

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF JUSTICE

*In re New Hampshire Republican State Committee*

**FINAL REPORT**  
**September 26, 2023**

On August 25, 2020, the Attorney General's Office received a report that the Meredith Town Clerk's Office was rejecting completed absentee ballot application forms sent by the New Hampshire Republican State Committee (NHRSC) to voters as part of an election-related mailer. Following an investigation, this Office determined that the absentee ballot application forms sent by NHRSC did not list the availability of absentee ballots for both the State Primary and General Elections, and thus did not comply with applicable law. This Office ordered the NHRSC to undertake remediation. This report sets forth the factual findings, the actions ordered by this Office, and the results.

**I. FACTUAL BACKGROUND**

On August 25, 2020, Attorney Bryan Gould, counsel to NHRSC, reported that the Meredith Town Clerk was rejecting absentee ballot request forms. NHRSC had sent the forms as part of a mailer. The mailer, issued on or about August 20, 2020, included what appeared to be an absentee ballot request application for the 2020 General Election to be sent by the voter to the appropriate municipal clerk's office for the voter to receive an absentee General Election ballot.

On August 26, 2020, this Office contacted Meredith Town Clerk Kerri Parker regarding Attorney Gould's report. This Office learned that an assistant clerk had spoken with a voter who handed the assistant clerk NHRSC's absentee ballot application form. The assistant clerk reviewed the form but was concerned about accepting it because it did not contain the exact content mandated by Laws of 2020, Chapter 14 (otherwise known as "HB1266").

The assistant clerk did not turn the voter away, but instead provided the voter with the official absentee ballot application form published by the Secretary of State's Office. The voter completed this form and successfully obtained an absentee ballot.

As part of its review of this matter, this Office reviewed an email showing that NHRSC Executive Director Elliot Gault e-mailed Deputy Secretary of State David Scanlan on August 4, 2020. Director Gault indicated that he wanted to run NHRSC's "generic ... AB App." by Deputy Scanlan. Director Gault stated twice in his email that NHRSC did not plan on sending this application, but he inquired if this application could be sent by NHRSC if it decided to publish the application. In a subsequent phone call between Director Gault and Deputy Scanlan, Deputy Scanlan indicated that the NHRSC's form appeared to contain the necessary information and was "good to go."

NHRSC decided to publish and mail the proposed absentee ballot request form more than two weeks prior to the September 8, 2020, State Primary election. NHRSC used a United States

Postal Service scanning system that identified which recipients of the absentee ballot application filled out and returned the form. This data could be pulled daily, which would ensure that NHRSC was able to promptly contact any voters who had returned this form. NHRSC sent the mailer to a total of 204,545 New Hampshire voters.

On August 28, 2020, this Office issued a Cease and Desist Order to NHRSC for violating RSA 657:4, II(a), by failing to produce a complete facsimile of the absentee ballot application form. A copy of the Cease and Desist Order is attached as Exhibit 1.

## **II. APPLICABLE LAW**

NHRSC's absentee ballot application form was not a "complete facsimile of the form prepared by the secretary of state," and therefore it did not comply with RSA 657:4, II(a). NHRSC's form was deficient in two ways:

1. It only identified that the applicant is requesting a ballot for the "State General Election to be held on November 3, 2020" while not including required language regarding the State Primary and the voter's choice of ballot; and
2. It did not contain the language HB1266 required: "Any person who witnesses and assists a voter with a disability in executing this form shall print and sign his or her name in the space provided on the application form."

## **III. CEASE AND DESIST ORDER**

NHRSC's publication of this defective form more than two weeks prior to the September State Primary could have caused voter confusion and frustration. Voters could have completed the purported absentee ballot forms believing they would receive absentee ballots for the State Primary, only to discover that the forms were only a request for absentee ballots for the November General Election.

Additionally, given the already heavy burden on clerks' offices around the State, due to the changes to election laws based on COVID-19 concerns, clerks did not necessarily have the resources to reach out to each voter who used NHRSC's absentee ballot request form to confirm whether they also wanted a State Primary ballot.

This Office's Cease and Desist Order required NHRSC to cease and desist from publishing any other absentee ballot application forms for the 2020 election cycle unless they were accurate and complete facsimiles of the language included in HB 1266.

Additionally, this Office required NHRSC to provide a written plan by close of business on August 31, 2020, explaining how NHRSC would urgently remedy the situation, including all remedial steps to be taken to notify recipients of the mailer so that voters knew they may not be able to obtain absentee ballots for the Primary Election based on this form.

#### **IV. REMEDIATION**

On August 31, 2020, NHRSC submitted its remediation plan to the Attorney General's Office. A copy of NHRSC's plan is attached as Exhibit 2. The plan provided as follows:

1. NHRSC would use newspaper ads and other communications to reach voters who received the absentee ballot application form. The communications would make three points:
  - i. Clerks will accept a properly completed application as a request for an absentee ballot for the November general election.
  - ii. Voters completing the application will likely not receive an absentee ballot for the September Primary.
  - iii. Voters who completed the application may vote in the Primary by voting on Election Day or by request by downloading an absentee ballot at <https://sos.nh.gov>. The form could be printed, completed, scanned, and emailed, faxed, or returned in person to the clerk's office.
2. NHRSC, in consultation with the Republican National Committee (RNC), would place newspaper ads throughout New Hampshire with the information in #1 above.
  - i. NHRSC would work with the New Hampshire Press Association to determine the most appropriate newspapers to place ads in.
3. NHRSC, in consultation with RNC, would identify any voter or household that received, completed, and returned absentee ballot applications that NHRSC had mailed.
4. NHRSC, with the assistance of the RNC, would call all identified voters individually and communicate the information in #1 above. NHRSC would also have an option for voters to request to speak with a staff member who would be available to provide information on how to request an absentee ballot or vote in-person on Election Day.
5. NHRSC would also email the information above in #1 to identified individuals.

#### **V. CONCLUSION**

On September 2, 2020, Attorney Gould provided this Office with a copy of the advertisement that NHRSC would publish pursuant to #1 and #2 above. Attorney Gould stated that the advertisement would be published in the Union Leader.

On September 8, 2020, NHRSC notified this Office that "To date, the NHGOP field staff completed in-person deliveries of new absentee ballot applications to affected voters that requested the delivery. In-person delivery requests, however, were minimal. Specifically, the NHGOP only received 18 requests, and only 10 voters answered the door during field staff deliveries. In addition, the NHGOP has completed all phone calls to affected voters."

This matter is closed.

ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD  
ATTORNEY GENERAL



JANE F. YOUNG  
DEPUTY ATTORNEY GENERAL

August 28, 2020

Bryan K. Gould, Esquire  
Cleveland, Waters & Bass, P.A.  
PO Box 1137  
Concord, NH 03302-1137

Re: CEASE AND DESIST ORDER  
Violation of RSA 657:4

Dear Attorney Gould:

On August 25, 2020, you contacted this Office to report that the Meredith Town Clerk was rejecting absentee ballot request forms, sent as part of a mailer by the New Hampshire Republican State Committee ("State Committee"). The mailer, issued on or about August 20, 2020, includes what is purported to be an absentee ballot request application for the 2020 General Election to be sent by the voter to the appropriate town or city clerk in order for the voter to receive an absentee General Election ballot.

Factual Background

On August 26, 2020, Chief Investigator Richard Tracy contacted Meredith Town Clerk, Kerri Parker, to follow-up on your report. In speaking with Clerk Parker, Investigator Tracy learned that an assistant clerk had spoken with the voter who handed the assistant clerk the State Committee's absentee ballot application form. The assistant clerk reviewed the form, but was concerned about accepting it because it did not contain the exact content mandated by Laws of 2020, Chapter 14 (otherwise known as "HB1266").

The assistant clerk did not turn the voter away, but instead provided the voter with the official absentee ballot application form published by the Secretary of State's Office. The voter completed this form and successfully obtained an absentee ballot.

As part of its review of this matter, the Attorney General's Office reviewed an email showing that the State Committee, through its Executive Director, Elliot Gault, emailed Deputy Secretary of State David Scanlan on August 4, 2020. Director Gault indicated that he wanted to "run by" Deputy Scanlan, the State Committee's "generic Generic (sic) AB App." Director Gault

twice stated, in his email, that the State Committee did not plan on sending this application. But, Director Gault inquired if this application could be sent by the State Committee if it decided to publish it. The Attorney General's Office was informed that, in a subsequent phone call between Director Gault and Deputy Scanlan, Deputy Scanlan indicated that the State Committee's form appeared to contain the necessary information and was "good to go."

The State Committee decided to publish and mail the proposed absentee ballot request form more than two weeks prior to the September 8, 2020 State Primary election.

### Legal Analysis

HB1266 became effective on July 17, 2020. With respect to absentee ballot application forms, it states in relevant part:

"[T]he absentee ballot application form described in RSA 657:4 is hereby suspended through December 31, 2020, provided that such form may be used in the event of a winter storm the day before the election. The secretary of state shall instead prepare new application forms for absentee ballots worded in substantially the following form to be used prior to any election occurring prior to December 31, 2020."

Laws of 2020, Chapter 14; 14:2. (emphasis added).

The new absentee ballot application form, mandated by the Legislature, includes language allowing a voter to request an absentee ballot for either the 2020 September State Primary Election, 2020 November General Election, or both. It also provides for a voter requesting a Primary Election absentee ballot to choose whether he or she wants a Republican or Democrat ballot.

RSA 657:4, II(a) states that, "[a]ny person, other than the city or town clerk or the secretary of state, that publishes, mails, or distributes in any manner any written communication that contains a form or post card which a reasonable person would consider as intended to be used by the recipient of the communication to submit a request for an absentee ballot shall identify who is publishing, mailing, or distributing the communication, and attach a copy of the form prepared by the secretary of state pursuant to paragraph I of this section to the communication or include in the communication a complete facsimile of the form prepared by the secretary of state pursuant to paragraph I of this section." (emphasis added).

Because the State Committee's absentee ballot application form is not a "complete facsimile of the form prepared by the secretary of state," it does not comply with RSA 657:4, II(a). The State Committee's form is deficient in two ways:

1. It only identifies that the applicant is requesting a ballot for the "State General Election to be held on November 3, 2020" while not including the mandated language regarding the State Primary and the voter's choice of ballot; and

2. It does not contain the language mandated by HB1266: "Any person who witnesses and assists a voter with a disability in executing this form shall print and sign his or her name in the space provided on the application form."

The State Committee's choice to publish this defective form more than two weeks prior to the September State Primary may cause voter confusion and frustration. Voters may complete the purported absentee ballot forms believing they will receive absentee ballots for the State Primary, only to discover that the forms are only a request for absentee ballots for the November General Election. The comment made by Deputy Scanlon is not a basis for the State Committee not to comply with New Hampshire law as the Secretary of State's Office does not have the general authority to waive provisions of the law.

Additionally, given the already heavy burden on clerks' offices around the State, due to the changes to election laws based on COVID-19 concerns, clerks do not have the resources to reach out to each voter who uses the State Committee's absentee ballot request form to confirm whether he or she also wants a State Primary ballot, and which party's ballot he or she wants.

#### Order

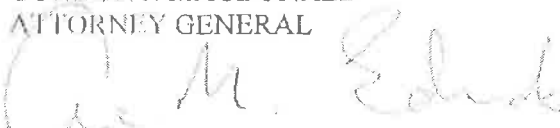
**In light of our finding that the State Committee violated RSA 657:4, II(a) by its failure to produce a complete facsimile of the absentee ballot application form, the State Committee is hereby ordered to CEASE AND DESIST any and all activities which violate this provision in the future. Furthermore, the State Committee shall CEASE AND DESIST from publishing any other absentee ballot application forms for the 2020 election cycle unless they are accurate and complete facsimiles of the language included in HB 1266**

**Additionally, the State Committee is required to provide the Attorney General's Office with a written plan, by close of business on Monday, August 31, 2020, explaining how it will urgently remedy this situation, including all remedial steps to be taken, to notify recipients of its absentee ballot request mailer so that voters know they may not be able to obtain absentee ballots for the 2020 September Primary Election based on this form.**

Any future failure to comply with our State's election laws may result in this Office seeking enforcement action.

Cease and Desist Order Issued  
By the Authority of:

GORDON J. MACDONALD  
ATTORNEY GENERAL

  
Anne M. Edwards  
Associate Attorney General  
Election Law Unit  
(603) 271-3650

**To: Anne Edwards**  
**Associate Attorney General, New Hampshire Department of Justice**  
**33 Capitol Street, Concord, NH 03301**

**From: Bryan Gould**  
**Counsel to the New Hampshire Republican State Committee**

**Re: New Hampshire Absentee Ballot Application Mail Solution**

**Date: 8/31/2020**

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At the request of the New Hampshire Department of Justice, the following process has been established as a pathway to correct any confusion that voters may have after receiving the Absentee Ballot application mail pieces that were sent by the New Hampshire Republican State Committee (NHGOP) in consultation with the Republican National Committee (RNC).

1. The NHGOP will utilize newspaper ads, phone calls, and emails to reach voters who received the absentee ballot application form. The communications will make these three points:
  - a. Clerks will accept a properly completed application as a request for an absentee ballot for the November general election.
  - b. Voters completing the application will likely not receive an absentee ballot for the September primary.
  - c. Voters who completed the application may vote in the primary by voting on election day or by request by downloading an absentee ballot at <https://sos.nh.gov/>. The form can be printed, completed, scanned, and emailed, faxed, or returned in person to the clerk's office.
2. The NHGOP in consultation with the RNC will place newspaper ads throughout New Hampshire with the information in #1 above.
  - a. The NHGOP will work with the New Hampshire Press Association to determine the most appropriate newspapers to place ads in.
3. The NHGOP in consultation with the RNC will identify any voter and/or household that has received, completed, and returned the Absentee Ballot application that was mailed to voters in New Hampshire by the NHGOP.
  - a. The NHGOP utilized a USPS barcode scanning system that enables us to identify which recipients of the Absentee Ballot application filled out and returned said form. The results of the bar code scanning system as of 8/31/2020 are outlined below.
  - b. This data can be pulled daily which will ensure that the NHGOP is able to contact any voters who have returned this form in real time.
  - c. Two separate mail pieces with the Absentee Ballot application have been sent to the exact same universe of New Hampshire voters. The total number of recipients of the two forms was 204,545 New Hampshire voters.
  - d. As of 8/31/2020 2,965 voters in New Hampshire have returned the Absentee Ballot application.
4. Upon identifying these voters, the NHGOP, with the assistance of the RNC, will call these voters individually and communicate the information in #1 above. The NHGOP will also have an option for voters to request to speak with a staff member who will be available to provide information on how to request an absentee ballot or vote in-person on election day.

5. The NHGOP will also email the information above in #1 to individuals for whom we have emails.