this Office received a complaint from you concerning Representative Michael Sylvia's domicile in Belmont and qualifications to vote and run for office in that jurisdiction. After conducting an investigation, we are closing this matter as unfounded.

Department of Justice Investigator Anna Croteau was assigned to this investigation. She spoke with you on August 4, 2022. You indicated that Representative Sylvia was claiming domicile at a Farrarville Road address in Belmont but did not live at that location following an injunction related to a lawsuit brought by the Town of Belmont against Representative Sylvia for living at that address without adequate infrastructure or permitting. Investigator Croteau reviewed property records and learned that Representative Sylvia owned a second property in Belmont with a residence on Great Brook Drive, as well as a house in Greenville, New Hampshire.

From review of court documents, a Superior Court judge ruled that Representative Sylvia lived—and was domiciled—at the Farrarville Road address in 2019. Representative Sylvia communicated to this Office that he resides at the Great Brook Drive residence and considers his Farrarville Road property to be his domicile to which he intends to return when permitted to do so. Representative Sylvia routinely lists Farrarville Road as his mailing address and registered to vote at this address a decade ago. In his recent Declaration of Candidacy for State Representative form, Representative Sylvia listed his mailing address as Farrarville Road, and, consistent with the requirements of the form, was only required to list "Belmont" as the town in which he was domiciled. This Office's investigation indicated that Representative Sylvia has had an ongoing association with Belmont and has not established a domicile in any other jurisdiction.

In New Hampshire, in order to vote in a town, ward, or unincorporated place a person must be domiciled there. A "domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in

democratic self-government.” RSA 654:1, I.¹ “A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.” *Id.* Additionally, RSA 654:2 states:

A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained.

RSA 654:2, I.

However, the question of domicile is a continuing analysis that is not isolated to the proof provided at the time a voter registers to vote. When this Office is contacted with complaints or reports involving the domicile of a voter, it must review the totality of the circumstances to determine if a voter was in fact domiciled for voting purposes in the town or city in which he/she registered and voted. Additionally, we note that domicile as it relates to qualification for office is the same as the qualification to vote, and under the law that qualification is tied to the district, ward, or political subdivision. That is, a voter is qualified to vote or run for office in Belmont if that voter lives anywhere in Belmont.

As confirmed by court order in 2019, Representative Sylvia’s domicile was the Farrarville Road address in Belmont. He indicated to this Office that he resides at another address in Belmont, but still considers the Farrarville Road property as his domicile and intends to return there when permitted after a temporary absence. These statements are consistent with the documentation reviewed and the investigation conducted by this Office.

Whether at Farrarville Road or Great Brook Drive, this Office is satisfied that Mr. Sylvia is domiciled in Belmont for the purposes of being a qualified voter in Belmont and being qualified to run for office representing Belmont. As such, we find that the complaint is unfounded.

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit

CC: Representative Michael Sylvia

¹ Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2864
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Michael Lewis**
Case Number: **217-2018-CR-01164**

Name: **Michael Lewis,** [REDACTED]

DOB: [REDACTED]

Charging document: Indictment

Offense: Voter Fraud - RSA 659:34, I(b)	GOC:	Charge ID: 1572142C	RSA: 659:34,II	Date of Offense: November 08, 2018
---	-------------	-------------------------------	--------------------------	--

Disposition: Dismissed/Quashed

Date: August 12, 2022

Action taken: By Judge

Andrew R. Schulman

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney Aileen M. O'Connell, ESQ
 Other _____ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
INDICTMENT

MERRIMACK, SS.

DECEMBER TERM, 2018

At the Superior Court, holden at Concord, within and for the County of MERRIMACK
aforesaid, on the 13th day of December in the year of our Lord two thousand and eighteen

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

MICHAEL L. LEWIS
[REDACTED]

of Miami, Florida, in the State of New Hampshire, on or about November 8, 2016, did commit
the crime of

WRONGFUL VOTING - NOT QUALIFIED TO VOTE
(RSA 659:34, I (c) & RSA 659:34, II)

in that, Michael L. Lewis, knowingly voted for an office or measure during the November 8,
2016, General Election in the Town of Hooksett, New Hampshire and that he was not qualified
to vote in said town as provided in RSA 654 because he was not domiciled for voting purposes in
the Town of Hooksett, New Hampshire,

Said acts being contrary to the form of the Statute, in such case made and provided, and against
the peace and dignity of the State.

8-12-2022
DISMISSED WITHOUT PREJUDICE,
following finding that defendant has
not been resored to competency.



Matthew T. Broadhead, NH Bar #19808
Assistant Attorney General

This is a true bill.

Honorable Andrew R. Swinson
August 12, 2022



Foreperson

Dated - 12/13/18

MCSC #217 2018 CR 1164
CHS ID# 1572142C

2018 DEC 13 PM 2 12
SUPERIOR COURT

029189

Plea of Not Guilty
Entered November 3, 2020

Clerk of Court

Name: Michael L. Lewis
DOB: [REDACTED]
Address: [REDACTED]
RSA: RSA 659:34, I (b) & RSA 659:34, II
Offense level: Class B Felony
Dist/Mun Ct: N/A

MSCC #217 2018 CR 1164
CHG ID# 1572142C

Note to File

Teresa Vigneault, Alleged Illegal Campaign Activity - 2021151262 8/26/2022 Note to File
sign theft 11:34:00 AM

There are no investigative leads or prospects for additional information. Closed with a note to file.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Mary Kate Lowndes**
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes,** [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Indictment

Offense: Voter Fraud	GOC:	Charge ID: 1786319C	RSA: 659:34,l(e)	Date of Offense: November 06, 2018
--------------------------------	-------------	-------------------------------	----------------------------	--

Disposition: Not Guilty

Date: September 23, 2022

Action taken: By Jury

Hon. Daniel I. St. Hilaire

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney William E. Christie, ESQ
 Other _____ _____ Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Mary Kate Lowndes**
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes,** [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Complaint

Offense: Voter Fraud - RSA 659:34, I (a,c,d,e,f)	GOC:	Charge ID: 1805775C	RSA: 659:34,II	Date of Offense: November 06, 2018
--	-------------	-------------------------------	--------------------------	--

Disposition: Dismissed/Quashed

Date: September 23, 2022

Action taken: By Judge

Dismissed

Hon. Daniel I. St. Hilaire

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney William E. Christie, ESQ
 Other _____ _____, Dist Div. _____

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Rockingham Superior Court
Rockingham Cty Courthouse/PO Box 1258
Kingston NH 03848-1258

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Mary Kate Lowndes**
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes,** [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Complaint

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Misusing Absentee Ballot		1805773C	657:24	November 06, 2018
Voter Fraud - RSA 659:34, I (a,c,d,e,f)		1805774C	659:34,II	October 25, 2016

Disposition: Not Guilty

Date: September 23, 2022

Action taken: By Jury

Hon. Daniel I. St. Hilaire

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ Defendant Defense Attorney William E. Christie, ESQ
 Other _____ _____ Dist Div. _____

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

83 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 25, 2022

Representative Debra Altschiller
Rockingham County, District 19
[REDACTED]
Stratham, NH 03885

Re: Warning for violation of RSA 664:6 relating to 2020 campaign finance filings

Representative Altschiller:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by you over past election cycles. Additionally, this Office received a complaint against you for violations of RSA 664:6 relating to campaign finance reporting obligations, notably filing late reports in the 2020 election cycle, failing to file reports, reporting incorrect surpluses, and missing expenses or reimbursements.

On June 23, 2022, Department of Justice Chief Investigator Richard Tracy spoke with you. He discussed with you your campaign finance filings, and apparent inaccuracies or filing failures. Having reviewed your 2020 filings, we note the following—which is a non-exhaustive list—regarding this set of reports:

- It appears you failed to file reports on or prior to 6/5/19, 12/4/19, 6/17/20, 10/14/20, 10/28/20, 11/12/20, and 5/3/21.
- The three reports you filed on 9/19/20 were 30, 17, and 3 days late, respectively.
- Election cycle starting balance sources were not documented.
- Expenses, such as for postcards, were not included in your filings.

On July 5, 2022, you indicated to Investigator Tracy that you had requested bank statements and had been assembling other documentation to determine how to accurately amend your reports.

You previously received a warning for failing to comply with RSA 664:6 in 2018 regarding the failure to list the city or town of the principal place of business for each contributor to your campaign. This Office recognizes that the 2018 warning letter concerned different compliance issues and is related to a different election cycle. While this correspondence does not constitute a second warning for the same issue or election cycle, please be advised that ongoing noncompliance with RSA 664 may lead to escalated enforcement action by this Office.

Debra Altschiller
Page 2 of 2

Please refile the above referenced reports, amended as necessary, within seven (7) days of receipt of this letter. Additionally, notify this Office when you have done so and provide a brief summary of the amendments you have made.¹ If you originally filed your report on the Campaign Finance System (CFS), please amend your report on that system. Your amended report will replace your original report and it will be designated as an amendment. If you originally filed your report by paper, please refile with the Secretary of State and be sure to clearly label the filing as an “amended” report for each appropriate date. In the event that you are unable to refile, please provide our Office with a brief written statement explaining why you are unable to comply with the above requirements for this reporting period.

Additionally, please take immediate action to ensure that your future reports comply with the minimum disclosure requirements set forth in RSA 664:6. For your convenience, we are enclosing a copy of the compliance checklist that our Office follows when reviewing campaign receipt and expenditure reports. Please review this document to ensure that your reports contain all of the required information.

Be advised that any future failure to comply with these minimum disclosure requirements may result in a cease and desist order, enforcement action, fines, and/or criminal prosecution. See RSA 664:9; RSA 664:18; RSA 664:21, V. Please contact me if you have any questions.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

¹ For the brief summary, each amendment to a filing need not be more than a sentence describing the nature of the change. For example, “Starting balance source documented as [source].”

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 25, 2022

Jonathan A. Caldwell, Treasurer
Stratham Town Democratic Committee
[REDACTED]
Stratham, NH 03885

Re: Warning for violation of RSA 664:6 relating to campaign finance filings

Treasurer Caldwell:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by the Stratham Town Democratic Committee (Committee) over past election cycles. Additionally, this Office received a complaint against the Committee for violations of RSA 664:6 relating to campaign finance reporting obligations.

On June 30, 2022, Department of Justice Chief Investigator Richard Tracy spoke with you. He discussed with you the Committee's campaign finance filings and apparent inaccuracies. Having reviewed your 2018 and 2019 filings, we note the following—which is a non-exhaustive list—regarding this set of reports:

- The Committee's first receipt and expense report of 2019 showed a \$890.85 surplus increase with no indication as to how that money was received.
- Some contributions received in excess of \$25 were missing a complete postal address.
- Some contributions of \$100 or more were missing a postal address and/or business employer information.

A week and half after your initial conversation with Investigator Tracy, you indicated to him that you had been working through documentation to determine how to accurately amend the Committee's reports. However, following that review, you stated that based on the financial paperwork you were able to compile, you were concerned that you might not be able to reconcile the \$890.85 difference. You indicated that the Committee has had three treasurers over the past four years, and that the identified issues were from reports prior to you taking the role of treasurer.

The Committee previously received a warning letter from this Office in 2018 for failing to comply with RSA 664:6 regarding the failure to list the city or town of the principal place of

Stratham Town Democratic Committee
Page 2 of 2

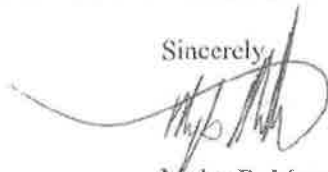
business for each contributor to your campaign. Please be advised that ongoing noncompliance with RSA 664 may lead to escalated enforcement action by this Office.

Please refile the above referenced reports, amended as necessary, within seven (7) days of receipt of this letter. Additionally, notify this Office when you have done so and provide a brief summary of the amendments you have made.¹ If you originally filed your report on the Campaign Finance System (CFS), please amend your report on that system. Your amended report will replace your original report and it will be designated as an amendment. If you originally filed your report by paper, please refile with the Secretary of State and be sure to clearly label the filing as an "amended" report for each appropriate date. In the event that you are unable to refile, please provide our Office with a brief written statement explaining why you are unable to comply with the above requirements for this reporting period.

Additionally, please take immediate action to ensure that your future reports comply with the minimum disclosure requirements set forth in RSA 664:6. For your convenience, we are enclosing a copy of the compliance checklist that our Office follows when reviewing campaign receipt and expenditure reports. Please review this document to ensure that your reports contain all of the required information.

Be advised that any future failure to comply with these minimum disclosure requirements may result in a cease and desist order, enforcement action, fines, and/or criminal prosecution. See RSA 664:9; RSA 664:18; RSA 664:21, V. Please contact me if you have any questions.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

¹ For the brief summary, each amendment to a filing need not be more than a sentence describing the nature of the change. For example, "Starting balance source documented as [source]."

October 5, 2022

Mr. Myles B. Matteson
Deputy General Counsel
Election Law Unit
33 Capitol Street
Concord, NH 03301

Re: Your letter dated August 25, 2022

Deputy General Counsel Matteson:

As I explained to Investigator Tracy, I assumed the responsibilities of Treasurer, Stratham Town Democratic Committee in January 2019. In the second half of 2018, the previous Treasurer, Sue Bourn, was in the process of caring for a disabled daughter, a grievously ill husband, selling their home and moving to Florida all at once. These reports and careful execution of the Treasurer responsibilities fell through the cracks.

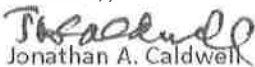
Among the consequences were a dozen uncashed checks. These checks from 2018 were stale dated. I attempted to get replacement checks issued by donors and our vendor Act Blue at the beginning of 2019. I do not have the detail of that period other than a copy of our bank register spreadsheet from that period which I have enclosed. This is the cause of the additional \$890.85 balance.

Once I received an understanding of the required reporting requirements, I believe we have been in compliance for the past four years.

As I noted to Investigator Tracy, this complaint is from an aggrieved State Rep candidate who came in fourth of four in the 2020 election. To what end other than petty harassment? There is clearly no intentional malfeasance. Perhaps Ms. Jeffrey and Mr. Abrami would like to explain why their local Republican committee has *never* filed required reports. On behalf of the NH taxpayers, I apologize that your time has been wasted by inconsequential complaints.

Thank you for your understanding.

Sincerely,


Jonathan A. Caldwell

Treasurer
Stratham Town Democratic Committee
[REDACTED]
Stratham, NH 03885

Cc: Heidi Hanson, Chair

Deposit Date	Transaction	Gross Amt	Check #	Net Deposit/Payment	Account Balance	Full name of contributor
1-Jan-19	Opening Balance				\$599.58	
9-Jan-19				\$60.00	\$659.58	
15-Jan-19				\$96.04	\$755.62	
17-Jan-19				\$1,076.88	\$1,832.50	
23-Jan-19				\$48.02	\$1,880.52	
23-Jan-19	Jonathan Caldwell/Helga Hanson aided to TD Bank account and Sue Born removed			n/a	\$1,880.52	1852.47 (per Jonathan)
24-Jan-19	Jonathan deposits replacement checks from Jonathan and David London and cash (see 2019-01)	\$742.60			\$2,623.12	
29-Jan-19	Town of Stratham, check written by Sue Heidi deposits Act Blue replacement checks (see 2019-01)	\$296.00	105		\$2,919.12	per Jonathan London
6-Feb-19	Heidi deposits Cushman/Lovejoy replacement checks (see 2019-01)	\$538.70			\$3,457.82	Check number 106 not used, wrinkled
12-Feb-19	Reimbursement check to Jo Ellen Cuff, coffee for Govt 101	\$300.90			\$3,156.92	per Jonathan London
7-Mar-19	Check to Lester Cuff for Stratham campaign (see 2019-02)	\$50.60	107		\$3,106.32	per Jonathan London
15-Apr-19	donations	\$1,200.00	108		\$1,906.32	per Executive Committee
1-Apr-19	Cash from Meeting donations	\$67.00			\$2,000.00	
16-Apr-19	Reimbursement check to Jan Dunn for stamps, envelopes, golf balls thank you for David, Casa de Fruta thank you for Londons, Candy for Sue Born	\$19.00			\$2,019.00	
6-May-19		\$777.29	109		\$1,241.71	per Jonathan London

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTY
DEPUTY ATTORNEY GENERAL

October 20, 2022

Representative Debra Altschiller
Rockingham County, District 19
[REDACTED]
Stratham, NH 03885

Re: Warning for violation of RSA 664:6 relating to 2020 campaign finance filings

Representative Altschiller:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by you over past election cycles. On August 25, 2022, this Office sent you a warning letter for apparent lack of compliance with campaign finance filing requirements. Per our letter, you amended your filings—including additional filings not covered by our letter—and supplied this Office with explanations for your amendments.

Following review of your submitted materials, it appears that your referenced filings are in compliance with campaign finance requirements and this Office is taking no further action. Thank you for your prompt attention to this Office's requests for information and amendment of your campaign finance filings.

This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "Myles B. Matteson".

Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

Note to File

Town of Croydon, Election Review and Follow Up 2022155358 12/9/2022 Case Notes
1:24:00 PM

Closeout Note by MGC

All communications on this case have been included, no further action is expected on the items contained here. To be closed following discussion with MM

From: Conley, Matthew
To: [REDACTED]
Cc: DOJ-Election Law
Subject: Response to Croydon Complaint
Date: Monday, June 20, 2022 10:16:00 AM

Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.

One complaint concerned pamphlets and election materials that were distributed at the May 7th, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters... Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, "[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a." As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office's review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

Matthew G. Conley
Attorney
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
Phone: (603) 271-6765

STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to justice@doj.nh.gov if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

From: Conley, Matthew
To: [REDACTED]
Cc: DOJ-Election Law
Subject: Response to Croydon Complaint
Date: Monday, June 20, 2022 10:16:00 AM

Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.

One complaint concerned pamphlets and election materials that were distributed at the May 7th, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters... Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, "[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a." As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office's review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

Matthew G. Conley
Attorney
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
Phone: (603) 271-6765

STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to justice@doj.nh.gov if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

From: Conley, Matthew
To: [REDACTED]
Cc: DOJ-Election Law
Subject: Response to Croydon Complaint
Date: Monday, June 20, 2022 10:16:09 AM

Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.

One complaint concerned pamphlets and election materials that were distributed at the May 7th, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters... Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, “[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a.” As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office’s review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

Matthew G. Conley
Attorney
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
Phone: (603) 271-6765

STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to justice@doj.nh.gov if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

From: Conley, Matthew
To: [REDACTED]
Cc: DOJ-Election Law
Subject: Response to Croydon Complaint
Date: Monday, June 20, 2022 10:16:11 AM

Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.

One complaint concerned pamphlets and election materials that were distributed at the May 7th, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters... Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, "[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a." As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office's review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

Matthew G. Conley
Attorney
Attorney General's Office
33 Capitol Street
Concord, NH 03301-6397
Phone: (603) 271-6765

STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to justice@doj.nh.gov if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

December 22, 2022

Wayne Welch, Moderator
Alyssa Richard, Town Clerk
Linda Hoelzel, School Clerk
Jonathon Woods, School District Moderator

Town of Raymond
4 Epping Street
Raymond, NH 03077

Re: Town of Raymond, Alleged Election Official Misconduct

Moderator Welch, Clerk Richard, Clerk Hoelzel, and Moderator Woods:

In March 2022 this Office received multiple complaints related to the administration of the 2022 town election. These complaints referenced (1) two candidates for the Raymond selectboard that did not properly declare the office for which they were running; (2) the conduct of a school district recount; (3) failure to deliver an absentee ballot; and (4) untimely posting of the town warrant.

Attorney General Chief Investigator Richard Tracy was assigned to this investigation. After investigation and review, this Office concludes that the documentation completed by two candidates for the Raymond selectboard was sufficient to satisfy the requirements of RSA 669:19 though the clerk's office must review all submitted paperwork at the time of the filing. This Office identified no violations of election law as it relates to the school district recount. While ultimately a Raymond voter did not appear to receive his absentee ballot, this Office concludes that the town clerk took appropriate actions and mailed an absentee ballot per the requirements of the law. Finally, although the warrant for the March 8, 2022 town election had an untimely posting, town officials ratified the election results through a special meeting authorized under RSA 31:5-b, and this Office finds no election violation.

DECLARATIONS FOR OFFICE

On March 14, 2022, Scott Campbell contacted the Secretary of State's Office on information received that two candidates for the Raymond selectboard, Chris Long and Carlos Maldonado, did not properly declare the office for which they were running on their declaration of candidacy forms. The Secretary of State's Office referred the matter to this Office. On March

15, 2022, Kera Goldsmith emailed this Office with the same concerns. On March 23, 2022, Rockingham County Attorney Patricia Conway forwarded complaints made to her office from Anthony Clements and William Weldy alleging that candidates failed to comply with RSA 669:19 and declare the office for which they were a candidate. Messrs. Clements and Weldy were also candidates for the selectboard in the town election.

This Office reviewed the declaration of candidacy forms and other filing paperwork completed by candidates Long and Maldonado. In both cases, the candidates provided information in all available fields on the declaration of candidacy form except for the office for which they were running.¹ That field on both forms was blank. However, at the time of completing their declarations, they also indicated the office for which they were running and the exact form of their name to appear on the ballot on a form provided by Clerk Richard.

On March 28, 2022, Investigator Tracy spoke with Clerk Richard. She indicated that at the time they completed them, she did not notice that candidates Long and Maldonado had not written in the office they were seeking on the candidacy forms. However, they had provided that information while completing the form she provided at the same time to indicate the office for which they were running, the term, and the exact form of their name to appear on the ballot. Clerk Richard admitted that it was an oversight on her part to not ensure the candidacy forms were complete, but that she could determine the office and term by the information supplied by the candidates at the time of filing on the forms she required them to complete.

This Office accepts the statements made by Clerk Richard that the declaration documents consisted of two parts—the declaration form and the associated office, term, and name-on-ballot form. Therefore, there is sufficient evidence for this Office to find that information—provided on *both* forms submitted by candidates Maldonado and Long—was sufficient to satisfy the requirements of RSA 669:19. There is insufficient evidence for this Office to find a violation of law or misconduct on the part of the candidates or clerk.

That said, any process that has a candidate recording essential information without verification by the receiving clerk, and confirmation by the candidate that the information recorded on the filing form is correct and complete, is at risk of error. While the candidate is responsible for providing essential information to file for office, the clerk's forms must be drafted so that the candidate is required to select and provide that essential information, and that clerical staff verify this has been done before accepting a declaration of candidacy. The clerk's filing processes and verifications must ensure that avoidable errors are in fact avoided.

¹ The content of a declaration of candidacy is specified in 669:19 Nominations; Nonpartisan Ballot System. It reads: "In a town which has adopted the nonpartisan ballot system as provided in RSA 669:13, all candidates shall file a declaration of candidacy with the town clerk during the filing period for town candidates. All candidates who file on the last day of the filing period shall do so in person before the town clerk. The filing period shall begin on the seventh Wednesday and end on the Friday of the following week before the town election. Such declaration of candidacy shall be prepared by the town clerk in substantially the following form: I, _____, declare that I am domiciled in the town of _____, and that I am a registered voter therein; that I am a candidate for the office of _____ and hereby request that my name be printed on the official nonpartisan ballot of the town of _____."

SCHOOL DISTRICT RECOUNT

On March 17, 2022, Nancy Kindler contacted this Office with concerns about the school district recount process that took place in Raymond on March 16, 2022. She stated that there were "non-registered people" observing the process as well as being in too close a proximity to the ballots. Ms. Kindler also stated that she spoke with a woman named Linda who indicated that she would take the ballots home with her that evening. Ms. Kindler indicated that she told Linda that she could not do that, to which Linda responded that she would take the ballots to the police station instead.

On March 25, 2022, Investigator Tracy spoke with Ms. Kindler. She felt the observers at the school district recount were too close to those counting, that tally sheets were left on the counting tables unattended, and that she had to point out to the moderator and two counters that they had failed to sign the tally sheets that they used. Ms. Kindler stated that the observers she saw stood next to the individuals who were counting the ballots. She stated that she did not see any of the observers touch the ballots nor did they disrupt the counting process. Finally, she indicated that she raised concerns about the type of tape officials used to secure the ballot boxes at the end of the recount.

On March 29, 2022, Investigator Tracy spoke with School Clerk Linda Hoelzel. Clerk Hoelzel and School Board Moderator Jonathon Woods were responsible for the school district recount. Clerk Hoelzel indicated that she ordinarily brought the school district ballots home with her on the night of the election and then would deliver them to the SAU 33 administrative building the next morning. However, she indicated that if she believed there might be a recount she would deliver the ballots to the Raymond police department instead to be secured. Following the March 8 election, Clerk Hoelzel delivered the school district ballots to the Raymond police department. On the night of the recount, March 16, she picked up the three ballot boxes and brought them to the school for the recount. She returned the ballots to the police department after the recount, before delivering them to the SAU 33 administrative office the following day.

Investigator Tracy reviewed a video-recording of the recount posted publicly. Based on the information provided by Ms. Kindler and the video, this Office has identified no violations of election law. That said, it is essential to maintain the integrity of election and recount processes by ensuring that election materials, including ballots, boxes and tally sheets to record results, are secure and signed as required. Although it does not appear that any violations occurred in this instance, this Office expects election officials to ensure election materials are appropriately supervised and secured.

ABSENTEE BALLOT DELIVERY

On March 21, 2022, Raymond voter Gary Brown submitted a complaint to the Secretary of State's Office, stating that he had not received his requested absentee ballot for the town election. Mr. Brown believed that his failure to receive a ballot was intentional, indicating that it was retribution for exposing corrupt town officials. Mr. Brown also stated that the town election warrant posting was not timely and that some selectboard candidates failed to declare the office

for which they were running. The Secretary of State's Office referred Mr. Brown's complaint to this Office on the same day it was received.

An email correspondence chain documents the communications between Mr. Brown and Clerk Richard. Mr. Brown initiated the correspondence on Saturday February 5, 2022, requesting an absentee ballot. Clerk Richard acknowledged receipt of the request on Monday the 7th. On the 21st Mr. Brown asked when he could expect his ballot. On the 22nd and 23rd the two exchanged multiple emails. Clerk Richard explained that she would mail the ballot as soon as she received the ballots from the printer. Also on the 23rd, Clerk Richard contacted the Secretary of State's office to inquire as to any other solutions permitted by law to send a ballot to Mr. Brown in advance of receiving the ballots from the printer. The Secretary of State's Office instructed Clerk Richard that she could print and sign a copy of the ballot proof and send that to a voter. Clerk Richard did so and by her statement and State election database records she mailed the absentee ballot to Mr. Brown at his requested address in Hawaii on the 23rd. Also on the 23rd, she explained the process, the solution proposed by the Secretary of State's Office, and stated that Mr. Brown's ballot was mailed that day. Mr. Brown responded, "Don't need a dissertation on your job [sic] This is not how you respond to a concern [sic] citizen you work for." Mr. Brown later wrote that he never received his absentee ballot.

In this circumstance, RSA 669:26 obligates the town clerk to provide absentee ballots for the town election, and RSA 657:15 governs the requirements for sending absentee ballots. Based on her own statements, the correspondence covered above, and the State's election database, Clerk Richard mailed—taking additional steps not required under the law to expedite the process in advance of receiving printed ballots—a ballot to Mr. Brown on February 23, 2022. This Office has no information to clarify why Mr. Brown did not receive a ballot. Based on the record available, Clerk Richard fulfilled her duties under the law and this Office finds no violation.

TIMELINESS OF THE TOWN WARRANT POSTING

Selectmen are responsible for posting the warrant at least 14 days before the town election. The warrant states the date of the election or town meeting, the location of the polling place, offices to be elected, the questions that will be on the ballot, and the polling hours. RSA 658:1; RSA 669:2. The town warrant for the March 8, 2022, town election was posted one day late.

Municipalities may correct minor procedural defects by calling a special town meeting to ratify their action pursuant to RSA 31:5-b. Per RSA 40:16, SB 2 municipalities may also utilize RSA 31:5-b to remedy procedural errors. The Raymond selectboard posted the warrant for the ratification of the March 8, 2022 town election results on March 15, 2022. Raymond held the required special meeting on April 2, 2022, and the ratification article passed 162-61.

While the failure to timely post the March 8, 2022 town election warrant was a procedural error, RSA 31:5-b provides the remedy. The town availed itself of this remedy and ratified the prior election results. As such, this Office finds no New Hampshire election law violations.

CONCLUSION

This Office received multiple complaints regarding the conduct of the March 8, 2022 town election in Raymond. As discussed above in more detail, this Office finds:

- (1) The totality of documentation completed by two candidates for the Raymond selectboard was sufficient to satisfy the requirements of RSA 669:19. There is insufficient evidence for this Office to find a violation of law or misconduct on the part of the candidates or clerk. However, the clerk's office must review all submitted paperwork at the time of the filing to ensure that candidates have accurately and completely filled out required filing paperwork, and that the supplied forms clearly request all information necessary under the law.
- (2) This Office identified no violations of election law as it relates to the school district recount. However, this Office expects election officials to ensure election materials are appropriately supervised and secured.
- (3) While ultimately a Raymond voter did not receive his absentee ballot, this Office concludes that the town clerk took appropriate actions and mailed an absentee ballot per the requirements of the law.
- (4) Although the warrant for the March 8, 2022 town election had an untimely posting, town officials ratified the election results through a special meeting authorized under RSA 31:5-b, and this Office finds no election violation.

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Anthony Clements
William Weldy
Scott Campbell
Kevin Pratt
Paul Ayers
Chris Long
Carlos Maldonado
Kera Goldsmith
Gary Brown
Nancy Kindler
Linda Hoelzel
Jonathon Woods

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 5, 2023

Scott A. Morrow

[REDACTED]
Sanbornton, NH 03269

RE: Alleged Illegal Campaign Activity in violation of RSA 664:14 and 664:17

Mr. Morrow:

On February 7, 2022, this Office received a complaint alleging that your candidate signs failed to contain the identification information required under RSA 664:14 and were placed on town property in contravention of RSA 664:17. This Office confirms that the signs are not in compliance with RSA 664:14, and that a sign was improperly placed on town property.

On February 8, 2022, Chief Investigator Richard Tracy spoke with you to discuss the signs in question. You indicated you were responsible for creating the political advertisements in question. You acknowledged that your signs did not include identifying information—although as a candidate sign they prominently featured your name—and also indicated that you were not aware of the requirements of RSAs 664:14 and 664:17. You agreed to remove your sign from the entrance of the town recycling center and that you would add the required identifying information to all of your displayed signs.

To supplement the discussion you had with Investigator Tracy, we will review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14 and RSA 664:17.

First, RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly advocates the success or defeat of any party, measure or person at any election. The statute also uses the phrase “or implicitly advocates” which we cannot enforce. With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that enforcement against “implicit” political advertisement is unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at *7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. The relevant sections:

I. All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it. Said signature shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of political advertising made on behalf of a political committee registered with the secretary of state pursuant to RSA 664:3 or a political advocacy organization registered with the secretary of state pursuant to RSA 664:3-a, the name and address on the advertisement shall match the name and address registered with the secretary of state.

II. Political advertising to promote the success or defeat of a measure by a business organization, labor union, or other enterprise or organization shall be signed. The name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address....

III. In the case of printed or written matter, the signature and address of signer shall be printed or written in a size of type or lettering large enough to be clearly legible.

RSA 664:14. Of note, not only must the *name* of the organization responsible for the political advertising be clearly identified, *an individual* must also be identified. Under RSA 664:14, I, that must be “names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for” the political advertising. Under RSA 664:14, II, the “name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address” (emphasis added).

Additionally, our Office interprets RSA 664:14, VIII as a website address on political advertising being acceptable as long as the website clearly identifies a contact person for the group responsible for the advertising and an address/phone number where the contact person can be located.¹

The overarching obligations imposed by RSA 664:14 make clear that political advertising make readily apparent to the recipient the individual or group responsible, and how to contact that responsible party. For a group or organization, that includes the organization’s name as well as an individual in a senior position—the chairman or treasurer.

¹ “VIII. Political advertising in the form of signs or placards may contain an Internet address in lieu of the signature and identification requirements of this section, if the Internet address is printed or written in a size of type or lettering large enough to be clearly legible and the website immediately and prominently displays all of the information required by this section through election day.” RSA 664:14, VIII

Scott Morrow
Page 3 of 3

RSA 664:17 states, in part: "No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent." As you admitted, one of your signs was posted on town property, which is improper under RSA 664:17. Subsequent to your conversation with Investigator Tracy, you removed the sign from public property.

Based on your communications with this Office, we anticipate that you will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,



Myles Matteson
Deputy General Counsel
New Hampshire Attorney General's Office

CC: Brandon Deacon

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 5, 2023

Robert Hatcher

[REDACTED]
Thornton, NH 03285

Re: Thornton Central School Alleged Illegal Campaign Activity

Dear Mr. Hatcher:

The Attorney General's Office received your complaint dated May 2, 2022, regarding the allegations that the Thornton Education Association was engaged in impermissible electioneering. Following review, this Office closes this matter and concludes that—acknowledging the personnel actions already taken—SAU 48 must reinforce the obligations of public employees regarding the handling or distribution of elections-related materials, particularly in any proximity to public property.

I. FACTUAL BACKGROUND

On May 2, 2022, you submitted a complaint that the Thornton Education Association sent home handouts with students regarding a ballot measure, and therefore engaged in impermissible electioneering by public employees or using public resources.

On May 9, 2022, Deputy General Counsel Myles Matteson called SAU 48 Superintendent Kyla Welch. The superintendent returned the call on May 10, 2022. Superintendent Welch acknowledged that several teachers—members of the Thornton Education Association—had produced handouts and had sent those handouts home with Thornton Central School students. Superintendent Welch indicated that while handouts are regularly sent home with students, they must be approved by school administrators. She further stated that the SAU had not determined whether any school resources were utilized in the creation of the handouts, but that the SAU responded to the handout distribution as a personnel matter, warning the involved teachers against further such action.

You produced a copy of these handouts to this Office. The handout contains a list of "voting days/meetings" upcoming as well as a statement that the "Thornton Education Association does not recommend this article" for a Town Meeting warrant article regarding the

public availability of teaching materials (emphasis in original). The Thornton Education Association is a union entity affiliated with the National Education Association-New Hampshire.

II. APPLICABLE LAW

Electioneering

Given its broad construction, and the potential First Amendment implications associated with this statute's regulation of speech, this Office has exercised its powers under RSA 7:6-c (authorizing the Attorney General to enforce election laws) to interpret RSA 659:44-a narrowly. Specifically, this office construes the term "electioneer" under RSA 659:44-a in conjunction with the definition of "electioneering" under RSA 652:16-h.

Although the language of RSA 659:44-a appears to have been constructed broadly, interpreting it in conflict with RSA 652:16-h would be in error.¹ The language of RSA 659:44-a was last updated on January 1, 2017. RSA 652:16-h was enacted on January 1, 2020. RSA 652:16-h defines "electioneering" as "visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." (Emphasis added.)

"When interpreting two statutes which deal with similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general." EnergyNorth Nat. Gas. Inc. v. City of Concord, 164 N.H. 14, 16 (2012).

Therefore, we conclude that to qualify as "electioneering" under RSA 659:44-a, the conduct in question must explicitly advocate for a question or office being voted upon consistent with RSA 652:16-h.

a. Electioneering by Public Employees

RSA 659:44-a provides that "[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

A public employee is defined as "any person employed by a public employer" with some limited exceptions. RSA 273-A:1, IX. Those exceptions are:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;

¹ See also Stenson v. McLaughlin, 2001 WL 1033614 (D.N.H. Aug. 24, 2001) (Holding that statutes can regulate political communications without violating the First Amendment "only if the communications used explicit words of advocacy of election or defeat of a candidate.").

- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

III. ANALYSIS

In this case, the handouts contained express advocacy in the form of the statement that the "Thornton Education Association does not recommend this article" for a Town Meeting warrant article. Therefore, it was an electioneering communication.

RSA 273-A:1, IX, makes clear that teachers at Thornton Central School are public employees that do not fall within one of the enumerated exceptions to the electioneering statute. Public employees are prohibited from electioneering while in the performance of their official duties—that is, engaging in express advocacy for a candidate or measure.

It is not clear that the involved teachers were operating in their official duties in the production of the handouts. Some activities and use of resources are permitted as union activities under New Hampshire labor laws. This Office makes no finding as to whether the creation of the handouts was in keeping with union obligations. However, even without that finding, this Office is concerned about the advocacy in opposition of a ballot measure taking place on public property, the very site that was an intended subject of the warrant article, and involving students carrying home the electioneering material. This at least gives the appearance of impropriety and partisanship by a public institution.

The handouts the teachers distributed, had they been posted on town property, would have been removed, as required by RSA 664:17. ("No political advertising shall be placed on or affixed to any public property"). While the evidence does not suggest the teachers posted their materials at the school, handing out these materials to students on public property was improper. Outside of the violation of SAU policies regarding handouts, even if the production of the handouts was a proper union activity, sending them home with students was in violation of the law. Beyond this instance, to avoid appearances of impropriety, we warn against advocacy that gives the appearance of public employees engaging in electioneering at the school, in support of school-related policies, while on duty as teachers during a school day.

SAU 48 Superintendent Welch is copied on this correspondence. Acknowledging the personnel actions already taken, this Office urges her to reinforce with SAU teachers and staff the obligations of public employees regarding the handling or distribution of elections-related materials, particularly in any proximity to public property. Public school employees must exercise a degree of care and diligence to ensure their conduct does not violate electioneering laws or raise questions of integrity and impropriety.

Thornton Central School Alleged Illegal Campaign Activity
Page 4 of 4

This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Myles B. Matteson', with a long horizontal flourish extending to the left.

Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: SAU 48 Superintendent Kyla Welch

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 5, 2023

Jim Tetrealt, Town Clerk
Town of Winchester
PO Box 512
Winchester, NH 03470

Re: Town of Winchester, Alleged Election Official Misconduct

Clerk Tetrealt:

On February 25, 2022, this Office received a complaint that Town of Winchester election officials inappropriately changed the filed term of Budget Committee Candidate Joanne Devost after the filing period and after a vote approving the warrant article at the town deliberative session.

Following an investigation and review, this Office accepts that Candidate Devost's original term was listed in error due to misinformation provided by the deputy clerk—an error by the clerk, not a scrivener's error—but conclude that the correction should have occurred prior to the deliberative session. This Office finds no misconduct on the part of Winchester election officials, however, we warn against opaque and untimely changes to ballots and the failure to properly inform voters of the change in the candidate slate and the reasons for the modification.

INVESTIGATION

On February 25, 2022, this Office received a complaint from Nathan Holmy, a candidate running for a 3-year term on the Town of Winchester Budget Committee. He alleged that on February 5, 2022, the voters at the Town of Winchester deliberative session voted to accept Town Warrant Article 1, which was the Article that listed all of the candidates running for various town offices. Mr. Holmy stated that when the ballot of candidates was read aloud at the deliberative session for those in attendance to hear, Joanne Devost was listed as being one of four candidates running for a 3-year term on the budget committee and that Max Santonastro was the only candidate running for the 1-year term on the budget committee. Mr. Holmy stated that he asked for and received from the town clerk's office on February 22, 2022, a copy of the sample ballot that listed the candidates on the ballot for the March 8, 2022, town election. Mr. Holmy noted that the sample ballot indicated that there were three candidates running for the 3-year term on the budget committee and two candidates for the 1-year term on the budget

committee, with one of the two being Joanne Devost. The sample ballot candidate lineup conflicted with the slate approved in Town Warrant Article 1.

Department of Justice Chief Investigator Richard Tracy investigated this complaint. He spoke with Mr. Holmy on May 18, 2022. Mr. Holmy further indicated that on the day of the election the sample ballots that were on display at the polls that he viewed had Ms. Devost listed as a 3-year candidate. However, the actual ballots that were handed to voters on election day had Ms. Devost listed as a 1-year candidate.

On May 18, 2022, Investigator Tracy spoke with Town of Winchester Moderator Denis Murphy. Moderator Murphy stated that he met with you at the Clerk's office on Friday, February 4, 2022, the day prior to the deliberative session to go over the ballot and warrant articles to assure they were accurate. On both February 4th and February 5th, the day of deliberative session, Ms. Devost was listed as one of four candidates running for the 3-year term on the budget committee.

Moderator Murphy further stated that sometime after the deliberative session he was in your office when you explained that there was a mistake, and that Ms. Devost wanted to run for the 1-year budget committee term and not the 3-year term. Moderator Murphy indicated that you said you called Elections Legal Counsel and Assistant Secretary of State Bud Fitch at the Secretary of State's Office and was told by Assistant Secretary Fitch that if a clerical mistake was made Winchester election officials could correct it. Moderator Murphy stated that you repeated that Assistant Secretary Fitch told him if a "legitimate mistake" was made then you could correct the mistake even if it was after the deliberative session.

Investigator Tracy asked Moderator Murphy about the sample ballot posted on the day of the election, and whether it listed Ms. Devost as a 1-year or 3-year candidate. Moderator Murphy stated that he posted two sets of sample ballots. One sample ballot listed Ms. Devost as a 3-year candidate and the other as a 1-year candidate. Moderator Murphy stated that he also called Assistant Secretary Fitch after learning that Ms. Devost had been switched to a 1-year candidate for the budget committee. According to Moderator Murphy, Assistant Secretary Fitch told him that if an "honest mistake" had been made then that mistake could be corrected.

Of concern to Moderator Murphy was that on the day of the deliberative session during a conversation, you informed him that Ms. Devost wanted to run for the 3-year term. Then some days later Ms. Devost was switched to the 1-year term. Moderator Murphy told Investigator Tracy that he questioned whether this was done to prevent 1-year candidate Max Santonastaso from running unopposed, which Moderator Murphy stated led in part to his decision to post both sample ballots on town election day—one that listed Ms. Devost as a 1-year candidate and the other as a 3-year candidate.

Investigator Tracy spoke with Ms. Devost on May 18, 2022. Ms. Devost stated that she went to the clerk's office where she filled out a filing form. Ms. Devost's recollection was that she circled the 3-year term listing, then realized she made a mistake, scribbled out 3-year term, and circled the 1-year term listing. Ms. Devost stated that she could not recall the female clerk's name that she dealt with when filing her paperwork, stating that she knows the female clerk

works with you. I questioned Ms. Devost as to whether she was sure that she circled the 3-year term first then crossed out the 3-year term and circled the 1-year term. Ms. Devost responded that that was the way she recalled it occurring.

Ms. Devost also stated that she had follow up communication with you on Facebook Messenger to clarify that she was running for the 1-year term. Ms. Devost provided Investigator Tracy with the Messenger exchange between you and herself. That exchange occurred on February 13th—two weeks after the close of the filing period and more than a week after the deliberative session. The exchange indicates that Ms. Devost reached out to you regarding the budget committee, you stated you had left her a message to clarify whether she intended to file for the 1-year or 3-year term, and that you could still fix the error if she could confirm the term for which she intended to file. Ms. Devost stated she was seeking the 1-year term, and you indicated that you would “fix it” with the printer the following day. Ms. Devost concluded the exchange stating that she had talked to a lady at the town office who had told her there was no such thing as a 1-year budget committee term.

On June 3, 2022, Investigator Tracy spoke with Ms. Devost again. Her recollection remained that she circled the 3-year term first, realized she made a mistake, crossed out the 3-year, and circled the 1-year term. Investigator Tracy had a copy of her filing paperwork and stated that it looked like the 1-year term was crossed out. Ms. Devost insist she circled the 3-year term first, crossed it out, then circled the 1-year, and handed the form to the female clerk who told her there was no 1-year term. Ms. Devost responded that she only wanted the 1-year term. Ms. Devost stated she did not make any additional changes after handing the form to the clerk.

On May 18, 2022, Investigator Tracy spoke with Deputy Clerk Danielle Roy. She recalled assisting Ms. Devost with her filing paperwork, but did not recall any of their conversation. Deputy Clerk Roy stated that she typically only handled candidate filings when you are not available. Deputy Clerk Roy reiterated that she had no recollection if she discussed the length of the term with Ms. Devost or not.

On May 19, 2022, Investigator Tracy spoke with Selectperson Natalie Quevedo—elected at the March 8, 2022 Winchester Town Election. Selectperson Quevedo verified that on January 28, 2020, the last day for filing period, she posted two items on Facebook. The first was a notice that the deadline to file was at 5pm on January 28th. Later that day, after the close of the filing period, Selectperson Quevedo posted the list of filings that she assembled herself based on reviewing scans of the filings themselves. Selectperson Quevedo listed Candidate Joanne Devost under the 1-year term for budget committee. Selectperson Quevedo explained that to her it looked like Ms. Devost attempted to erase the circle around the 3-year term because the circle around the 1-year term was darker. In addition, she and Ms. Devost only discussed Devost running for the 1-year term and never the 3-year term. Selectperson Quevedo also reviewed Facebook Messenger messages between herself and Ms. Devost that occurred prior to the deliberative session. In the exchange, Ms. Devost related that Deputy Clerk Roy had said there was only a 3-year budget committee term, and Selectperson Quevedo responded that was wrong and you needed to know “first thing” in the morning to make any necessary corrections prior to the deliberative session.

Selectperson Quevedo attended the deliberative session and recorded it. Both she and Investigator Tracy reviewed the recording. In it, Moderator Murphy clearly announced Ms. Devost for a 3-year term for budget committee. Selectperson Quevedo acknowledged that she did not catch that announcement. She did, however, review and confirm a Facebook Messenger exchange with you where she confirmed that Ms. Devost intended to run for the 1-year term, and you responded that her filing was unclear. Selectperson Quevedo responded in the exchange that Ms. Devost told her she had messaged you and sent a Facebook friend request.

On May 20, 2022, Investigator Tracy made contact with Budget Committee Chairman Brendan Hubbard. Chairman Hubbard explained that about 10 minutes prior to the start of the February 5th deliberative session he noted that Ms. Devost's name was listed as a candidate for the 3-year term on the budget committee. Chairman Hubbard recalled that he had seen a social media post on one of the town's Facebook pages where Devost was one of two candidates listed for the 1-year term on the budget committee.

Chairman Hubbard stated that he approached Moderator Murphy and you, where he described to you what he saw on the Facebook page about Ms. Devost running for the 1-year term. Chairman Hubbard stated that you said that Ms. Devost had made a mistake by circling the 1-year term, and that she really wanted to be a candidate for the 3-year term.

Chairman Hubbard stated that he was surprised on election day when he saw that Ms. Devost was listed as a candidate for the 1-year term. Chairman Hubbard spoke with Moderator Murphy who told Hubbard that the issue had been reported to the Attorney General's Office. Moderator Murphy further explained that he was told that you had the authority to correct ballot errors.

Investigator Tracy spoke with Assistant Secretary Fitch, who indicated that he recalled having a conversation with someone from Winchester about a filing issue, but believed it was while he was away from his desk and he did not have notes for the call. Assistant Secretary Fitch stated that he likely would have told the caller that they can correct clerical errors to reflect the intent of the person filing for office, but could not recall providing further clarification as it related to timing or the nature of the clerical error.

On May 18, 2022, Investigator Tracy spoke with you. You stated that you initially thought Ms. Devost was a candidate for the 3-year term for budget committee as on her filing paperwork she circled the 1-year term and appears to have also crossed it out and circled the 3-year term. You stated you were not aware at the time of the interview that Deputy Clerk Roy had allegedly told Ms. Devost that there was not a 1-year budget committee term for the 2022 town election. You explained that you and Deputy Clerk Roy each work a 4-day week. You work Monday through Thursday and Deputy Clerk Roy works Tuesday through Friday. Candidate Devost completed her candidate filing paperwork on Friday, January 28, 2022, when you were not in the office. You stated that if both you and Deputy Clerk Roy are working, you will normally handle candidate filing paperwork.

You explained that after the deliberative session on Saturday, February 5, 2022, Selectperson Quevedo approached you and told you that Ms. Devost was interested in running

for the 1-year term. That is when you stated you first heard that Ms. Devost had reportedly been told by Deputy Clerk Roy that there was no 1-year term budget opening on the 2022 ballot.

You said you began to think about your conversations with Selectperson Quevedo and others, as well as looking again at Ms. Devost's filing paperwork, which made you feel "uncasy." You stated that within a day or two of the deliberative session you left Ms. Devost a voicemail message asking that she call you to discuss the term for which she intended to file. On February 8th, a day or two after leaving Ms. Devost a message and not hearing back from her, you began to work with the printer on the ballot for the upcoming town election. On February 8, 2022, when speaking with the printer, you had Ms. Devost listed as a candidate for the 3-year term.

Sometime after February 8th but before February 13th you believe you "may have" reached out to Selectperson Quevedo or that she contacted you. You recalled that Selectperson Quevedo was adamant that Ms. Devost only wanted to run for the 1-year term position. You stated that you told Selectperson Quevedo that you had left Ms. Devost a message but she had not returned your call.

You told Investigator Tracy that on February 13th you heard from Ms. Devost, who expressed her interest in the 1-year term and not the 3-year term, and that Deputy Clerk Roy told her there was no 1-year term. You verified with Investigator Tracy the contents of the February 13, 2022, Facebook Messenger exchange with Ms. Devost.

You also stated that prior to taking any action to change the town election ballots you contacted Assistant Secretary Fitch. You told Investigator Tracy that you explained to Assistant Secretary Fitch that "our office made a mistake referencing the term of office and that I would like to make a correction." You relayed the Assistant Secretary Fitch told you if it was a "clerical error" you could make an "administrative correction." You stated that your clear impression from the call was that it was not too late at that point to make such an administrative correction to the ballot.

CONCLUSION

This Office finds no violation of law. However, at a minimum, an error by the Deputy Clerk resulted in a candidate relying on faulty information, changing the seat for which she intended to run prior to the filing period ending, and ultimately a group of candidates not running against the slate listed at the close of the filing period and approved in Town Warrant Article 1 at the deliberative session. Although there is insufficient evidence to determine that this was anything other than an error by Deputy Clerk Roy, the error should have been corrected promptly, not after the deliberative session.

Neither the Attorney General nor the Secretary of State has the authority to alter the filing results or final outcome for the Winchester Budget Committee seats at issue. A candidate or election official is not permitted to change the race or term for which a candidate filed after the deadline has passed---such a change constitutes a filing submitted after the deadline and is invalid. *See* RSA 671:19 and RSAs 669:19-669:22. However, at issue here is whether an error by

the Deputy Clerk—in providing bad information to a candidate that resulted in an ambiguous filing form—may be changed after the filing deadline has passed.


Acknowledging the consistency of information provided by multiple parties, this Office has no grounds to find that the initial term-listing information on Ms. Devost's filing was brought about by anything other than an error by the Deputy Clerk. We would note here that we are differentiating between a "clerical error" and an "error by the clerk." The "clerical error" phrase used by Assistant Secretary Fitch almost certainly referred to a scrivener's error, that is, an error in recording information, not an error in the substantive information spoken by the Deputy Clerk. Keeping that difference in mind, it is far from clear that your communications with Assistant Secretary Fitch conveyed that distinction, which could have been material to the answer you received as to your ability to modify the ballots in question.

The procedural issue in this case is serious: after the filing period and the candidate slate had been approved as part of a warrant article at the deliberative session, you modified ballots by listing Candidate Devost for a different term. However, there is insufficient evidence for this Office to find a violation of law for your actions—changing the town ballots after the filing deadline and deliberative session approval—when it appears you did so in good faith and based on the feedback from the Secretary of State's Office, which appears to have been provided based on incomplete information as to the underlying facts.

Elections are public meetings and New Hampshire law makes clear that transparency is a vital concern. Even though the original error in this case was inadvertent, the ballot change process was not transparent nor communicated publicly to allow voters to understand the justification for a change post-filing period and post-deliberative session. That elected officials and candidates were surprised by the ballot slate on election day is unacceptable. As such, even if in good faith, we warn against opaque and untimely changes to ballots and the failure to adequately inform voters of the change in the candidate slate and the reasons for the modification.

This matter is closed.

Sincerely,



Myles Matteson
Deputy General Counsel
Election Law Unit
Myles.b.Matteson@doj.nh.gov
603-271-1119

CC: Nathan Holmy
Denis Murphy, Moderator
Danielle Roy, Deputy Town Clerk
Natalie Quevedo, Selectperson
Brendan Hubbard
Joanne Devost
Dave Scanlan, Secretary of State of New Hampshire

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 5, 2023

Al Brandano

Kensington, NH

Re: Town of Kensington, Alleged Election Official Misconduct

Mr. Brandano:

You have submitted multiple complaints and corresponded extensively with this Office alleging violations concerning Town of Kensington ballot counting device activity logs, compliance with RSA 91-A Right-To-Know requests, and voter suppression as it relates to your treatment by town officials. In summary, this Office: addressed your complaints regarding the ballot counting devices in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied; has no enforcement authority with regard to the RSA 91-A violations you allege; and concludes that the allegations of voter suppression under RSA 659:40 do not meet the threshold necessary to constitute violations of the law.

INVESTIGATION

On January 19, 2022, you contacted this Office after you were referred by the Secretary of State's Office. You alleged that there were multiple violations in the Town of Kensington regarding the ballot counting device activity logs and that citizens are losing faith with the voting process. You followed up your initial phone call with multiple emails and requests for an in-person meeting. You met with several members of this Office on February 11, 2022.

On March 1, 2022, you sent a correspondence to the Town of Kensington styled as a "Notice of Trespass to Kensington Selectman Infringement on Constitutional Rights Unconstitutional Use of Electronic Voting Machines." You alleged official oppression, tampering with public records, and unlawful simulation of legal process. You cited reasons why the Kensington Board of Selectmen (BOS) had violated their oath of office by not treating you with "dignity and respect." Those include: the BOS not seconding motions for a hand count of ballots, the BOS allowing an election official's letter to be posted on the town website that you claim was disparaging to you, your RSA 91-A requests were not answered completely, you were not placed on the BOS agenda to address topics of concern to you, the BOS limited your time to speak when you were given the floor, and the Kensington town moderator did not permit a point

of order claim you raised at the February 9, 2022, deliberative session. You also sent the Town of Kensington a document styled as a "Memorial and Remonstrance."

On April 12, 2022, you sent this Office a letter that included a copy of a two-page outline requesting an investigation "into The Town of Kensington, Selectmen, and Town Moderator(s) for suppression and obstruction of my sovereign voting and civil rights" as they had violated their oaths of office by not acting in good faith on your concerns. On April 28, 2022, by certified mail, you requested a second meeting with this Office. The next day this Office responded that the Attorney General's Office is not the proper venue to address complaints of "being verbally chastised, being disparaged by another town resident, correcting town meeting minutes, enforcing Right to Know requests to town officials, you appearing on the selectboard's agenda, selectmen's refusal to second motions, or a denial of points of order during town public meetings." However, that correspondence noted that the ballot counting device logs and voter suppression matter was actively being reviewed by this Office.

In May and June, you and others copied this Office on correspondences and Right-To-Know requests. On May 5, 2022, you spoke with Attorney General's Office Chief Investigator Richard Tracy. You conveyed to Investigator Tracy that on March 8, 2022, the day of the Kensington Town Election, you had been at the polls most of the day. You explained that you spent the majority of the day in the electioneering zone supporting your article to have Kensington prohibit the use of ballot counting devices. You stated that you twice saw an election official leave the polling place building with official ballots, once to assist a voter with COVID who sat in his vehicle, and then later when an official went across the parking lot to the fire department with ballots.

You stated that sometime between 1PM and 3PM you entered the polls to vote, and that when you did so you saw Kensington Selectman Bob Gustafson near the entrance to the school gym where voting was taking place. You stated that you approached Selectman Gustafson and asked him if you would be able to have your ballot counted by hand and not the ballot counting device. You indicated that Selectman Gustafson told you that he did not think that was possible. Selectman Gustafson further explained to you that the town checked with the Secretary of State's Office, which told town election officials that if a town has elected to use ballot counting devices then all ballots will be counted by the machine. You stated that Selectman Gustafson told you that you should speak with the moderator, Harold Bragg.

You told Investigator Tracy that you saw Moderator Bragg in the hallway a short time later on March 8, 2022, and you asked Moderator Bragg if you could have your ballot counted by hand. You stated that Moderator Bragg responded, "Absolutely not." You stated that your questions were "very professional," and you were not looking to be disruptive. You told Investigator Tracy that you chose not to vote, as you did not believe the town should be using the ballot counting device, that you had filed a "remonstrance," and that you would be contradicting yourself if you allowed the ballot counting device to count your ballot.

You told Investigator Tracy that at the Kensington BOS meeting that you first brought up the idea of doing away with ballot counting devices and returning to hand counts, Selectman Joe Pace became very angry, started yelling at you, and you thought things were going to turn to "fist

a cuffs.” You stated that about one hour later, Selectman Pace gave a public apology to you. You indicated that you feel that certain town and election officials have created a “real hostile environment” because of your belief that the town should not use a ballot counting device in elections and should return to hand counting ballots.

You told Investigator Tracy that you thought you had a good working and cordial relationship with the town’s attorney, Charlie Bauer, until you received a copy of Attorney Bauer’s report indicating that Moderator Bragg would have allowed you to have your ballot hand counted if you had asked him, and denying memory of a conversation with you in the hallway. You stated that you have since stopped talking to Attorney Bauer.

Charles Bauer – Town Counsel, Town of Kensington

Attorney Bauer spoke with Investigator Tracy regarding the complaints and correspondences you sent Town of Kensington officials. He also provided a copy of the email describing the investigation he completed relating to your complaints about voting at the March 8, 2022, town election. In that email, sent to you, he noted:

A witness says that he seems to recall the Moderator made a reference that the Citizen requested a general hand-counting of ballots while the Moderator was outside, but the request was not for the Citizen’s personal ballot. According to a different witness citizen, the Moderator went outside at about 3 PM or so to tell an individual with leaflets to get behind the fence. At that time, the Citizen was behind the fence area about 25 feet from the Moderator’s interaction with that citizen. In conclusion, there was either miscommunication or misunderstanding on March 8 between the Citizen and the Moderator. There was no attempt or intent to deprive anyone from voting.

Robert Gustafson – Kensington Selectman

On June 2, 2022, Investigator Tracy interviewed Selectman Gustafson. Selectman Gustafson recalled that on March 8, 2022, at approximately 3PM you approached him and asked if you could have your ballot hand counted. Selectman Gustafson stated he did not believe that could occur, but directed you to speak with Moderator Bragg. Selectman Gustafson did not see you approach or speak with Moderator Bragg and does not know if you may have spoken with him at any other point in the day.

Selectman Gustafson stated that you and he have on several occasions spoken about your mutual concern about the use of ballot counting devices, and that you have been allowed to speak at BOS meeting on more than one occasion on the topic. He did not recall if you had a speaking time limit but remembered you speaking for two or three minutes each time you addressed the Selectboard at a BOS meeting.

Dan Davis

On June 20, 2022, Investigator Tracy spoke with Dan Davis. Mr. Davis spent hours with

you on March 8, 2022, in the electioneering zone outside the Kensington polling place. He indicated that he did not witness any conversations between you and Moderator Bragg, but that in the afternoon you told Mr. Davis that you had not voted as election officials stated they would not hand count your ballot. Mr. Davis also stated that he was aware that election officials had carried school ballots to the fire station to make copies as they were running out of ballots.

Ben Cole – Kensington Assistant Moderator

Investigator Tracy interviewed Assistant Moderator Cole regarding the March 8, 2022, town election. Assistant Moderator Cole stated that he manned the ballot counting device for much of election day, and occasionally placed ballots that could not be counted by the machine in the side ballot collection box compartment to be hand counted at the end of the night.

Assistant Moderator Cole also indicated that in the early evening election officials were running low on school ballots so he took a ballot to the fire department on two occasions and made a total of 20 copies. Town Clerk Wiggin also went to Town Hall and made school ballot copies—approximately 100 in total. He did not recall whether any election official signed or initialed the photocopied ballots.

Assistant Moderator Cole stated that a voter was parked in the parking lot asking to vote from his car as he had an active case of COVID. Assistant Moderator Cole obtained the voter's ID, verified he was registered, and brought ballots to the parking lot for him. The car was near the electioneering zone and Assistant Moderator Cole stated that he announced what he was doing in bringing voting materials to the voter. Assistant Moderator Cole brought the voter's ballots back into the polling place and cast them in the presence of Moderator Bragg and Clerk Wiggin.

Assistant Moderator Cole stated that he remembered seeing you inside the polling place once, near the entrance, in the vicinity of Selectman Gustafson and several police officers. He did not recall whether Moderator Bragg was also in the area. However, he did recall Moderator Bragg coming into the polling place from outside and stating that you wanted all ballots hand counted.

Peter Merrill – Kensington Assistant Moderator

Investigator Tracy interviewed Assistant Moderator Merrill. Assistant Moderator Merrill stated that he was not aware that you had requested to have your ballot hand counted on March 8, 2022. He did recall seeing you inside the polling place at one point. He also recalled that one voter asked to have his ballot hand counted, and that Assistant Moderator Merrill placed the ballot in the side compartment of the ballot collection box to be hand counted at the end of the night. Assistant Moderator Merrill stated that had you asked him to have your ballot hand counted, he would have ordered it placed in the side compartment for later hand counting.

Sarah Wiggin – Kensington Town Clerk

Investigator Tracy interviewed Clerk Wiggin. She stated that she was “shocked” that you complained that you were not able to vote on election day because your ballot was not able to be hand counted. She did not speak with you about the subject but noted that other voters had been permitted in the past to have their ballots cast in the side compartment of the ballot collection box to be hand counted at the end of the night.

Clerk Wiggin acknowledged that she and Assistant Moderator Cole copied school ballots when they were running low on inventory. She did not recall any election official signing or initialing the copied ballots.

Harold Bragg – Kensington Moderator

Investigator Tracy interviewed Moderator Bragg. Moderator Bragg indicated that he may have spoken with you on the afternoon of March 8, 2022, when he was in the electioneering zone speaking with Mr. Davis, but that he recalls that you may have asked, “Are you going to hand count ballots,” which he took to mean would election officials hand count *all* ballots. Moderator Bragg was certain that he had not had a one-on-one conversation with you at any point in the day regarding having your own ballot hand counted. Moderator Bragg stated that had you asked to have *your* ballot hand counted, he would have—as he did with other voters—instructed you to cast it into the side compartment of the ballot collection box to be hand counted at the end of the night. Moderator Bragg recalled several voters that cast their ballots in the side compartment on March 8, 2022.

Additional materials

You also submitted to this Office affidavits from other individuals speaking to the topics covered above. By affidavit, Valerie Watkins stated that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that Moderator Bragg would not hand count your ballot. By affidavit, J. David Bernardy attested to the same claim—that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Dan Davis attested that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Patricia DeCaprio attested that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that election officials would not hand count your ballot. By affidavit, Patrick Marr attested that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Jennifer Marr attested that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that Moderator Bragg would not hand count your ballot.

DISCUSSION

As noted earlier, this Office addressed your complaints regarding ballot counting device activity logs in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied. Please refer to that letter for discussion regarding ballot counting device activity logs. Additionally, as conveyed to you previously, this Office has no enforcement authority with regard to the RSA 91-A violations you allege. Please refer to RSA 91-A:8 for any remedies that may be available for you to pursue relating to RSA 91-A compliance.

Regarding the photocopying of school ballots, the Election Procedure Manual speaks to the process required:

First use any remaining Absentee Ballots as election day ballots. Authenticate unused absentee ballots before using them as election official ballots. Best practice is for the clerk to draw a line through the word "Absentee" on the absentee ballot and then sign or initial the ballot. If the supply of absentee ballots is exhausted, use photocopies of the official ballot. Authenticate these unofficial ballots with the signature or initials of the clerk or a designee prior to issuing the ballots to voters. Authentication distinguishes extra ballots from any fraudulently created ballots added to the cast ballots. Authenticating absentee ballots converted to election day ballots allows matching the number of absentee ballots counted to the record of how many absentee ballots were marked as cast on the checklist during any post-election review. It is essential that the clerk and the moderator keep an accurate count of the number of absentee or photocopy ballots that are put into use as election day ballots. The total number of ballots used and issued to voters, must be reported to the Secretary of State. The total number of ballots used is an important number, because the moderator uses this number to compare with the total votes cast for particular offices or questions when reconciling the ballot count.

New Hampshire Election Procedure Manual 2022-2023, page 170. Moderator Bragg, Assistant Moderator Cole, and Clerk Wiggin admit that no election official signed or initialed the photocopied school ballots. That is inconsistent with proper procedure and Kensington election officials are hereby ordered—and have been instructed—to follow the signing or initialing procedure in the event they must make copies of ballots in the future.

As to your allegations of voter suppression under RSA 659:40, this Office finds that the facts do not support a conclusion that Kensington election officials' actions constitute violations of the law or were inappropriate based on the evidence available. RSA 659:40 makes it a criminal offense for any person to "use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting" or to "knowingly attempt[] to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information." RSA 659:40, II and III. The facts you allege, the affidavits you provided, and the information acquired through interviewing numerous individuals who were at the polls on March 8, 2022, do not establish the elements of this offense. It appears most likely that you inquired about hand counting and Moderator Bragg answered as to hand counting *all ballots*, stating officials would not do so. However, at least a few voters on March 8, 2022, who requested to have their ballots hand

counted when they approached the ballot counting device were instructed to cast their ballots into the side compartment of the ballot collection box to be hand counted at the end of the night.

For towns and cities using ballot counting devices, the presumption is that ballots will be counted by the device unless the law provides otherwise—such as for ballots with an overvoted office, Federal Office Only ballots, UOCAVA printed at home ballots, electronic accessible ballots printed at home, or ballots otherwise rejected by the device—or if, in the moderator’s discretion, it is appropriate to allow a ballot to be hand counted to avoid a disruption in the polling place by an insistent voter. From the information available, it appears that Kensington election officials were operating within the scope of the moderator’s discretion in how ballots were to be cast and counted.

CONCLUSION

This Office addressed your complaints regarding the ballot counting devices in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied. This Office has no enforcement authority with regard to the RSA 91-A violations you allege. Photocopied ballots need to be signed or initialed by the town clerk, and Kensington election officials are ordered to follow the procedures in the Election Procedure Manual.

Finally, your allegations regarding voter suppression appear to broadly concern your interactions with town officials and their unwillingness to adopt positions or policies for which you advocate. There is a difference under the law between declining to support proposed policies and threatening “force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting.” See RSA 659:40. As such, this Office concludes that no violations of voter suppression under RSA 659:40 occurred with regard to you at the March 8, 2022, town election.

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Charles Bauer, Kensington Town Counsel
Sarah Wiggin, Kensington Town Clerk
Harold Bragg, Kensington Moderator
Robert Gustafson, Kensington Selectman
Ben Cole, Kensington Assistant Moderator
Peter Merrill, Kensington Assistant Moderator

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 10, 2023

David Croft
Merrimack County Sheriff

[REDACTED]
Boscawen, NH 05303

**Re: David Croft, Sheriff, Alleged Illegal Campaign Activity
CEASE AND DESIST**

Sheriff Croft:

On June 20, 2022, this Office received an anonymous complaint alleging that you were engaged in electioneering through the Merrimack County Sheriff Facebook page. We spoke on June 22, 2022. You subsequently removed posts by "Elect David Croft – Merrimack County Sheriff" from the official Merrimack County Sheriff Facebook page. Acknowledging your immediate remediation, this Office orders you to cease and desist utilizing public resources for electioneering purposes and closes this matter.

On June 20, 2022, a caller to the Election Law Unit hotline stated that posts from "Elect David Croft – Merrimack County Sheriff" were being posted on the official Merrimack County Sheriff Facebook page, and that it should not be allowed. We viewed those Facebook posts, which by virtue of being your campaign Facebook account advocating for your reelection, are electioneering materials. I subsequently spoke with you on June 22, 2022. We discussed the posts, and the prohibition under New Hampshire law relating to the use of governmental resources—including official communications channels such as Facebook—for electioneering purposes. You remediated by removing the "Elect David Croft – Merrimack County Sheriff" posts from the official Merrimack County Sheriff Facebook page.

As an elected official, you fall into an exception under RSA 273-A:1, IX and are in a class of public employees that is not prohibited from electioneering under RSA 659:44-a. You are permitted to electioneer under the statute. At the same time, the action complained of—electioneering material on your agency' official Facebook page—is prohibited under RSA 659:44-a, II: "No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

As an official communication channel that is routinely utilized for sharing information with the public, the Merrimack County Sheriff Facebook page is a resource closely tied to the

David Croft, Sheriff, Alleged Illegal Campaign Activity
Page 2 of 2

non-exhaustive list of government property or equipment described in RSA 659:44-a, II. Posting express advocacy material on the agency's Facebook page amounts to a use of agency resources—public resources—to advocate in support of a candidate.


This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Brd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005). However, public agencies have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Even while you as an elected official are exempt from the electioneering prohibition, the electioneering Facebook posts could be—and were—perceived as your agency functioning as a political entity engaged in inappropriate electioneering.

Conclusion

The Merrimack County Sheriff Facebook page is used as an official channel of communication and therefore constitutes a public resource that falls within the prohibition in RSA 659:44-a, II. You are ordered to **cease and desist** from using public resources for electioneering in violation of RSA 659:44-a, II. Given your immediate remediation of this issue when brought to your attention, this Office is taking no further action.

This matter is closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 30, 2022

Jean Simon, Zachary Tresp, Thomas Reed
Supervisors of the Checklist
Town of Conway
23 Main Street
PO Box 2680
Conway, NH 03818

Re: [REDACTED] Alleged Wrongful Voting

Dear Conway Supervisors of the Checklist:

This Office received a complaint dated April 1, 2022, from the Conway Supervisors of the Checklist alleging a possible incident of Wrongful Voting. Specifically, the Supervisors indicated that [REDACTED] had registered to vote in Conway and the town manager had informed the Supervisors that the [REDACTED] listed address appeared to be a short-term rental. After investigation, this Office accepts the [REDACTED] domicile claim—they were properly domiciled and qualified voters in the Town of Conway.

The Supervisors referred this matter to this Office based on voter registrations being associated with a short-term rental property, in this case, one owned by [REDACTED]. The Supervisors attached the voter registration forms for both individuals. Both forms had been filled out by hand and listed [REDACTED] North Conway, 03860 as the voters' domicile.

Chief Investigator Richard Tracy ran a license and vehicle check on both individuals. Between them, they had [REDACTED] vehicles, a trailer, and a boat all registered at the [REDACTED] address as of October 4, 2022. Both individuals were issued a New Hampshire driver's license on October 21, 2021, that listed the [REDACTED] address. Both individuals surrendered driver's licenses from Massachusetts on that same date.

On October 6, 2022, Investigator Tracy spoke to Corie Hilton, the Conway Assistant Assessor. Ms. Hilton explained that the [REDACTED] purchased [REDACTED] as well as the vacant lot next to that property on October 8, 2021.

In New Hampshire, in order to vote in a town, ward, or unincorporated place a person must be domiciled there. A "domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a

single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I.¹ “A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.” *Id.*

Based on their purchase of these properties, and taking a number of other steps to establish a physical presence and show participation in North Conway life relevant to self-government, this Office is satisfied that [REDACTED] are properly domiciled at [REDACTED] in North Conway and they are therefore qualified voters.

This matter is closed. Please contact me if any of you have any further questions.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

cc: [REDACTED]

¹ Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Women Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-004433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

June 10, 2022

Douglas Viger, School Moderator
Town of Pelham
[REDACTED]
Pelham, NH 03076

Re: Douglas Viger, Pelham School Moderator, Alleged Election Official Misconduct

Dear Moderator Viger:

On March 8, 2022, the Town of Pelham conducted a town election at which two issues arose—two marked and cast ballots were inadvertently handed to voters instead of blank ballots, and election officials failed to count write-in votes following a ballot counting device diverter malfunction. This Office writes you to report on our investigation and request a remediation plan to protect against such errors in future elections.

Distribution of marked ballots

On March 10, 2022, the Secretary of State's Office referred to this Office an email correspondence from Pelham voter Michael Carter. Mr. Carter expressed concern that an unknown number of Pelham voters were handed school ballots that were already filled in at the March 8, 2022, election. On the same day, another Pelham voter, John Spottiswood, also contacted the Secretary of State's Office regarding the same issue and was referred to this Office.

Attorney General's Office Chief Investigator Richard Tracy spoke with both Mr. Carter and Mr. Spottiswood on March 10, 2022. Mr. Carter indicated that he voted in Pelham on March 8th and following the election saw a Facebook post by Kevin Edwards that Pelham election officials had handed him a school ballot that was already filled in instead of a blank ballot. Mr. Carter indicated that you responded to that Facebook post acknowledging that the error did indeed occur. Mr. Spottiswood made essentially the same complaint to Investigator Tracy regarding the marked ballots, and additionally expressed concerns about the lack of enforcement by Pelham election officials related to electioneering and manning political advocacy signs at the Pelham polling place in prior elections.

On March 10, 2022, Investigator Tracy spoke with Kevin Edwards. Mr. Edwards stated that he voted at the Pelham polling place at approximately 1pm on March 8, 2022. He indicated that an election official handed him town and school ballots, which he took to a voting booth.

Upon looking at the ballots in the booth, he noticed that the school ballot had already been marked and filled out. Mr. Edwards returned to the voting official to notify her that the ballot she had handed him was already marked. Mr. Edwards observed the official inspect the next five ballots in the distribution stack. All were also marked. A second official gave Mr. Edwards an unmarked school ballot. He returned to the booth, voted, cast his ballots in a ballot counting device, and left the polling place.

After returning home, Mr. Edwards stated that he became more upset about the incident and posted a message on Facebook describing what had happened. He indicated that you responded to the post acknowledging the ballot error, and that you were investigating the issue.

Investigator Tracy spoke with you on March 10, 2022. You admitted the ballot-handling error and stated that at least two previously filled out school ballots had been handed to voters. Based on your discussion with voters and election officials you believed that both voters received new unmarked ballots, no already-cast ballots were cast again, and all remaining marked ballots were collected and properly secured. The two voters receiving marked ballots notified the ballot clerks, and officials then identified a stack of 20-25 marked ballots that a ballot clerk had placed on the blank ballot distribution table. Officials made an announcement to all voters in the polling place asking them to check their ballots to ensure that they were not already marked. You indicated that there were few voters in the polling place at that point in the day and no additional voters indicated they had a marked ballot.

You described to Investigator Tracy what you believed happened. You indicated that you and the deputy clerk had emptied the school ballot counting device collection box and put the cast ballots into a plastic bin, then moved the ballots into a ballot box for storage. That ballot box of cast ballots was placed under a table—the same table on which blank ballots were being distributed. You stated that you normally would seal a box of cast ballots and tape a piece of paper on top of the box indicating “used ballots.” You said that you “dropped the ball” and did not do this in this instance prior to the box being placed under the table. That appears to have led to a clerk inadvertently opening the box and placing the marked ballots on the distribution table believing that they were blank, unused ballots.

Failure to count write-in votes

During your March 10, 2022, conversation with Investigator Tracy you also described how you discovered on election day that the ballot counting device diverter did not appear to be functioning correctly. If a ballot counting device detects a write-in vote or other markings on the ballot it will divert the ballot into a separate compartment in the ballot collection box. The ballot counting device records all of the non-write-in votes from the ballot, and also records a “write-in” entry that is reported as a total number of write-in votes recorded by race on the device results tape. As the results tape only indicates that a certain number of write-in vote were cast in a particular race, not for whom those votes were cast, election officials are responsible for inspecting those diverted ballots and hand-counting the write-in votes on those ballots.

You described how over the course of the day you could hear the diverter motor whirring, sounding as if it were moving to divert ballots into the diverter compartment, but that at the end

of the day there were no ballots in the diverter compartment. As such, you concluded that the diverter had malfunctioned. You told Investigator Tracy that on the night of March 8th you determined that the total number of write-in votes was not close as compared to the margin of victories, so you and other election officials intended to “tally” the write-in votes at 4:30 PM on March 10, 2022.

This Office contacted you again on the afternoon of March 10, 2022, and instructed you not to reopen any ballot boxes to tally votes. We noted that New Hampshire law permits the counting of ballots on election day, but does not provide for additional opportunities to tally votes outside of a requested race recount.

On March 11, 2022, we spoke with you again. We discussed the Pelham School District results. In the race for school board, there were three listed candidates for two three-year terms. The vote difference between the second vote-getter and third vote-getter was 136 votes. The number of recorded write-in votes was 170. Given the number of write-in votes was higher than the margin of victory, it is mathematically possible that the write-in votes could have been outcome determinative in the school board race. However, as noted above, while the total number was captured, none of those write-in votes was counted for any particular candidate due to the ballots not being diverted and instead ending up in the collection box with all cast ballots. We reiterated that Pelham election officials had no authority on their own to reopen ballot boxes to count ballots after election day, but should a court order a recount or should a candidate request a recount, the cast ballots with write-in votes could be counted.

On March 15, 2022, this Office spoke with you again. You informed us that you had prepared a remediation plan in anticipation of providing one following conclusion of this investigation. When asked, you also stated that all of the school board candidates were aware of the issue with the diverter and how the write-in votes were not counted. You stated that none of the school board candidates had requested a recount. As such, absent any petition to superior court for authority, there would be no counting of the uncounted write-in votes.

Conclusion

We find that the distribution of marked and cast ballots to voters was an inadvertent error, but one brought about by inadequate ballot management. As Pelham’s chief election official,¹ you are responsible for ensuring that the handling of ballots—blank ballots and cast ballots—is transparent, clear to all election officials involved, and protective against errors. For example, segregating used and unused ballots physically and labelling all boxes is a reasonable and necessary step to avoid these types of inadvertent errors.

Additionally, we find that you failed to properly count write-in votes on election day following the diverter malfunction.² However, we accept that this failure to count write-in votes on election night was the result of a belief that such a count could be conducted at a later time, rather than any knowing or intentional failure to count validly-cast votes. As such, we find that

¹ RSA 659:9 Moderator to Oversee Voting. – It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.

² 659:64-a Counting Write-In Votes.

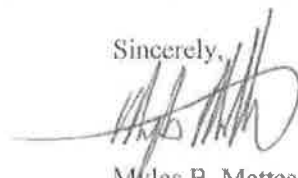
Douglas Viger, Pelham School Moderator, Alleged Election Official Misconduct
Page 4 of 4

no penalty provisions apply.³ We anticipate that you will review these and related statutes to ensure that such errors do not occur in the future.

This Office requests that you submit a remediation plan within 30 days of receipt of this letter to address the two issues identified in this report—the improper distribution of cast ballots to voters and the failure to count write-in votes on election night following the diverter malfunction. We appreciate that you have indicated you have already drafted a remediation plan, and your cooperation in handling this matter.

Upon review of a satisfactory remediation plan this matter will be closed.

Sincerely,



Myles B. Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: Michael Carter
John Spottiswood
Kevin Edwards
Troy Bressette (school board candidate)
Joshua Glynn (school board candidate)
G. David Wilkerson (school board candidate)

³ See RSA 659:77, I: If any moderator shall intentionally 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. See RSA 666:2 Official Malfeasance. A moderator, supervisor of the checklist, selectman or town clerk shall be guilty of a misdemeanor if at any election:... II. He shall knowingly omit to receive and count any legal vote....

Douglas Viger, Pelham, NH School Moderator

██████████
Pelham, NH 03076

February 4, 2023

Attorney General Department of Justice
33 Capitol Street
Concord, NH 03301

Election Remediation Plan

As detailed under state statute, the below bullet points will be followed;

- Official school ballots will only be handled by the School District Clerk, Elections Officials appointed by the School Moderator, and the School Moderator
- All unused ballots will remain in their original sealed boxes until they are hand delivered to the ballot clerks.
- Original ballot boxes will be resealed after ballots are distributed to the ballot clerks.
- All sealed unused ballot boxes will be stored together in a secure location in the polling place.
- All marked ballots will remain in the ballot box until such a time the ballot box needs to be emptied.
- Counted ballots removed from the ballot box will be placed in separate plastic tote that is secured and stored separately of the unmarked ballots
- Any counted ballots that may need to be hand counted will remain in the ballot box until the close of the polls.
- All counted ballots will be placed into their original boxes, sealed and signed at the time of the polls closing.
- All counted ballots remaining in the ballot box that need to be hand counted will be removed and put into groups of 25.
- All hand counted ballots will be counted the same day of the election.
- All hand counted ballots will be in a separate sealed box.
- All ballots will be stored at the SAU in the secure ballot closet until a recount is requested or such time for request passes

Douglas E. Viger

Douglas E. Viger School Moderator

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

February 6, 2023

Douglas Viger, School Moderator
Town of Pelham
[REDACTED]
Pelham, NH 03076

Re: Douglas Viger, Pelham School Moderator, Alleged Election Official Misconduct

Dear Moderator Viger:

On March 8, 2022, the Town of Pelham conducted a town election at which two issues arose—two marked and cast ballots were inadvertently handed to voters instead of blank ballots, and election officials failed to count write-in votes following a ballot counting device diverter malfunction. On June 10, 2023, this Office wrote you to report on our investigation and request a remediation plan to protect against such errors in future elections. After a subsequent correspondence from our Office in January, you supplied a remediation plan on February 4, 2023.

The remediation plan is acceptable. This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Conley".

Matthew Conley
Attorney
Election Law Unit
(603) 271-6765

CC: Michael Carter
John Spottiswood
Kevin Edwards
Troy Bressette (school board candidate)
Joshua Glynn (school board candidate)
G. David Wilkerson (school board candidate)

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

February 10, 2023

Erika Robinson, Town Clerk
Town of Epping
157 Main Street
Epping, NH 03042

Katherine Cooper, Town Moderator
Town of Epping
157 Main Street
Epping, NH 03042

Re: Town of Epping - Use of Replacement Ballot Counting Device at the March 8,
2022 Town Election

Dear Clerk Robinson and Moderator Cooper:

We have completed our review of the use of a replacement ballot counting device (BCD) during the March 8, 2022, Epping Town Election. This Office conducted an investigation and, based on that investigation, we find that election officials did not follow required procedures in the 2022 Epping Town Election by failing to properly test a replacement BCD before it was used in that election.

Investigation

Epping Selectman John Cody called this Office on March 9, 2022, asking questions regarding the use of a replacement BCD during the election. Based on the facts he alleged, we opened an investigation. During that investigation we spoke with both of you, Town Administrator Gregory Dodge, Selectman John Cody, and Jeff Silvestro, President of LHS Associates.

Initial Contact and Follow Up Interview with John Cody

On March 9, 2022, Selectman Cody called our Office to discuss the procedure for replacing a BCD during an election. He spoke with Associate Attorney General Anne Edwards explaining that he was a selectman in Epping and that, prior to the March 8, 2022, election, the Town Clerk and the Moderator had run test ballots through the two BCDs that Epping owns. One of the BCDs failed the test and was not used during the election. The other one passed the testing protocol and was used in the election. Selectman Cody did not know if a zero tape was printed on election day from the BCD that was used, but stated that he had not seen one.

Mid-afternoon on election day, the BCD being used at the polling place failed. Selectman Cody was not clear if the rollers in the BCD failed or if it was the memory card but thought that the rollers had failed. LHS Associates (LHS), the company contracted to maintain BCDs in New Hampshire, brought a replacement BCD to the polling place. Selectman Cody said it looked like Epping election officials and the LHS representative used the second memory card for the replacement BCD. Election officials re-ran all of the previously-cast ballots through the replacement BCD to achieve a then-current vote tally, and the BCD was used through the remainder of election day. The tally from the replacement BCD was used for the final counts for the election. Selectman Cody indicated that no race was close, that they had 1,334 voters voting four ballot pages each, and that it took election officials from about 4:00 pm to after 7:00 pm to re-run all of the ballots in the replacement BCD.

Selectman Cody confirmed that they did not run any test ballots in the replacement BCD or a print a zero tape from the machine. AAG Edwards informed Selectman Cody that, while LHS may have had some information on the replacement BCD and its status, our Office and the Secretary of State's Office require that at least twenty-five marked ballots, using all four ballot pages, in all four different orientations (right-side up, upside down, bottom of the page first, and top of the page first), which essentially is the pre-election testing protocol, be run through the replacement BCD to ensure that it worked correctly before it was brought into use. Selectman Cody was further informed that a zero tape should have been run when the replacement BCD was put into election mode.

Selectman Cody indicated that it was not until people began asking questions about the BCDs at the end of the night that he started becoming concerned and wanted to be certain that things had been done correctly. AAG Edwards told him that the matter would be reviewed.

On May 11, 2022, Attorney General's Office Investigator James Hodgdon conducted an interview with Selectman Cody, who provided additional information. Selectman Cody confirmed that he contacted this Office on March 9, 2022, regarding the March 8, 2022, election. On March 8, 2022, Selectman Cody was present at Town Hall along with other Epping election officials, prior to the polls opening, and indicated that one BCD failed the preliminary testing and a second, backup BCD passed the protocols and was used during the election. The polls opened at 7:00 a.m. at the Epping Middle School with Selectman Cody in attendance along with other members of the Board of Selectman, Town Administrator Gregory Dodge, Town Clerk Erika Robinson, and Town Moderator Katherine Cooper.

Later that morning, the BCD began having sporadic problems with feeding ballots into the machine. It would take a couple of attempts to feed a ballot in before it was accepted by the BCD. The Town Clerk and Moderator discussed obtaining a replacement BCD from LHS after the BCD at Epping Middle School stopped accepting ballots altogether.

While officials waited for a replacement BCD, voters were still able to cast their votes. Ballots were stacked on a table by the BCD in public view and, when the replacement BCD arrived, an alignment card was run through it by the Moderator and a new memory card was used. Selectman Cody indicated that there was no adequate testing of this replacement BCD by

running test ballots as was done for the BCDs prior to the election. Selectman Cody did not address his concerns with the Town Clerk or Moderator during or after the election.

Investigator Hodgdon followed up with Selectman Cody on August 9, 2022. Selectman Cody confirmed that Town Clerk Erika Robinson told him that the testing procedure was conducted prior to the election with one of the BCDs failing the test. He was told this on the day of the Epping Town Election.

Interview with Jeff Silvestro

On May 10, 2022, Investigator Hodgdon conducted an interview of Jeff Silvestro, President of LHS Associates. Mr. Silvestro confirmed that LHS provides support for BCDs in the Town of Epping in the form of programming the BCDs for the elections, providing ballots, performing preventative maintenance, and responding to calls for maintenance during elections. Once a year, LHS conducts a full inspection on Epping's BCDs that includes calibrating, cleaning, checking batteries, and running diagnostic tests of ballots. On March 8, 2022, LHS logged a call from Epping regarding an issue with a BCD. Epping requested a replacement BCD be delivered and a technician brought a BCD to Epping. The technician met with the Town Clerk or Moderator when they arrived with the replacement BCD. Mr. Silvestro confirmed that the technician stood by while the replacement BCD was set up for use, but that it is not the technician's job to advise election officials how to follow procedures required by New Hampshire law.

Mr. Silvestro believes that the BCD that failed remained in the custody of Epping. That BCD remains in the custody of Epping following diagnostic testing by LHS. The replacement BCD has been returned to LHS.

Interview with Erika Robinson and Katherine Cooper

On May 12, 2022, Investigator Hodgdon conducted a joint interview with Epping Town Clerk Erika Robinson and Epping Town Moderator Katherine Cooper. Clerk Robinson indicated that Epping has two BCDs, one that is used during elections and one that is kept as a backup. LHS had provided three memory cards to use in the BCDs for the March 8, 2022 Town Election. Clerk Robinson ran a test on both BCDs the Wednesday before the election to ensure that the memory cards and machines were accurate. In each test, Clerk Robinson used twenty-five test ballots and ran them through the BCDs. One of the BCDs was off by one vote in the test and, therefore, was not used on election day. All three memory cards, provided by LHS, were tested at that time.

On election day, the BCD used in the election was plugged in and a zero tape was printed. At some point between 9:00 a.m. and 10:00 a.m., a ballot jammed in the BCD and LHS was called. LHS provided instructions as to how to proceed and the jam was resolved. Afterwards, Moderator Cooper was running the BCD and observed issues with the rollers jamming, sticking, and kicking back ballots. This issue continued to get worse until election officials called LHS again. LHS staff indicated that they would deliver a replacement BCD. While awaiting the replacement BCD, voters were informed of the situation, continued to vote,

and were informed that they could either remain with their ballots until the issue was resolved or stack them beside the inoperable BCD, in public view, until the replacement BCD was delivered. Epping Police Chief Michael Wallace was contacted and stood guard over the stacked ballots until the replacement BCD arrived.

LHS arrived with a replacement BCD within an hour and a half after they had indicated that a replacement BCD would be delivered. As the replacement BCD was set up, the inoperable BCD was left untouched. Moderator Cooper stated that, upon the LHS technician's arrival, "there was a discussion" between at least her and the LHS technician because "technically you are not supposed to start a new election and I'm saying quote/unquote a 'new election' by having a new machine and card, et cetera." Given this exchange, it appears there was some concern as to whether testing should have occurred at the time the new BCD was installed. Moderator Cooper did not have confidence in the inoperable BCD and the numbers of votes it contained at that point. This prompted the LHS technician to contact and inform the New Hampshire Secretary of State's Office of a "no-confidence situation." According to Moderator Cooper, the Secretary of State's Office instructed election officials to remove all ballots from the inoperable BCD and feed them into the replacement BCD in order to verify the total votes cast in the election.

Moderator Cooper and Clerk Robinson understood that the replacement BCD had been tested and calibrated prior to its delivery by the LHS technician. Clerk Robinson took her third, previously tested memory card and placed it in the replacement BCD. Following the call with the Secretary of State's Office, all ballots were removed from the inoperable BCD and run through the replacement BCD. Clerk Robinson did not believe that it was necessary to run a test with the new BCD because the memory card had already been tested and had proven accurate the Wednesday before the town election. The issue, she indicated, with the inoperable BCD was a mechanical problem with the machine itself, not the memory card.

Following the close of the polls, election officials ran the BCD reports, read the preliminary numbers to the public, and inventoried by hand all cast ballots to compare that inventory to the total ballot count from the BCD for accuracy. The inventory was off by two votes compared to the BCD count.

As of the date of the interviews, all three BCDs were in the custody of the Town Clerk's Office. All memory cards remained in their respective BCDs with the seals intact. All three BCDs were awaiting maintenance by LHS.

Investigator Hodgdon followed up with Clerk Robinson on August 9, 2022. Clerk Robinson indicated that she spoke to Debra Unger of the Secretary of State's Office to express her concerns about the BCD issues from the March 8 election. Clerk Robinson explained that Patricia Piccuch of the Secretary of State's Office later contacted her regarding these issues but was uncertain of the exact date, only that it occurred after speaking with Investigator Hodgdon on May 12, 2022. Clerk Robinson stated that she had contacted LHS on the day of the election, the replacement machine was delivered, and the spare memory card was placed in the replacement machine. Clerk Robinson then went through her recollection of the events of March 8, 2022, as she had on May 12, and further provided Investigator Hodgdon with a copy of the zero tape report for the LHS replacement BCD, the Epping BCD Activity logs, the Epping work

order for LHS repairs to the BCD that failed during the election, and the Epping test results report.

Contact with the Secretary of State's Office

On May 31, 2022, Investigator Hodgdon reached out to the Secretary of State's Office to verify that the LHS technician had reached out to their Office during the March 8, 2022, Epping Town Election. Attorney Orville Fitch indicated that he contacted the State Election Director, Patricia Piecuch, who stated that, after speaking with her staff, no one remembered receiving a phone call from LHS or from the Town of Epping on the day of the election relative to their BCD. Given the volume of calls received by the Secretary of State's Office on any election day, the fact that staff do not recall any contact regarding the issues with the Epping BCD on election day, this Office accepts the claim that such contact occurred.

Director Piecuch followed up with Clerk Robinson after May 17, 2022. Clerk Robinson had spoken to Debra Unger at the Seacoast Regional Meeting informing Ms. Unger that Clerk Robinson was expecting a visit from the Attorney General's Office over what had happened on election day. When Director Piecuch returned from vacation, Ms. Unger relayed her conversation with Clerk Robinson to Director Piecuch. Director Piecuch then reached out to Clerk Robinson directly to discuss what had occurred with the BCD on election day as Clerk Robinson had expressed concern about this Office's Investigation to Ms. Unger. According to Director Piecuch, Clerk Robinson explained that the BCD stopped working and she called LHS who, in turn, brought in a replacement BCD. Clerk Robinson explained that the memory card that she used in the replacement BCD was her spare card that had been tested pre-election and she had proof that it had been tested.

On August 17, 2022, Investigator Hodgdon spoke with Director Piecuch who could not confirm the date she spoke with Clerk Robinson, only that it was sometime after May 17.

Contact with the LHS Associates Technician

On August 16, 2022, Investigator Hodgdon conducted a digitally recorded interview with Michael Carlson, LHS Associates Technician. Mr. Carlson explained that he responded to Epping, on March 8, 2022, and brought Epping a replacement BCD. Upon arriving in Epping, Mr. Carlson met with the Town Clerk and the Moderator in the parking lot and had a conversation with them about what was going on with the BCD. Mr. Carlson explained that the read head was probably the issue and that he had a spare machine with him. Mr. Carlson explained to the Town Clerk and the Moderator the following procedure for the existing memory card:

1. Verify the count on the BCD based on the reading on the memory card;
2. Break the seal and remove the memory card with the power off;
3. Remove the tabulator from the ballot storage box;
4. Take the spare machine out of the bag and put on the ballot storage box; and
5. Reinsert the memory card and reseal.

It was at that point that the Clerk and the Moderator explained that they were not confident the existing memory card would have the correct count. Mr. Carlson then called the LHS office and explained the situation. His office provided instructions to execute the following procedure:

1. Zero out the machine;
2. Empty the ballot storage box;
3. Re-feed the ballots to recreate the election.

Mr. Carlson asked the Clerk if she had a backup memory card and explained that, if that were the case, they could do the following with the new BCD:

1. Insert the third memory card;
2. Zero out the machine;
3. Sign in;
4. Take all the ballots from the ballot storage box systematically;
5. Re-feed all of the ballots into the replacement BCD with the third memory card.

This procedure was agreed to by all and followed. Mr. Carlson observed this procedure being followed and then waited in the school's cafeteria in case there was an issue with the replacement BCD. No issues were reported and Mr. Carlson eventually left.

Law and Authority

RSA 656:42, II requires, in relevant part, that “[e]ach [ballot counting] device shall be tested after installation and prior to each election. RSA 656:42, VIII(e)(5) explicitly requires that “[t]he town or city clerk shall run each of the test ballots through the counting device in the following orientations: Top first with side one face up, bottom first with side one face up, top first with side one face down, and bottom first with side one face down.” Finally, RSA 556:42, VIII(e)(10), (11) reads:

[t]he clerk shall test **all** electronic ballot counting devices and memory devices in the possession of the town or city. Prior to placing the electronic ballot counting device or any memory device into service in an election, the moderator shall certify that there is evidence that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerk's possession, and that these ballot counting devices and memory devices have passed the test.

(Emphasis added.)

These legal requirements are also reflected in the Election Procedure Manual (EPM) published by the Secretary of State. In “Duties of Moderators,” Chapter IX of the EPM, the EPM states: “Certify that all electronic ballot counting devices and memory cards passed testing requirements and deposit evidence of testing in the front pocket of the canvas bag for the device.” **Do not put a ballot counting device into use that has not been properly tested or**

which is not properly sealed. p. 135 (2020-2021 ed.). The Duties of Moderator's Checklist of Responsibilities repeat these requirements of the law. p. 163 (2020-2021 ed.) (emphasis added).

The "Election Day – Moderator" section reiterates the duty of the moderator to "certify that there is evidence at the polling place that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerks' possession, and that these ballot counting devices and memory devices have passed the test." p. 319 (2020-2021 ed.).

Conclusions

New Hampshire law specifically defines two applicable obligations relating to BCDs. First, BCDs used in an election must go through mandated testing procedures before being used in an election. Second, it is the responsibility of the town clerk and the moderator, working in tandem, to personally ensure that these testing procedures are done and that both the memory cards and BCDs have passed the tests defined in law.

The memory card used in the replacement BCD had been previously tested and passed the testing protocols according to law. However, Epping election officials did not perform the required testing on the replacement BCD on election day in March 2022. Both Moderator Cooper and Clerk Robinson admitted that they relied on representations from LHS that the replacement BCD had been properly maintained and neither of them personally tested the replacement BCD, with the third memory card in it, with test ballots before it was used in the Epping election despite the requirements of New Hampshire law.

This Office recognizes that Epping election officials had a desire to act in a way that would maintain the security of the election while conducting it in an efficient manner. We also acknowledge the cooperation of Epping election officials during our investigation and their explanations related to why they believed they had complied with the law before using the replacement BCD. Obviously, following the required testing process for a replacement BCD using test ballots would have caused a delay in achieving a final vote count on election day. Even with that understanding, the BCD testing procedures serve important purposes such as guaranteeing that a BCD can read a ballot regardless of orientation and ensuring that a BCD and memory card accurately count test ballots so as not to compromise the results of the election. While LHS plays a critical role in maintaining and programming BCDs and memory cards, it is ultimately the responsibility of the election officials to ensure that our elections are free, fair, accurate, and executed in accordance with New Hampshire law.

Our Office finds that election officials did not follow required procedures in the 2022 Epping Town Election by failing to properly test the replacement BCD with the third memory card in it prior to its use in that election. Epping election officials are directed to carefully review the applicable laws and sections of the Election Procedure Manual regarding use and replacement of ballot counting devices. We stress to all election officials the need to follow the guidance of the Election Procedure Manual and to consult with either the Secretary of State's Office or the Attorney General's Office if any questions or concerns arise on election day.

Town of Epping, Ballot Counting Device
Page 8 of 8

This matter is concluded.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

cc: Selectman John Cody

Jeff Silvestro, President, LHS
David Scanlan, Secretary of State

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

February 10, 2023

Keith Stanton

[REDACTED]
Fremont, NH 03044

Re: Fremont Education Association, Alleged Illegal Campaign Activity

Dear Mr. Stanton:

In response to a complaint this Office received, on March 18, 2022, regarding allegations that the Fremont teachers' union, the Fremont Education Association (FEA), violated RSA 659:44-a which prohibits public employees from engaging in electioneering. We understand that there may be confusion regarding the issue of which public officials are allowed to electioneer and what, if any, public resources can be used by them while electioneering. We conclude that the FEA members who participated in electioneering were not doing so in the course of their official duties as public employees and the FEA did not use any public resources in mailing out the flyers.

I. FACTUAL BACKGROUND

On March 18, 2022, this Office received a telephone call from the Fremont Police Chief John Twiss relaying that at the March 15, 2022, Fremont School Board meeting, an individual made claims of election fraud and other issues against the town administrator. Later that same day, Attorney General's Office Chief Investigator Richard Tracy spoke with Chief Twiss who explained that you had alleged voter fraud at the recent School Board meeting. You stated that you received a flyer from the local teachers' union asking for your support on a ballot measure and you were upset by the content of that flyer. Chief Twiss stated that you told him that you then went to the Fremont Post Office and spoke with the Fremont Postmaster who told you that Town Administrator Heidi Carlson dropped off the flyers at the Post Office. You alleged that town resources were used to mail the flyers.

Chief Twiss then told Investigator Tracy that he spoke with Administrator Carlson who denied mailing the flyers, stating that it was likely the president of the teachers' union that had gone to the Post Office. Investigator Tracy asked for a link to the video of the School Board meeting, a copy of the flyer, and contact information for the FEA President, all of which Chief Twiss provided on March 21, 2022.

On April 4, you filed a written complaint with this Office. In that complaint, you indicated that the Town of Fremont spent town funds promoting a raise in salaries for “the teachers, counselors, and librarians” by using a town postage permit to mail out over 1,200 flyers to everyone in town while making it appear that it was mailed by the FEA. These flyers urged Fremont voters to vote “Yes” on School Article 2. You attached a detailed account of your concerns, in which you explained that Article 2 concerned a “raise in salaries for all teachers, librarians, and counselors.” You wrote that the return address for the flyers at issue read “Fremont Education Association, 432 Main Street, Fremont, NH 03044.” That address, you indicated, is the address of the Ellis School, Fremont’s Pre-Kindergarten through Grade 8 school. You indicated your concern with the FEA using the school address for electioneering.

You believed the flyers were mailed through a Fremont town account by Administrator Carlson after you had spoken with the Fremont Postmaster. You pointed out that there was no postal permit number on any of the flyers. You believed that many voters in town felt that they had been misled believing that the FEA was a citizen’s group advocating for increases in pay and that many people would not have voted for the measure if they had known that the Town of Fremont had played a role in the electioneering. You believed that the citizens deserved to re-vote Article 2. You also attached a copy of an email you sent to the Secretary of State’s Office, dated March 17, 2022, explaining your grievances, a sheet of paper labeled “Q’s Asked to School Board, 03/15/2022”, and a copy of the front and back of the flyer at issue.

On May 18, I emailed FEA President Dana Crowell. Ms. Crowell called me back that day and left a voicemail. The following day, Ms. Crowell replied to my email, leaving her cell phone number, explaining that the flyer was produced, printed, and paid for by the FEA and that she could provide receipts from Staples for the printing and the reimbursement check from the FEA for the purchase. She wrote that the FEA used the “Every Day Direct” mailing process to bulk mail the flyers, meaning that there was no need for a postal permit number and there would be no permit number on the flyers themselves. Ms. Crowell further wrote that the cost of the mailing was paid by check from the FEA to the Fremont Post Office and the Raymond Post Office and the flyers were delivered there by a member of the FEA Communications Committee. The use of the school’s address as the return address was justified under a union contract provision that allows the FEA to use the school facilities for activities. The FEA’s mail is delivered to the Ellis School and has been for years. Ms. Crowell explicitly represented that no school or town funds were used for the flyer and no school or town officials were part of the development, processing, or mailing of the flyer.

On May 19, I spoke to Ms. Crowell on the phone and she confirmed that Jamie Bolduc, a music teacher at the school and a member of the FEA, delivered the flyers to the Post Offices to be mailed. Ms. Crowell was aware of your complaints after your appearance at the School Board meeting. She indicated that Chief Twiss had all of the receipts to which she had referred, although Chief Twiss would later state that he did not possess them.

On May 20, Ms. Crowell emailed me and attached a written, notarized statement from Jamie Bolduc. In that statement, Ms. Bolduc certified that she, as a member of FEA’s Communication Committee, delivered the flyers related to the March, 2022 Town Election. She recounted that she first went to the Raymond Post Office and met with the Postmaster to mail the

majority of the flyers. She then went to the Fremont Post Office and spoke with the clerk on duty, specifically noting that it was not the Postmaster, and submitted roughly 100 flyers for Post Office mailboxes. The Fremont postal clerk called the Raymond Postmaster to get advice on how to process the paperwork. Ms. Bolduc's statement is notarized.

On August 10, Investigator James Hodgdon spoke to Chief Twiss who indicated that he did not have the receipts. On that same date, Investigator Hodgdon contacted Ms. Crowell who responded that she was no longer associated with the FEA and reiterated what she had communicated to me. On August 11, Investigator Hodgdon received two separate emails from Ms. Crowell with attached copies of the following documents:

- 1) A Staples receipt, dated February 6, 2022, for the purchase and payment of 950 flyers in the amount of \$298.30. The transaction was conducted using Ms. Crowell's personal credit card;
- 2) A check, dated February 10, 2022, for \$298.30 from the FEA to Ms. Crowell as reimbursement;
- 3) Two checks, dated February 23, 2022, for \$358.20 and \$20.60 from the FEA payable to the Raymond Post Office and the Fremont Post Office, respectively;
- 4) Receipts from the Raymond Post Office and the Fremont Post Office, dated March 3, 2022, in the amount of \$358.20 and \$20.60, respectively, for the payment and delivery of the flyers;
- 5) A USPS Every Door Direct Mail Retail form from the Raymond and Fremont Post Offices with Ms. Crowell's signature as the mailer or agent.

On August 15, Ms. Crowell clarified that the two checks to the Post Offices were written before the February school vacation week and the Union withheld the mailing until the Thursday of school vacation week.

II. LAW & ANALYSIS

Under New Hampshire law, "[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties." RSA 659:44-a, I. Further, "[n]o public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers for electioneering." RSA 659:44-a, II. For the purposes of this analysis, it is sufficient to note that a "public employee" is defined as "any person employed by a public employer," which state and local school systems are. RSA 273-A:1, IX, X.

RSA 273-A:1, IX makes clear that the Fremont teachers are public employees who do not fall within one of the enumerated exceptions to the electioneering statute. Public employees are prohibited from electioneering while in the performance of their official duties—that is, engaging in express advocacy for a candidate or measure while the teachers are performing their official public duties of teaching. In this case, the flyers contained express advocacy in the form of the statements in support of a Town Meeting warrant article. Therefore, it was an electioneering communication.

Fremont Education Association, Alleged Illegal Campaign Activity
Page 4 of 4

However, some activities and use of resources are permitted as union activities under New Hampshire labor laws. In this instance, the FEA may send and receive mail using the Ellis School's mailing address. From the facts gathered in this investigation, there is no indication that any public resources were used or that any electioneering occurred in the course of a public employee's official duties. The flyers themselves were purchased from Staples, a private entity. That purchase was made ultimately using funds from the FEA. The FEA then paid the cost to the Post Offices for the flyers to be distributed. Ms. Crowell was able to provide documentation of all of this. We therefore find that no unlawful activity occurred on the part of the FEA in this matter.

This matter is closed. Please contact me if you have any questions or concerns.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: David Scanlon, Secretary of State
Chief John Twiss, Fremont Police Department
Fremont Education Association

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELIA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

February 10, 2023

[REDACTED]
Chester, NH 03036

Re: **CEASE AND DESIST ORDER**
[REDACTED] Alleged Wrongful Voting

Dear [REDACTED]

On May 6, 2022, this Office received a complaint alleging that you had been engaging in a pattern of unlawful voting in the Town of Chester since May of 2015. This investigation followed. This Office concludes that you did engage in a pattern of illegal voting. However, this Office further acknowledges that you were provided with faulty and conflicting information by Chester town officials who reviewed your voter registration and your subsequent efforts to confirm your qualifications to vote. Therefore, this Office concludes this matter with this Order that you refrain from voting in the State of New Hampshire so long as you are not a United States citizen.

I. FACTUAL BACKGROUND

a. **Initial Complaint and Contact with Dianna Charron**

On May 6, 2022, Dianna Charron, a Chester Supervisor of the Checklist, contacted the New Hampshire Attorney General's Office Election Law Unit and spoke to Investigative Paralegal Jill Tekin. Ms. Charron reported that she recently discovered that you had registered to vote, you had voted multiple times in the Town of Chester, and that you may not be a United States citizen.

That same day, Deputy General Counsel Myles Matteson reached out to Ms. Charron to obtain additional information. Ms. Charron indicated that you were a [REDACTED] employee who had registered to vote, voted in the May 12, 2015 Town of Chester election, and had voted multiple times since. You did not present a birth certificate or a U.S. passport when registering to vote, but signed an affidavit. Ms. Charron further explained that you recently contacted her because of an immigration matter. She explained that you sounded distressed, stating, "I guess I didn't understand what I was signing" and "I thought I could vote if I wasn't a U.S. citizen."

On June 28, 2022, Chief Investigator Richard Tracy contacted Ms. Charron. She further indicated that it was her signature on your voter registration from 2015 but that she did not specifically recall registering you to vote in 2015. Ms. Charron clarified that she contacted this Office after you reached out to her for a copy of your “original voter registration card” and voting history. You insisted that Ms. Charron did not tell you in 2015 that you needed to be a U.S. citizen in order to register to vote.

Ms. Charron explained that she has a “standard spiel” that she tells everyone who wants to register to vote who does not have a birth certificate or U.S. passport with them at the time of registering that they still may register to vote by filling out an affidavit and swearing that they are a U.S. citizen. Ms. Charron stated that you kept insisting that she did not tell you that. Ms. Charron stated that she has worked as a Supervisor of the Checklist for 20 years and “that’s my speech” that she gives to everyone who does not have proper documentation with them.

In your recent conversation with her, you told her that you had an immigration proceeding and that you needed an affidavit from Ms. Charron and Leslie Packard, the other Supervisor of the Checklist who signed your registration form. You told her in conversations at that time that you would not have registered to vote had you known of the citizenship requirement.

In reviewing your voter registration form, Ms. Charron noted that it appeared that she wrote “Boston” on your form where it asked for a “Place of Naturalization.” Without being able to recall a specific memory, Ms. Charron surmised that after you filled out the registration form and walked away from the table, she noted that section was not filled out. Ms. Charron explained that she would not have been able to enter your information into *ElectionNet*, the state voter registration system, without your place of naturalization. Ms. Charron stated that either you told her “Boston” or she wrote “Boston” with the intention of confirming that with you later. She repeated that she no longer had any recollection of that transaction.

On July 1, 2022, Ms. Charron provided Investigator Tracy with notarized copies of the following documents:

- A letter from Ms. Charron outlining what may have happened on May 12, 2015, when you registered to vote;
- Your May 12, 2015 voter registration form;
- Your May 12, 2015 qualified voter affidavit;
- An Election Day New Voter Log, dated May 12, 2015, that contains your name;
- Chester Town Election Voter Checklist, dated May 10, 2016, with your name checked off (page 210);
- Chester Town Election Voter Checklist, dated May 14, 2016, with your name checked off (page 210);
- Chester Town Election Voter Checklist, dated May 9, 2017, with your name checked off (page 227);
- Chester Town Election Voter Checklist, dated May 13, 2017, with your name checked off (page 227);

- Chester Town Election Voter Checklist, dated May 8, 2018, with your name checked off (page 225);
- Chester State Election Voter Checklist, dated November 6, 2018, with your name checked off (page 221);
- Chester Town Election Voter Checklist, dated May 14, 2019, with your name checked off (page 226);
- Chester Presidential Primary Election Voter Checklist, dated February 11, 2020, with your name checked off (page 231);
- Chester Town Meeting Voter Checklist, dated March 14, 2020, with your name checked off (page 235);
- Chester Town Meeting Voter Checklist, dated June 20, 2020, with your name checked off (page 235);
- Chester State Election Voter Checklist, dated November 3, 2020, with your name checked off (page 243);
- Chester Town Election Voter Checklist, dated May 11, 2021, with your name checked off (page 254);
- Chester Town Election Voter Checklist, dated March 8, 2022, with your name checked off (page 222);
- Chester Town Election Voter Checklist, dated March 10, 2022, with your name checked off (page 222);

b. Contact with Michael Oleson

On July 20, 2022, Investigator Tracy reached out Michael Oleson. Mr. Oleson explained that he had been a road agent in Chester for about 16 years and had regular contact with you ██████████. Mr. Oleson recalled you telling him at some point that a supervisor of the checklist told you that you could vote. He recalled that, although he was surprised to learn that you were voting in federal elections, you told him that you truly believed you could legally vote in Chester because that is what you had been told by local election officials. Mr. Oleson was not surprised to learn that you were voting in town elections as you were a tax paying resident of the town. Mr. Oleson was firm in stating that you were not being deceptive and that you truly believed that you were allowed to vote in Chester.

c. Contact with Stephan Landau

On July 21, 2022, Investigator Tracy reached out to Chester Selectman Stephan Landau. Mr. Landau said that he knew you very well, he was familiar with you as a resident ██████████. Mr. Landau was aware that you were registered to vote in town and believed it was one of the two former town clerks who told him that. He further explained that he thought it was Barbara Gagnon who had told him and, as the town clerk, Ms. Gagnon was a stickler for the rules. Mr. Landau believed that you were legally allowed to vote in town elections, but not in state and federal elections.

Mr. Landau also told Investigator Tracy that ██████████, is an English citizen who has not applied for American citizenship. At some point after learning that you were

registered to vote in town and were voting, Mr. Landau told ██████████ that he believed ██████████ could vote in town elections. ██████████ told Mr. Landau that he did not believe that to be the case. Mr. Landau did not feel that it was his place to inquire further.

Mr. Landau confirmed that, after speaking with other residents of the town, everyone that he spoke to seemed to believe that you were allowed to vote and that you were not doing anything illegal. Mr. Landau felt strongly that you did not try to deceive anyone and this was the result of some kind of mix up or miscommunication.

d. Contact with ██████████

On July 21, 2022, Investigator Tracy reached out to ██████████ explained that she was aware that you had previously spoken to Investigator Tracy and that you were “mortified” when you found out that you should not have been voting. She explained that you believed that you had the right to vote right up until you had your interview with immigration officials. ██████████ recalled that you and she had spoken about whether you could vote before you registered to vote. She recalled that, when the two of you went to vote on May 12, 2015, ██████████ received her ballot while you told the ballot clerk that you were not a citizen but you were a resident of the town and wanted to know if you could vote. ██████████ could not recall if you filled out all the paperwork right then or if you took it home first to fill it out and then returned later to vote.

While not providing a specific date, ██████████ recalled another occasion where the two of you went to vote and you told the ballot clerk that you were not a citizen but a resident of the town. The ballot clerk checked the list and noted that your name was on it as an registered voter, allowing you to vote.

██████████ stated that you never lied and did not understand why they would allow you to register if you were not allowed to vote when you called to election officials’ attention that you were not a U.S. citizen. ██████████ also noted that you were honest with immigration officials when they asked if you had ever voted in the United States because you truly thought you had the right to vote.

e. Contact with Barbara Cannon

On July 26, 2022, Investigator Tracy spoke to Chester Deputy Town Clerk Barbara Cannon. Ms. Cannon explained that she had not heard about this investigation before that point. She explained that she had been working in the Chester Town Clerk’s office since June of 2015 before becoming the Deputy Town Clerk in January of 2016. She further stated that no one had ever questioned her about your right to vote and this was the first she had heard of any problems.

f. Contact with you

On July 15, 2022, Investigator Tracy met with you for a recorded conversation at the New Hampshire Department of Justice in Concord, New Hampshire. You told Investigator Tracy how you moved to the United States in 2010 and were living here on a green card. Prior to 2015,

you spoke to various individuals about voting with some of them telling you that you should be allowed to vote as you are a tax-paying resident of Chester.

You confirmed that you went to the May 12, 2015 town election with ██████████. You recalled that you told the clerk handing out ballots who you were and asked if you were eligible to vote. You said the clerk directed you to another table to ask the same question of the supervisor of the checklist. Rather than giving you an answer, they gave you two forms which you filled out and returned to the same table.

Investigator Tracy went over the forms that you filled out with you and you acknowledged the sections that you filled out. You were adamant that you did not fill in the "Place of Naturalization" on either form as you had never been naturalized. Where the forms read "Boston" as the "Place of Naturalization," you indicated that it was not written in your handwriting and you did not check off that you were a citizen on the Qualified Voter Affidavit. You did not know who wrote this on the forms.

You confirmed that while your phone number did appear on the document, it was also not in your handwriting and you believed that had been written after you turned in the forms and walked away from the registration table. You stated that no one from the Town of Chester had ever asked you if you had been naturalized, if you had a passport, or if you had a birth certificate. You admitted that you had not thoroughly read the affidavit sections of the Qualified Voter Affidavit or the voter registration.

You indicated that you predominantly vote in town elections and that you voted in the General Election in 2018 as a result of staying on top of current affairs.

You further explained that, after learning you were a registered voter, Mike Oleson questioned you about your eligibility to vote and you told him that you filled out the relevant forms and no one ever told you that you could not vote, even after you specifically brought to election officials' attention your foreign citizenship.

II. APPLICABLE LAW & ANALYSIS

Under RSA 654:12, election officials are required to verify that individuals are citizens of the United States, among other requirements, before they may be allowed to register to vote. Those who vote while not qualified to do so as required by RSA 654 are subject to criminal liability under New Hampshire law and are also subject to a civil penalty of up to \$5,000. RSA 659:34.

It is clear that you voted numerous times in violation of state law. This is readily confirmed by the records provided to this Office and by your own statements. It is equally clear, however, that the election officials in the Town of Chester should not have accepted your registration in the first place, particularly after your own statements about being a foreign national and asking if you were eligible to vote. In reviewing your own account of events as well as all other witnesses interviewed in the course of this investigation, there is no indication that

you had any intention to deceive. Due in part to the errors by election officials, we have determined that in this circumstance further investigation or charges are inappropriate.

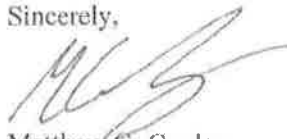
However, you have now been informed by this Office that since you are not a United States citizen, you are not eligible to vote in any local, state, or federal election. We have also notified the Town of Chester that you are not a United States citizen and advised election officials that you should be removed from the voter checklist unless and until you obtain citizenship.

III. CONCLUSION

We conclude that you were not a citizen when you voted in the Town of Chester. Be advised that your actions are inconsistent with the requirements of RSA 659:34, I(e) which prohibits "vot[ing] for an office or measure at an election if such person is not qualified to vote as provided in RSA 654." A violation of this law constitutes a class B felony if the person acts knowingly or purposely. RSA 654:34, II. We find that you did not act knowingly or purposely.

Pursuant to Part I, Article 11 of the New Hampshire Constitution, RSA 659:34, and RSA 654:1, and based upon the investigation conducted by this Office, you are hereby ordered to **Cease and Desist from voting in New Hampshire unless and until you establish United States citizenship in addition to satisfying the other qualifications to vote in this State.** Failure to comply with this Cease and Desist Order may result in this Office pursuing criminal prosecution or civil penalties.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

CC: Chester Town Clerk Elizabeth Lufkin
Chester Supervisors of the Checklist Chair Dianna Charron
Chester Board of Selectmen
Chester Town Moderator Michael Scott

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

February 10, 2023

Tricia Thompson
[REDACTED]

Salisbury, NH 03268

Re: Tricia Thompson - Alleged Illegal Campaign Activity

Dear Ms. Thompson:

This letter is in response to a complaint this Office received on February 13, 2022, regarding allegations that signs had been put up in Salisbury, New Hampshire that violated RSA 644 by not listing an address or fiscal agent. We conclude that the signs posted did violate RSA 644. This matter has been resolved to this Office's satisfaction and no further action will be taken in this case with the understanding that future violations will be met with criminal prosecution or civil penalties.

I. FACTUAL BACKGROUND

On February 13, 2022, Brett Walker of Salisbury submitted a complaint to this Office with an attached photograph. The complaint alleged that signs to elect Tricia Thompson for Selectman had been placed in Salisbury without language required by RSA 644. The photograph was a clear, center-frame picture of a red, white, and blue sign that read, "Elect Tricia Thomson Selectman." The sign contained no other language or lettering of any kind related to a paid-for disclaimer or other identifying information such as contact information or a website.

On May 17, 2022, Investigator Allison Vachon communicated with Mr. Walker by email. Mr. Walker explained that the signs had been taken down.

On May 31, 2022, Investigator Vachon reached out to you directly. Investigator Vachon explained the nature of the complaint to you and what was required under RSA 664:14. You told her that you were not aware that you needed to include that information and that you paid for the signs yourself and did not have a fiscal agent. You indicated that you purchased the signs at "Big Daddy's" in Laconia and that you paid for them. Investigator Vachon asked for your email address so that she could email you RSA 664:14 directly.

II. ANALYSIS

RSA 664:14, I reads, in relevant part, that “[a]ll political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it.”

It is clear from this Office’s review that the signs at issue did not conform to this standard. Upon contacting you, you made it clear that you were not previously aware of the statutory requirements. In the future, this issue can be corrected in one of two ways. First, the signs can be printed with the information when they are created. If, for whatever reason, this information is not included, it may later be handwritten on or a sticker with the information may be applied to the sign, so long as it is large enough to be clearly legible. RSA 664:14, III.

III. CONCLUSION

While this behavior does constitute a violation of RSA 664:14, you cooperated with this investigation and were made aware of the deficiency with your signs after they were taken down. Therefore, this Office will take no further action on this matter. We anticipate that any future election signs will have the proper information on them as required by New Hampshire law. Otherwise, you may be subject to additional enforcement action.

This matter is closed.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

cc: Brett Walker

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

March 10, 2023

Donna Decotis, Town Clerk
Rye Town Hall
10 Central Road
Rye, NH 03870

Robert Eaton, Town Moderator
Rye Town Hall
10 Central Road
Rye, NH 03870

Re: Donna Decotis, Alleged Election Official Misconduct

Dear Clerk Decotis and Moderator Eaton:

This Office received a complaint regarding Rye's ballot counting device (BCD) activity logs being incomplete. Following interviews, reviews of the logs and associated documents, and Clerk Decotis' statements, we find that a number of Rye's BCD activity log entries are not compliant with RSA 656:42 by virtue of failing to ensure the appropriate number of witness signatures. This Office directs you to ensure that, as required under RSA 656:42, the activity logs are completed with all required signatures.

INVESTIGATION

On January 19, 2022, Al Brandano contacted this Office after being referred by the Secretary of State's Office. Mr. Brandano alleged that there were multiple violations in the Town of Kensington regarding the BCD activity logs and that citizens were "losing faith" with the voting process. Mr. Brandano followed up his initial phone call with multiple emails and requests for an in-person meeting. Mr. Brandano, Michael Bean, and Joseph Torelli met with several members of this Office on February 11, 2022.

Mr. Bean provided Chief Investigator Richard Tracy with copies of BCD activity logs for Rye going back to 2010 that Mr. Bean obtained via a Right-to-Know request. Mr. Brandano and Mr. Bean pointed out what they believed were several errors and deficiencies in how those logs had been kept, including a lack of required signatures.

Investigator Tracy reviewed those logs and found that the activity logs did not have the required number of signatures in several locations. Specifically, he noted that there was only one witness where there should have been three. He also noted that the logs did not always include the security seals' serial numbers as they should have. On October 15 and October 23, 2020, there was only one signature, that of the Rye Town Clerk, Donna Decotis.

On February 8, 2023, Investigator Tracy contacted Clerk Decotis as he had communicated with her in the past on other election related matters. He explained why he was calling, and Clerk Decotis stated that she was familiar with Mr. Bean as they had graduated high school together and they were unaware that they both lived in Rye until “they ran into each other” a few years ago. Clerk Decotis recently had a conversation with Mr. Bean about elections but could not recall any conversation about activity logs. However, she did recall that he filed a Right-to-Know request seeking copies of the BCD’s logs.

Clerk Decotis acknowledged that she did not always have all witness signatures. She questioned whether this was mandated as she did not always have someone available to be a witness. Investigator Tracy told her that going forward she needed to assure that she had at least three people to sign the activity log each time a seal is removed and added, even if that meant getting someone from another office or a citizen doing business at the clerk’s office at the time. Clerk Decotis stated that she understood and would take care of it. She was adamant that nothing nefarious took place and that, in most cases, they simply did not have enough people present to get all witness signatures.

Investigator Tracy asked her about the October 15 and October 23, 2020, activity log entries as she was the only one who signed on those dates. Clerk Decotis explained that the October 15 entry, marked “Send to LHS to program”, is when she sent that BCD’s memory card to LHS to be programmed for the upcoming November election. Clerk Decotis indicated that the October 23 entry marked “Unlock bag to test machine” is the date the machine was tested for the upcoming General Election. She stated that only her signature appeared in these places because, due to the COVID-19 pandemic, there was limited access to the building, and town employees were practicing social distancing to prevent catching the disease.

Investigator Tracy reminded Clerk Decotis of the vital importance of following election rules and guidelines in order to instill as much trust in the election process as possible. Clerk Decotis assured Investigator Tracy that going forward she would make sure to have two additional witnesses observe the breaking of any seal and sign each entry on the log. Clerk Decotis assured Investigator Tracy that she was not trying to deceive anyone or commit any type of election fraud.

APPLICABLE LAWS

The New Hampshire Ballot Law Commission has authorized the use of the AccuVote BCD—the only BCD authorized for use in New Hampshire—under RSA 656:40. As referenced previously, RSA 656:42 outlines the rules concerning BCDs, including the following obligation:

No person shall break a counting device seal without the presence of 2 witnesses. Upon breaking such seal, the person responsible shall update the activity log, obtain the signatures of each witness, record the reason for breaking such seal, ensure that it is resealed with a new seal immediately, and properly record the new seal number in the activity log.

RSA 656:42, VIII(d)(3).

The moderator is empowered to refrain from using a BCD in an election if he or she “notices that any seal on the counting device appears tampered with or broken without an adequate record in the activity log...” RSA 656:42, VIII(d)(5). This is consistent with a prior subparagraph whereby the moderator makes a pre-election assessment as to whether “any seals which have been broken have been promptly resealed and the activity log properly recorded and signed.” RSA 656:42, VIII(d)(4). Election officials are also responsible for conducting a pre-election test to confirm that a BCD returns a vote tally consistent with the marked test ballots. RSA 656:42, VIII(e).

A BCD may be used on election day if it passes the test protocol under RSA 656:42, VIII(e) and the moderator is satisfied, under RSA 656:42, VIII(d)(5), that the BCD has not been tampered with.

ANALYSIS

While Town of Rye activity log entries have not all been compliant with RSA 656:42, VIII(d)(3)—in that the logs did not always contain the required number of witness signatures—it was within the Moderator’s discretion to use the BCD in an election if it otherwise passed the pre-election test protocol.

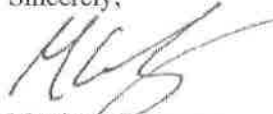
It is undisputed that the logs that Investigator Tracy discussed with Clerk Decotis did not comply with New Hampshire law. Clerk Decotis and other Rye election officials are hereby ordered—and have been instructed—to have two witnesses view the removal of any seal and have those witnesses sign the log alongside the individual removing the seal as the law requires.

CONCLUSION

Although RSA 656:42 requires that activity logs contain the signatures of three witnesses each time a seal is broken, it is within the discretion of the moderator to use a BCD if the moderator is satisfied that the BCD has not been tampered with. Rye election officials are hereby ordered to ensure that their BCD activity logs will be complete and compliant with the law henceforth.

This matter is closed.

Sincerely,



Matthew G. Conley
Attorney
Civil Bureau
(603) 271-6765
matthew.g.conley@doj.nh.gov

MGC/mgc

Donna Decotis, Alleged Election Official Misconduct
Page 4 of 4

cc: Al Brandano
Michael Bean
Joseph Torelli

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: State v. Michael Drouin
Case Number: 226-2022-CR-00615

Name: Michael Drouin, [REDACTED] Merrimack NH 03054
DOB: [REDACTED]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
False Documents, Names or Endorsement		2008235C	666:6	April 13, 2021

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Misdemeanor

Sentence: see attached

April 24, 2023
Date

Hon. Jacalyn A. Colburn
Presiding Justice

Amy M. Feliciano
Clerk of Court

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Myles Brand Matteson, ESQ; Matthew Gregory Conley, ESQ Defendant
Defense Attorney Eleftheria S. Keans, ESQ
 Sex Offender Registry Other _____ Dist Div. _____

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**
http://www.courts.state.nh.us

Court Name: Hillsborough Superior Court Southern District
Case Name: State v. Michael Drouin
Case Number: 226-2022-CR-615 Charge ID Number: 2008235C
(if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	
Crime: False Documents, Names, Endorsement	Date of Crime: 04/13/2021

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Misdemeanor

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a _____
OR A person similarly situated to _____

CONFINEMENT

A. The defendant is sentenced to the House of Corrections for a period of 90 days.
Pretrial confinement credit is _____ days.

- B. This sentence is to be served as follows:
 - Stand committed Commencing _____
 - Consecutive weekends from _____ PM Friday to _____ PM Sunday beginning _____
 - All** _____ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 2 years from today or release on charge ID number _____.
 - _____ of the sentence is deferred for a period of _____.
- The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.
- Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

Other: _____

C. The sentence is consecutive to case number and charge ID _____
 concurrent with case number and charge ID _____

- D. The court recommends to the county correctional authority:
 - Work release consistent with administrative regulations.
 - Drug and alcohol treatment and counseling.
 - Sexual offender program.
 - _____

Case Name: State v. Michael Drouin

Case Number: 226-2022-CR-615

HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

PROBATION

A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.

Effective: Forthwith Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.

FINANCIAL OBLIGATIONS

A. **Fines and Fees:**

Fine of \$ 250.00, plus a statutory penalty assessment of \$ 60.00 to be paid:

Today

By 90 days

Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ _____ of the fine and \$ _____ of the penalty assessment is suspended for _____ year(s).

A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

B. **Restitution:**

The defendant shall pay restitution of \$ _____ to _____

Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: _____

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ _____

payable through _____ in the amount of \$ _____ per month.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

Case Name: State v. Michael Drouin

Case Number: 226-2022-CR-615


HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____
- D. The defendant shall perform 250 hours of community service and provide proof to State within 12 months of today's date.
- E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may destroy the evidence return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

The defendant shall lose the right to vote in New Hampshire pursuant to Part I, Article 11 of the New Hampshire Constitution.

For Court Use Only


Honorable Jacalyn A. Colburn
April 24, 2023

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<http://www.courts.state.nh.us>

Court Name: Hillsborough Superior Court Southern District
Case Name: State v. Michael Drouin
Case Number: 226-2022-CR-615 Charge ID Number: 2008235C

COMPLAINT/INDICTMENT AMENDMENT FORM

- The offense degree is amended to:
- Violation Misdemeanor Class A Class B Unclassified (non-person)
 Felony Class A Class B Special Unclassified (non-person)

- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:

RSA name (UCT Descriptor): _____

RSA: 666:6

- The complaint narrative is unchanged.
 Scrivener's error – amended as follows (no defense signature required):

- The complaint narrative is amended as follows:

Michael R. Drouin, without authority, falsely represented that any other had written any letter or document, knowing such representation to be false, for the purpose of influencing votes. To wit; Michael R. Drouin created a Craigslist advertisement on election day purported to have been written by William Boyd that listed William Boyd's cell phone number for the purpose of interfering with William Boyd's efforts to communicate using his cell phone to coordinate election efforts on election day.

If applicable, the inchoate reference is unchanged; amended to read:

If applicable, the extended term is unchanged; amended to read:

04/21/2023
Date

/s/ Matthew Conley
Signature of Prosecuting Attorney

04/21/2023
Date

/s/ Eleftheria Keans
Signature of Defendant/Attorney for Defendant

THE STATE OF NEW HAMPSHIRE
INDICTMENT

HILLSBOROUGH SOUTH, SS.

NOVEMBER TERM, 2022

At the Superior Court, holden at Nashua, within and for the County of HILLSBOROUGH, upon the 17th day of November, in the year of our Lord two thousand and twenty-two

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

MICHAEL R. DROUIN



226-2022-CR-615
2008235C

of Merrimack, New Hampshire, on or about April 13, 2021, New Hampshire in the County of Hillsborough, did commit the crime of

INTERFERENCE WITH COMMUNICATION

RSA 659:40-a

in that, Michael R. Drouin, on the day of an election, knowingly blocked the access of a candidate's communications equipment or services with the intent of interfering with campaign activity.

Said acts being contrary to the form of the Statute, in which case made and provided, and against the peace and dignity of the State.

Myles B. Matteson, NH Bar #268059
Assistant Attorney General

This is a true bill.

Plea of Guilty as amended. See
Complaint/Indictment Amendment form.

Amy M. Felciano, Clerk of Court

Foreperson

Name:	Michael R. Drouin	April 24, 2023
DOB:	[Redacted]	
Address:	[Redacted]	Merrimack, NH 03054
RSA:	RSA 659:40-a	
Offense level:	Class B Felony; 3 1/2 - 7 years, \$4,000 fine, or both	
Dist/Mun Ct:	N/A	
Docket No.:	226-2022-CR-00615	
Charge ID:	2008235C	