

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

1 GRANITE PLACE SOUTH
CONCORD, NEW HAMPSHIRE 03301

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

December 21, 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, 2023-June 30, 2023. 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 "John 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, 2023, to June 30, 2023

Issued December 21, 2023

Prepared by:

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Attorney General

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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. During this reporting period, the Unit was staffed by one full-time attorney, Assistant Attorney General 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 Senate this report on the status of all complaints of alleged violations of election laws received from January 1, 2023, to June 30, 2023. 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, 2023, to June 30, 2023, 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, 2023, to June 30, 2023

Complaint Against	Complainant	Date of complaint	Allegations	Status	Bates No.
Nashua Mayor	Laura Colquhoun	1/18/2023	RSA 659:44-a, Alleged illegal campaign activity	Open	
Alleged Wrongful Voting – unfounded	Town of Canaan	1/23/2023	RSA 659:34, Alleged wrongful voting	Closed on 3/10/2023	063-065
Michael Morelle	Maura Palmer	1/25/2023	RSA 664:14, Alleged illegal campaign activity	Open	
Alleged Wrongful Voting – unfounded	Christina Zornio, Clerk	2/1/2023	RSA 659:7, Alleged wrongful voting	Closed on 9/15/2023	111
Tara Columb	Frank Edelblut & Laura Dunn	2/1/2023	RSA 659:44-a, Alleged illegal campaign activity	Closed on 9/15/2023	115-117
Jon Swan	n/a	2/2/2023	RSA 654:31-a & RSA 654:45, disclosure of confidential information	Closed on 9/26/2023	131-133
Jeanne Dietsch/Granite State Matters	Carroll County Republican Committee	2/6/2023	RSA 664:14, Alleged illegal campaign activity	Closed on 8/29/2023	090-093
Jade Hartsgrove	Richard Giehl	2/16/2023	RSA 659:44-a, Alleged illegal campaign activity	Closed on 9/27/2023	179-180

Periklis Karoutas, Strategic Alchemy	Katie Williams	3/10/2023	RSA 664:14, Alleged illegal campaign activity	Closed on 10/3/2023	198
Alleged Wrongful Voting	Cheryl Brooks	3/13/2023	RSA 659:34, Alleged Wrongful Voting	Open	
Anthony Apache Lastone	Lisa Gonyer	3/13/2023	RSA 659:40, Alleged illegal campaign activity	Open	
Casella Waste Management	Jon Swan	3/13/2023	RSA 659:40, Alleged illegal campaign activity	Open	
Haverhill Fire Chief	Ed Ballam, Gary Hebert	3/17/2023	RSA 659:44-a, Alleged illegal campaign activity	Closed on 9/8/2023	098-103
Town of Rye	Secretary of State's Office	3/27/2023	RSA 659:95, Election review and follow up	Open	
Alleged Wrongful Voting - Unfounded	Ashland Police Department	3/28/2023	RSA 659:34, Alleged wrongful voting	Closed on 9/19/2023	122-123
Tina Thomas – charges filed	Jonathan Wood	3/28/2023	RSA 659:41, Alleged assault of election official	Open	
Town of Nottingham	Roger Richard	3/29/2023	RSA 656:20, Election review and follow up	Closed on 5/30/2023	072-074
Senate District 24 2022 Election	Lou Gargiulo	4/10/2023	RSA 659:95, Election review and follow up	Open	

Town of Hollis	Hillsborough County Attorney	4/17/2023	RSA 654:38, Alleged election official misconduct	Open	
Kenneth McCord	Thomas Maher	5/8/2023	RSA 644:14, Alleged illegal campaign activity	Open	
Dartmouth Undergraduate Student Government	Debbie Callahan	5/9/2023	RSA 659:40, Alleged illegal campaign activity	Open	
Jonathan Wood	James McLeod	6/19/2023	RSA 669:30 Alleged election official misconduct	Closed on 10/3/2023	186-197
Constance Kieley	Nicole Concordia	6/26/2023	RSA 664:14 Alleged illegal campaign activity	Closed on 8/11/2023	086-087

A. Number of Complaints Received Per Month

Month/ year	Number of Complaints
January 2023	3
February 2023	5
March 2023	10
April 2023	2
May 2023	2
June 2023	2
TOTAL:	24

B. Complaints Received by Type of Complaint

Type of Complaint	RSA Violations	Number of Complaints
Alleged Wrongful Voting	RSA 659:34 (wrongful voting)	4
Alleged Illegal Campaign Activity	RSA 664:14 (political advertising disclosure requirements); RSA 664:16 (push poll, political advertising in newspaper,); RSA 664:17 (removal of signs); RSA 666:6 (false documents)	13
Alleged Election Official Misconduct	RSA 654:2 (temporary absence); RSA 659:37 (voter interference); RSA 659:69 (duties); RSA 659:77 (general neglect); RSA 666:3 (official misconduct)	2
Alleged Campaign Finance Violation		0
Alleged Assault of Election Official	RSA 659:41 (assault, etc.)	1
Election Review & Follow-Up		3
Miscellaneous	RSA 654:31-a & RSA 654:45 (disclosure of confidential information)	1
TOTAL:		24

II.

**INVESTIGATIONS OPEN PRIOR TO THE
REPORTING PERIOD**

Alleged Violation	Date Opened	Date Closed	Bates No.
Wrongful Voting RSA 659:34 – charges filed	10/30/2019		
Voter Suppression RSA 659:40	8/12/2020	9/26/2023	134-144
Voter Suppression RSA 657:4	8/27/2020	9/26/2023	145-152
Illegal Campaign Activity RSA 656:18	10/15/2020	9/26/2023	153-159
Wrongful Voting RSA 659:34 – guilty plea	4/26/2021	9/27/2023	169-178
Voter Intimidation RSA 659:40	6/15/2021		
Illegal Campaign Activity RSA 664:6	7/1/2021	8/31/2023	096-097
Illegal Campaign Activity RSA 664:14	12/22/2021	9/13/2023	104-110
Wrongful Voting RSA 659:34 – charges filed	2/2/2022		
Wrongful Voting RSA 659:34	2/18/2022		
Illegal Campaign Activity RSA 664:14	2/18/2022	9/18/2023	118-121
Illegal Campaign Activity RSA 664:14	3/8/2022		
Wrongful Voting RSA 659:34	3/15/2022		
Illegal Campaign Activity RSA 659:44	3/31/2022		
Election Official Misconduct RSA chapter 669	4/13/2022		
Wrongful Voting RSA 659:34	6/1/2022	9/26/2023	128-132
Illegal Campaign Activity RSA 655:28	6/30/2022	8/28/2023	089
Illegal Campaign Activity RSA 664:17	8/12/2022	9/15/2023	112-114
Wrongful Voting RSA 659:34	8/27/2022		
Wrongful Voting RSA 659:34	8/30/2022	9/26/2023	160-168
Illegal Campaign Activity RSA 666:6	9/2/2022	9/21/2023	126-127
Illegal Campaign Activity RSA 659:40	10/17/2022	9/28/2023	181-183

Illegal Campaign Activity RSA 664:14	10/25/2022	10/4/2023	198
Illegal Campaign Activity RSA 664:14	11/1/2022		
Wrongful Voting RSA 659:34	11/8/2022		
Wrongful Voting RSA 659:34	11/10/2022	9/19/2023	124-125
Wrongful Voting RSA 659:34	11/17/2022		
Wrongful Voting RSA 659:34	11/17/2022		
Wrongful Voting RSA 659:34	11/18/2022		
Election Official Misconduct RSA 659:77	11/23/2022		
Official Misconduct RSA 666:3	12/21/2022		

III.

INDEX OF CLOSURE LETTERS/COMMUNICATIONS

Alleged Violation	Date Closed	Bates Page Number
RSA 659:40 – voter suppression	1/5/2023	001-007
RSA 659:44-a – electioneering	1/5/2023	008-011
RSA 664:14 – identification on advertising	1/5/2023	012-014
RSA 666:1 - term of office	1/5/2023	015-020
RSA 659:44 – electioneering	1/10/2023	021-022
RSA 666:3 – official duties	1/18/2023	023
RSA 659:34 - wrongful voting	1/30/2023	024-025
RSA 666:3 – official duties	1/30/2023	026-027
RSA 659:9 – moderator duties	2/6/2023	028-033
RSA 659:34 – wrongful voting	2/10/2023	034-039
RSA 656:42 – clerk duties	2/10/2023	040-047
RSA 659:44-a – electioneering	2/10/2023	048-051
RSA 664:14 – identification on advertising	2/10/2023	052-053
RSA 659:34 – wrongful voting	3/10/2023	054-056
RSA 666:3 – official misconduct	3/10/2023	057-060
RSA 659:34 – wrongful voting	3/10/2023	061-062
RSA 659:34 – wrongful voting	3/10/2023	063-065
RSA 666:6 – false names	4/24/2023	066-071
RSA 656:20 – official duties	5/30/2023	072-074
RSA 659:34 – domicile	5/31/2023	075-077
RSA 7:33 – qualifications	6/22/2023	078-081
RSA 666:3 – official duties	8/10/2023	082-085
RSA 664:14 – identification on advertising	8/11/2023	086-087
RSA 659:43 – electioneering zone	8/14/2023	088
RSA 655:28 – qualifications	8/28/2023	089
RSA 664:17 – removal of signs	8/29/2023	090-093
RSA 664:17 – removal of signs	8/30/2023	094-095
RSA 664:3 – registration and reporting	8/31/2023	096-097
RSA 664:14 – identification	9/8/2023	098-103
RSA 664:14 – identification	9/13/2023	104-110
RSA 659:34 – wrongful voting	9/15/2023	111
RSA 664:17 – removal of signs	9/15/2023	112-114
RSA 659:44-a – electioneering	9/15/2023	115-117
RSA 664:14 – identification	9/18/2023	118-121

RSA 659:34 – wrongful voting	9/19/2023	122-123
RSA 659:34 – wrongful voting	9/19/2023	124-125
RSA 666:6 – false names	9/21/2023	126-127
RSA 659:34 – wrongful voting	9/26/2023	128-130
RSA 654:31-a – disclosure of confidential material	9/26/2023	131-133
RSA 659:40 – voter suppression	9/26/2023	134-144
RSA 659:40 – voter suppression	9/26/2023	145-152
RSA 656:18 – printed ballots	9/26/2023	153-159
RSA 659:40 – voter suppression	9/26/2023	160-168
RSA 659:34 – wrongful voting	9/27/2023	169-178
RSA 659:44-a – electioneering	9/27/2023	179-180
RSA 659:40 – voter suppression	9/28/2023	181-183
RSA 664:14 – identification	10/3/2023	184-185
RSA 666:3 – official misconduct	10/3/2023	186-197
RSA 664:14 – identification	10/4/2023	198
RSA 659:40 – voter suppression	10/5/2023	199
RSA 659:30 – wrongful voting	10/10/2023	200-203
RSA 657 – official misconduct	10/12/2023	204-212
RSA 659:34-a – wrongful voting	10/16/2023	213-215

**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



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 5, 2023

Al Brandano
[REDACTED]

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 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,



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**

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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

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 "uneasy." 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**

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JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

January 10, 2023

David Croft
Merrimack County Sheriff
[REDACTED]
Boscawen, NH 03303

**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

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

Note to File

Coos District 3 Election Officials in Colebrook, West 2022157863 1/18/2023 Note to File
Stewardstown & 1:21:00 PM

Closeout Note

Following ELU discussion on 1/12/23, this matter is being administratively closed. Following investigation, no violations of state law found.

**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

January 30, 2023

Nicole Merrill
Windham Town Clerk
3 North Lowell Road
Windham, NH 03087

Peter Griffin
Windham Town Moderator
3 North Lowell Road
Windham, NH 03087

Re: Richard J. Cormier, Alleged Election Official Misconduct

Dear Clerk Merrill and Moderator Griffin:

We write to conclude our review of the circumstances surrounding Supervisor Mashimo's complaint regarding Richard Cormier voting in the November 8, 2022 General Election. This Office investigated based on her report to this Office. We anticipate closing this matter after receiving confirmation that Windham election officials have received this letter and will ensure that the guidance in this letter will be followed in future elections. In summary, there are two individuals named Richard J. Cormier who have resided in Windham—one is now deceased and due to a mistake, the second inadvertently voted under the checklist registration of the deceased individual.

On November 29, 2022, Windham Supervisor of the Checklist Eileen Mashimo contacted this Office to report that Richard J. Cormier of 5 Mockingbird Road, Windham was checked off as having voted in the November 8, 2022 General Election despite the fact that he had passed away prior to the election. Supervisor Mashimo spoke with Chief Investigator Richard Tracy on that same date. Investigator Tracy checked state records and found that a second Richard J. Cormier with a different date of birth resided at 43 Beacon Hill Road in Windham. Supervisor Mashimo confirmed that she did not see the second Richard J. Cormier on the Windham voter checklist. Investigator Tracy was not able to find the second Richard J. Cormier in *ElectioNet*.

After speaking to Ms. Mashimo, Investigator Tracy called two separate phone numbers in state records associated with the Richard Cormier of Beacon Hill Road. Investigator Tracy left a voicemail explaining who he was, his purpose for calling, and asking for a return call.

On November 30, 2022, Investigator Tracy received a call from Richard Cormier. Mr. Cormier confirmed that he had voted in person at the November 8, 2022 General Election in Windham, New Hampshire. He stated that he had assumed he was registered to vote when he registered his vehicle and conducted other business at town hall after purchasing his home in Windham in 2020. Investigator Tracy explained that Mr. Cormier was neither on the checklist

nor on the Windham voter checklist. Mr. Cormier told him that Mr. Cormier showed his identification when he voted, he watched election officials cross out his name, and he voted. Investigator Tracy told him that there was another Richard J. Cormier living in Windham who happened to pass away earlier this year and, he gathered, the ballot clerk made a mistake when checking him in by not confirming the address of the individual at issue. Mr. Cormier agreed that he would register to vote promptly.

Investigator Tracy then called Supervisor Mashimo and left her a message explaining what he had learned and asking her to call back if she had any questions. He then called and left a message for Clerk Merrill, asking her to call him so that he could explain what had happened so that she would understand when Mr. Cormier went to register.

Clerk Merrill returned Investigator Tracy's call later that afternoon. Investigator Tracy explained what had been reported to this Office and what he had learned. Clerk Merrill agreed that it was likely that the ballot clerk had made a mistake. Investigator Tracy advised that this Office would be sending a letter and suggested that Clerk Merrill and Moderator Griffin use this letter for training purposes to follow all procedures under the law and recommendations for process in the Election Procedure Manual.

Though we appreciate that this circumstance is unusual—two unrelated individuals with identical names living in the same town—this matter could have been avoided if proper procedure had been followed in this case. The New Hampshire Election Procedure Manual: 2022-2023 outlines the ballot clerk election procedures for the primary and general elections on pages 409 and 412, respectively. Instructions call for the ballot clerk to ask the voter to announce their name and domicile address, then call for the ballot clerk to find the voter's name and address on the voter checklist and read that information aloud as it appears on the sheet.

Those actions did not appear to have occurred when Mr. Cormier voted on November 8, 2022. We trust that this instance illustrates the importance of these procedures. We expect that these procedures will be followed to avoid similar errors in the future.

This matter will be closed, please reach out to me if you have any questions.

Sincerely,



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

MGC/mgc

cc: Windham Supervisor of the Checklist Eileen Mashimo
Richard J. Cormier

**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
[REDACTED]
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

[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

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 Piecuch 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 Picuch, 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 Picuch 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 Picuch returned from vacation, Ms. Unger relayed her conversation with Clerk Robinson to Director Picuch. Director Picuch 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 Picuch, 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 Picuch 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,

A handwritten signature in blue ink, appearing to read 'MGC', is written over the typed name.

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

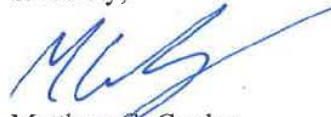
Under New Hampshire law, "[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties." RSA 659:44-a, I. Further, "[n]o public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, 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.

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. 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

Sally Kellar, Town Clerk
Town of Bedford
24 North Amherst Road
Bedford NH 03110

Re: [REDACTED] Alleged Wrongful Voting

Dear Clerk Kellar:

On November 10, 2022, you notified this Office of a possible incident of voter fraud. We investigated the matter and find that no willful violations of New Hampshire law occurred as the issues raised resulted from a clerical error. We are copying Moderator Brian Shaughnessy on this letter so he can direct election officials to take greater care in marking the checklist and complying with New Hampshire election protocols in the future to avoid similar errors.

I. FACTUAL BACKGROUND

On November 10, 2022, I spoke with you and you stated that Bedford's supervisors of the checklist had been updating their voter lists in the ElectionNet system when they came across one individual who would not scan in because his name had already been scanned in Goffstown, New Hampshire. That individual was [REDACTED]. You noted that the person just above [REDACTED] had the last name [REDACTED] and the person below him was his daughter who had the same last name. You told me that she did not vote in this election as far as you knew because she was away at college. You indicated that you would ask around for more information and get back to me if you found anything.

On December 5, Investigator Daniel Mederos reached out to you for more information. You gave him documentation of [REDACTED] voting in Bedford as well as contact information for the supervisors of the checklist and the Bedford Moderator. You told Investigator Mederos that you would be able to recognize [REDACTED]'s daughter, but you did not see her on election day. [REDACTED]'s registration indicated that he registered to vote in Bedford on October 26, 2020.

On December 6, Investigator Mederos reached out to the Goffstown Town Clerk seeking similar documentation and information. Goffstown Town Clerk Cathy Ball provided, among

other information, ██████████'s Goffstown voter registration which had been completed on November 8, 2022. That registration showed that ██████████ had identified himself as a "New Registration" rather than a "Transfer" or "Name Change Address Update" despite being registered to vote in Bedford.

On December 6, Bedford Supervisor of the Checklist Barbara Chagnon sent Investigator Mederos a copy of the voter checklist page on which ██████████'s name was crossed off as having voted on November 8, 2022. Immediately below his name, Investigator Mederos observed the name ██████████, ██████████'s daughter on the list. Over the next several days, Investigator Mederos made contact with Bedford Supervisor of the Checklist Rebecca Kuhns, Bedford Town Moderator Brian Shaughnessy, and Goffstown Election Volunteer Deborah Schulte. None could recall observing or interacting with ██████████ on November 8.

On January 10, 2023, Investigator Mederos contacted ██████████ who confirmed that he had voted in Goffstown on November 8 but denied voting in Bedford on that same date. He confirmed that his daughter, ██████████ resided in Bedford and voted there on November 8. His daughter, ██████████ happened to be present with ██████████ when he spoke with Investigator Mederos and Mr. Censabella handed the phone to ██████████ explaining who Investigator Mederos was and that he wanted to ask her about her voting. ██████████ indicated that she voted in Bedford, on November 8, 2022, after registering there several weeks earlier. After their conversation, Investigator Mederos confirmed that ██████████ had registered to vote in Bedford on October 19, 2022.

On March 1, 2023, Investigator Mederos spoke with Moderator Shaughnessy who confirmed that ballot clerks are trained to cross names off the checklist using a straight edge after stating out loud the name of the voter and the address on the checklist. When Investigator Mederos pointed out that this error could have potentially been caught if the address had been read to ██████████, Moderator Shaughnessy indicated that this very issue would be discussed at a meeting of Bedford's election officials during the week of March 6 in anticipation of the upcoming town election.

II. ANALYSIS

The New Hampshire 2022-2023 Elections Procedure Manual contains a checklist detailing the responsibilities of ballot clerks on and before election day. That checklist specifically requires ballot clerks to, "[a]fter the voter's address and identity has been verified, at the moment when the voter will be issued a ballot, draw a single thin line through the voter's last name using a ruler or other straight edge." P. 141.

As Investigator Mederos explained, this procedure, specifically verifying Logan Censabella's address, would likely have caught the error that occurred in this situation. The procedure is specifically designed to minimize errors in general. We direct Bedford to reinforce the training of their ballot clerks to use a straight edge when reading a voter's name and address back to them out loud and then use that straight edge to cross off the name.

III. CONCLUSION

The facts show that ██████████ voted in Bedford while ██████████ voted in Goffstown, during the 2022 General Election, and ██████████'s name was incorrectly crossed off the Bedford checklist. We find, therefore, that no unlawful conduct occurred. In the future, Bedford's ballot clerks are directed to take greater care, to read the names and addresses of voters out loud using a straight edge, and then to use that straight edge to cross of the name.

This matter is closed.

Sincerely



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

MGC/mgc

cc: Secretary of State of New Hampshire
██████████
Moderator Brian Shaughnessy
Bedford Supervisors of the Checklist

**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 “notifies 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

3891461

060

**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

Zachary Tresp, Supervisor of the Checklist
Town of Conway
1634 East Main Street
Center Conway, NH 03813

Re: [REDACTED] Alleged Wrongful Voting

Dear Supervisor Tresp:

On January 11, 2023, this Office became aware of concerns that you raised with the New Hampshire Secretary of State regarding a possible incident of voter fraud. We investigated the matter and we find that no willful violations of New Hampshire law occurred as the issues raised resulted from a clerical error. We are copying Moderator Christopher Meier on this letter so he can direct election officials to take greater care in marking the checklist and complying with New Hampshire election protocols in the future to avoid similar errors. In the future, clearer communication between election officials and including explanatory notes on the checklist could prevent errors such as this one.

I. FACTUAL BACKGROUND

On January 11, 2023, Secretary of State Election Director Patricia Piecuch forwarded to our Office an email that you had sent regarding [REDACTED]. In your email, you indicated that you tried to update [REDACTED]'s address in ElectionNet following the November 8, 2022 General Election only to find that it had already been updated to an Albany address. You indicated that [REDACTED] was checked off, "although faintly," on the Conway checklist as having voted, and [REDACTED] had registered and voted in Albany on November 8.

On January 23, 2023, Chief Investigator Richard Tracy spoke to [REDACTED] on the phone and she told him that she initially went to Conway to vote where she has voted for the last several years. She explained that she told the ballot clerk that her new address was in Albany and the ballot clerk explained that she would need to go to the Albany Town Hall where she could register and vote.

Investigator Tracy called you after speaking with [REDACTED]. He told you that he could not even see a faint check mark next to [REDACTED]'s name and could only just make out a line

through ██████████'s former address. You agreed and noted that it was possible that everything was so faint because the ballot clerk or moderator could have realized that ██████████ ██████████ had been crossed off the list in error and then attempted to erase the checkmark and address information. You also pointed out that, after realizing the error, the ballot clerk or moderator could have acknowledged the mistake, made a note, and initialed it which would have provided clarity as to what had happened. Investigator Tracy suggested that you bring this to the attention of the moderator and town clerk to be used as a training tool in the future.

II. CONCLUSION

The facts show that ██████████ only voted in Albany and her name was incorrectly crossed off the Conway checklist. We find, therefore, that no unlawful conduct occurred. In the future, Conway's election officials, including the ballot clerks, shall communicate with each other and/or seek assistance when circumstances like this arise and make a clear record on the checklist of what occurred in order to avoid this type of situation again.

This matter is closed.

Sincerely,



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

MGC/mgc

cc:

██████████
Secretary of State - Elections Division, Secretary of State
Conway Moderator Christopher Meier

**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

Vicky McAlister
Canaan Town Clerk
365 Ibey Road
Canaan, NH 03741

Re: [REDACTED] Alleged Wrongful Voting

Dear Clerk McAlister:

On November 22, 2022, Canaan Supervisor of the Checklist Maegan Ellis reached out to this Office to notify us of a possible incident of voter fraud. We investigated and find that no willful violations of New Hampshire law occurred as the issues resulted from a clerical error. We are copying Moderator Dale Barney on this letter so he can direct election officials to take greater care in marking the checklist and complying with New Hampshire election protocols in the future to avoid similar errors.

I. FACTUAL BACKGROUND

On November 22, 2022, Supervisor Ellis contacted our Office and stated that she encountered a voter who had voted in Canaan but appeared to have voted in another town on election day. When she was updating Canaan's voter checklist in ElectionNet, following the November 8, 2022, election, to include [REDACTED] as having voted in Canaan, she discovered that [REDACTED] had voted on the same day in the Town of Enfield, New Hampshire. Supervisor Ellis indicated that [REDACTED] had been registered in Canaan prior to the November 8 election.

On November 23, Chief Investigator Richard Tracy reached out to Enfield Town Clerk Wendy Huntley who was able to provide copies of documents related to [REDACTED] voting in Enfield on November 8, including a Qualified Voter Affidavit, a New Hampshire Voter Registration form, and the Enfield voter checklist that included [REDACTED]'s name.

Investigator Dan Mederos later checked ElectionNet and found that [REDACTED] registered to vote in Enfield on November 8, 2022. On December 2, Investigator Mederos spoke with you

and you confirmed the location of the Canaan polling station, but you indicated that you were not familiar with ██████████

On December 5, Investigator Mederos contacted Supervisor Ellis who provided him with a copy of ██████████'s previous New Hampshire Voter Registration Form showing that ██████████ registered to vote in Canaan in 2014. Supervisor Ellis stated that the other supervisors of the checklist had been unable to corroborate that ██████████ voted in Canaan on November 8, 2022. She was unable to verify who would have checked ██████████ off the checklist as election officials had been consistently rotated during the election.

On December 7, Investigator Mederos contacted Enfield Supervisor of the Checklist Shirley Ryea. Supervisor Ryea was unable to specifically recall registering ██████████ but explained that her normal procedure was to positively identify the individual using their driver's license and record the driver's license number on their registration form.

That same day, Investigator Mederos spoke with ██████████. ██████████ confirmed that he only cast a vote in Enfield on November 8, 2022. He explained that he had originally gone to Canaan to vote as he had traditionally voted there prior to moving to Enfield. He said that he presented his driver's license and told the ballot clerk that he had a change in address. He was directed to another clerk to provide this update and this second clerk asked him if he was a Canaan resident. ██████████'s replied that he was not and he was told that he would need to vote in Enfield where he currently lived. He left without ever receiving or casting a ballot. He was unaware of the names of the clerks who assisted him but he was able to describe them physically. He was not aware that either ballot clerk had checked off his name on any list.

After speaking with ██████████ Investigator Mederos called you to discuss ██████████'s explanation. Also present with you were Canaan Supervisors of the Checklist Maegan Ellis and Janet Grecsek. You and the Supervisors of the checklist were unable to specifically recall ██████████ based on what he had told Investigator Mederos. You and the Supervisors indicated that election day had been very busy at certain times. You did confirm that ██████████'s description of what occurred at the Canaan polls matched the set up and procedures followed during the November 8 General Election and that ██████████'s account was plausible. After listening to Investigator Mederos, you and the Supervisors believed this was most likely an error on the part of Canaan's election officials.

II. ANALYSIS

The 2022-2023 New Hampshire Election Procedure Manual contains a checklist detailing the responsibilities of ballot clerks on and before election day. That checklist specifically requires ballot clerks to, "[a]fter the voter's address and identity has been verified, at the moment when the voter will be issued a ballot, draw a single thin line through the voter's last name using a ruler or other straight edge." P. 141.

██████████'s account of events is uncontested by anything found in this investigation. While Canaan election officials had no specific memory of him coming to the polling place to vote, you and the Supervisors confirmed that his explanation of what occurred at the Canaan

polls matched the set up and procedures followed by Canaan election officials during election day. We direct Canaan officials to reinforce the training of their ballot clerks to not check off a voter from the checklist until they have been found qualified to vote in Canaan *and* issued a ballot. This situation could also have been avoided if the ballot clerks had communicated with each other and made a notation on the checklist indicating that ██████████'s name should not have been crossed off.

III. CONCLUSION

The facts show that ██████████ only voted in Enfield during the 2022 General Election and his name was incorrectly crossed off the Canaan checklist. We find, therefore, that no unlawful conduct occurred. In the future, Canaan's ballot clerks are directed to take greater care and to cross off a voter's name only after they have been found qualified and issued a ballot.

This matter is closed.

Sincerely,



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

MGC/mgc

cc: ██████████
Secretary of State - Elections Division, Secretary of State
Canaan Supervisors of the Checklist
Canaan Moderator Dale Barney

**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: False Documents, Names or Endorsement	GOC:	Charge ID: 2008235C	RSA: 666:6	Date of Offense: April 13, 2021
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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:
- | | | | | | |
|------------------------------------|-------------|---|----------------------------------|--|--|
| <input type="checkbox"/> Violation | Misdemeanor | <input checked="" type="checkbox"/> Class A | <input type="checkbox"/> Class B | <input type="checkbox"/> Unclassified (non-person) | |
| | Felony | <input type="checkbox"/> Class A | <input type="checkbox"/> Class B | <input type="checkbox"/> Special | <input type="checkbox"/> 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

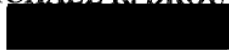
HILLSBOROUGH SOUTH, SS.

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

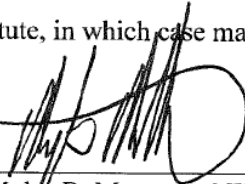
2008235C

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.

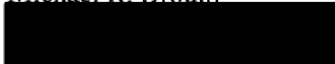



Plea of Guilty as amended. See
Complaint/Indictment Amendment form.



Foreperson

Amy M. Feliciano, Clerk of Court

Name: Michael R. Drouin
DOB: 
Address:  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

**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 30, 2023

Roger Richard

[REDACTED]
Nottingham, NH 03290

Re: Town of Nottingham, Absentee Ballots

Dear Mr. Richard:

On March 29, 2023, you contacted this Office to report that you and other voters in the Town of Nottingham had been given the wrong absentee ballots ahead of the March 28, 2023, town election. This Office investigated and found that the issue you raised was corrected by Nottingham election officials in advance of the March 28 election. However, this issue could have been avoided by adherence to the procedures outlined in New Hampshire Law and the Election Procedure Manual. Nottingham election officials are directed to use this letter to exercise greater caution in advance of future elections.

I. FACTUAL BACKGROUND

On March 29, you called this Office to indicate that, on March 22, you went to the Nottingham Town Clerk's Office to pick up an absentee ballot. Once you returned to your vehicle, you realized that the absentee ballot that the Clerk gave you was from the 2022 Nottingham Town Election. You returned to the Clerk's Office, passing a couple that appeared to be holding absentee ballots after leaving that office as you did. You alerted them to the mistake that you saw and the couple realized that they possessed 2022 absentee ballots as well. You and the couple then spoke to the Clerk who attributed the mix-up to a printing error and gave you 2023 Nottingham Town Election ballots. You filled out your ballot and returned it on the same day. You called this Office on March 31 and spoke to Chief Investigator Richard Tracy reiterating your concern that, because you were a candidate for Nottingham Selectman in the 2023 election, an unknown number of people may have voted absentee on a ballot from the 2022 election.

II. INVESTIGATION

On April 3, Investigator Tracy spoke with Nottingham Town Clerk Lori Anderson. Clerk Anderson had a sense of why Investigator Tracy was calling and explained that Nottingham ran out of absentee ballots after the 2023 election was rescheduled due to inclement weather from March 14 to March 28. Clerk Anderson made copies of a 2023 ballot that she had available until she received an additional shipment of absentee ballots from LHS. That shipment arrived on March 22. Clerk Anderson was busy that day. She placed the ballots on the counter and began to hand the ballots out to voters as they requested them. Clerk Anderson remembered you and the couple coming in that day and provided her recollection of the interactions with the three of you which were very similar to your report.

Clerk Anderson checked her records and believed that she handed out 18 absentee ballots on March 22. She believed 10 of these were the wrong ballots including the ballots she handed out to you and the couple. Clerk Anderson was confident that she had contacted all of these voters and provided them with 2023 ballots. They all were able to vote absentee except for one voter who chose to vote in person on March 28, 2023.

On March 22, Clerk Anderson called LHS and explained the error. LHS printed and shipped the correct 2023 ballots which arrived on March 23.

Our Office coordinated with the Secretary of State's Office, using Help America Vote Act (HAVA) records, to verify that 166 voters requested absentee ballots for Nottingham's 2023 Town Election and 16 of those voters were issued absentee ballots on March 22. All 16 of those individuals did ultimately vote in the March 28 Nottingham Town Election.

On April 5, Investigator Tracy spoke with LHS Director of Election Services Kristen Becotte-Kennedy who verified that Clerk Anderson had requested 100 additional absentee ballots following their election being postponed from March 14 to March 28. Those ballots were delivered on March 22. Director Becotte-Kennedy recounted her dealings with Clerk Anderson on March 22, essentially verifying that Clerk Anderson explained that day's events with the incorrect 2022 ballots. Director Becotte-Kennedy contacted Mid-West Printing, the company LHS used to print Nottingham's ballots, which indicated that it had mistakenly used the printing plate from the 2022 town election. The error was corrected and new ballots were shipped for delivery on March 23.

Finally, this Office reviewed the names on the 2022 ballot and the final 2023 Nottingham Town Election results. None of the candidates who were on the 2022 ballot appeared on the 2023 final results.

III. PROCEDURE AND LAW

Under New Hampshire law,

[c]ach town or city clerk, prior to election day, shall open the package in which the ballots are enclosed, in the presence of at least one other legal voter, to verify

that the ballots in the package are all the proper ballots for that town or city. The clerk and one other legal voter shall then reseal the package with the sealing label provided by the secretary of state.

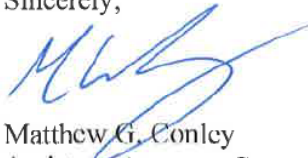
RSA 656:20, II. See also RSA 656:22, 29. These laws are referenced under the heading "Inspect Ballots Upon Receipt" on page 241 of the New Hampshire Election Procedure Manual (EPM). While these statutes and the EPM reference state elections and primary elections, election officials should follow a similar procedure in municipal elections.

IV. CONCLUSION

Following an investigation, this Office finds that the issue that you raised in your March 29 complaint was brought to the attention of Nottingham election officials on March 22. Between March 22 and March 28, Nottingham officials corrected the error and we have found no evidence that any voter submitted a 2022 ballot to be counted in the March 28, 2023, Town Election. While we appreciate that election officials are busy in the lead up to town elections and the issue in this case can be attributed to a printing error, the issue could have been avoided entirely if the ballots had been inspected prior to their distribution. We direct Nottingham election officials to correct their practices in the future to conform with the EPM and to inspect ballots prior to distributing them to voters in order to ensure that voters only receive the correct ballots.

This matter is closed, please contact me if you have any questions or concerns.

Sincerely,



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

MGC/mgc

cc: Nottingham Town Clerk Anderson
LHS Director Becotte-Kennedy
Nottingham Town Moderator Dawn Fernald
Nottingham 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

May 31, 2023

[REDACTED]
Epsom, NH 03234

Re: [REDACTED] Chichester Domicile Issue, Alleged Wrongful Voting

Dear [REDACTED]

On May 26, 2022, Attorney Michael P. Courtney of Upton & Hatfield, LLP, contacted our Office seeking guidance, on behalf of the Town of Chichester, regarding an individual who was claiming to live in Chichester in a camper but who had no other connections to the town. Attorney Courtney indicated that you were the individual and that you wanted to register to vote. Then-Deputy General Counsel Myles Matteson communicated with Attorney Courtney and directed him to pages 45 and 46 of the Election Procedure Manual which describe the law as it relates to domicile of homeless individuals and the duties of the Supervisors of the Checklist in those instances.

You filed your registration to vote, in Chichester, on May 30, 2022. On August 1, 2022, Attorney Courtney reached out to us again by email, explaining that on June 27, 2022, Chichester had filed an action in the Merrimack County Superior Court against you as you were using your property in violation of local zoning law. You filed an answer in that case claiming that "for no reason should anyone believe that [REDACTED]" You filed this answer with the Court on July 31, 2022.

Attorney Courtney also noted that that in July of 2022, you advised the Merrimack County Superior Court by telephone that you would not be served with a complaint because you lived in Florida and were not planning on coming back anytime soon.

Attorney Courtney asked, in light of all of this, if the Town should remove you from the checklist, and if our Office would be investigating you for any criminal conduct.

Our Office opened an investigation based on Attorney Courtney's August 1, 2022, email and asked Attorney Courtney if Chichester had sent you a 30-day letter in accordance with RSA

654. On September 28, 2022, Attorney Courtney confirmed that Chichester sent you a 30-day letter on August 31, 2022, and had received no reply.

On November 8, Attorney Courtney informed then-Deputy General Counsel Matteson (“DGC Matteson”) that you were removed from the voter checklist as you had never responded to the 30-day letter. However, you submitted a voter registration form and voted in the General Election on November 8, 2022. ElectionNet records show that you voted in person in Chichester on November 8, 2022. You had not voted in Chichester before nor have you voted after that date. Chief Investigator Richard Tracy has not found any evidence that you voted in any other state on November 8, 2022.

On November 14, Attorney Courtney followed up with DGC Matteson and sent him a copy of your registration form, a Challenged Voter Affidavit, a Domicile Affidavit, a Qualified Voter Affidavit, and a Permit to Kindle Fire. You filed the Challenged Voter Affidavit and the Voter Registration form on November 8, 2022. You filled out the remaining documents in May of 2022.

On December 14, Attorney Courtney wrote to DGC Matteson again to inform him that a preliminary injunction hearing in the Town’s action against you was held in Merrimack County Superior Court on December 13. At that hearing, you made a number of representations about your domicile and your rationale for filling out your voter paperwork. Attorney Courtney attached an order from the Court, dated December 14, in which the Court found that “[t]he defendant, Shaun Fife, maintains he has not slept in the camper since July 1, 2022. Further, he states that the camper is no longer on his property but is currently legally on a road abutting his property.”

On May 15, 2023, Investigator Tracy spoke with you by phone. The two of you spoke about your litigation with Chichester and you stated that you did not believe you were domiciled anywhere else. You explained that you were divorced from your first wife who lived in Lakewood, Colorado with your two children. You stated that you were in the process of divorcing your second wife who lives in West Palm Beach, Florida. You explained that you have lived in multiple locations since you separated from your second wife and that, from 2020 to the present, you have lived in Key West, Florida; Weare, New Hampshire; Pittsfield, New Hampshire; Loudon, New Hampshire; Sebastian, Florida; and “the Keys” in Florida. You noted that you have not lived in any one place very long and the only property that you consider to be anything close to permanent is the lot you own in Epsom and Chichester.

Finally, you explained that you have been unable to obtain a driver’s license, register a vehicle, obtain a hunting license, or register to vote in New Hampshire because the Town of Chichester would not issue an address for your Chichester property. You said that you learned that you had been removed from the voter checklist in Chichester, on November 8, 2022, because you had not responded to a letter that Chichester officials had mailed to you. You stated that some Chichester election officials spoke with Karen Ladd at the New Hampshire Secretary of State’s Office while other Chichester officials spoke with New Hampshire Secretary of State David Scanlan and Assistant Secretary of State Orville Fitch regarding your circumstances. They coordinated with this Office and ultimately informed Chichester town officials that you should

be allowed to register and vote in the November 8, 2022, General Election. This Office and the Secretary of State determined that you were not domiciled anywhere else at the time and that your property in Chichester was your only known property.

If Judge Kissinger's decision in favor of the Town of Chichester stands and you are not permitted to live on the Chichester property, be advised that, in New Hampshire, in order to vote in a town, ward, or unincorporated place, you 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.

A resident does not lose their place of domicile during a temporary absence if they intend to return to their place of domicile. *See* RSA 654:2, I. The plain and ordinary meaning of the word "temporary" means "[l]asting for a time only; existing or continuing for a limited (usually short) time." BLACK'S LAW DICTIONARY (8th ed. 2004). However, a voter must establish a domicile before they can be temporarily absent. And, a "voter can only have one domicile for voting purposes." RSA 654:2, I.

Considering the evidence and statements you have made regarding your current living situation, this Office does not reject your claim of domicile as it relates to the two instances where you registered to vote in Chichester. However, in the future, you must determine whether Chichester continues to be your domicile, as defined above in RSA 654:1, I, if you are not allowed to live on your property. Any future failure to comply with election and domicile laws may result in a Cease and Desist order, enforcement action, and/or criminal prosecution.

We hope this information will be useful to you as you determine your domicile. This matter is closed. Should you have any questions, please do not hesitate to contact me.

Sincerely,



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

MGC/mgc

cc: Jodi Pinard, Chichester Town Administrator
Chief Patrick Clarke, Chichester Police Department
Attorney Michael Courtney, Upton & Hatfield, LLP.

**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 22, 2023

Roger Sylvestre

[REDACTED]
Clarksville, NH 03592

Re: **CEASE AND DESIST ORDER**
Roger Sylvestre, Alleged Illegal Campaign Activity

Dear Mr. Sylvestre:

On October 27, 2022, this Office received a complaint alleging that you were running for Coos County Attorney without having the qualifications that office requires under New Hampshire Law. This investigation and litigation followed. This Office concludes that you sought an office for which you did not have the required qualifications under New Hampshire law. However, it is unclear if you had the requisite intent to commit a criminal violation of RSA 641:3 – Unsworn Falsification. Therefore, this Office concludes this matter with this Order that you refrain from running for State offices for which you do not have the required qualifications.

I. FACTUAL BACKGROUND

On October 27, 2022, the Office of the New Hampshire Secretary of State contacted this Office and explained that Coos County Attorney John McCormick, who was seeking re-election at the time, contacted the New Hampshire Secretary of State's Office regarding your qualifications to be the Coos County Attorney. Specifically, County Attorney McCormick learned that, although you were on the ballot following a write-in campaign, you were not an attorney. The Office of the Secretary of State explained its belief that you were therefore not qualified to be the Coos County Attorney and requested that this Office take action. Later that day, Assistant Secretary of State Orville Fitch sent this Office your Declaration of Candidacy for Coos County Attorney that you filed on September 26, 2022. In that document, you indicated your intention to seek the Office of Coos County Attorney and signed that document below the words "I further declare that, if nominated as a candidate for said office, I will not withdraw; and that, if elected, I will be qualified for and will assume the duties of said office."

On that same date, Deputy General Counsel Myles Matteson and I called you and left you a voicemail explaining the nature of the complaint that we had received and that we wanted to speak with you regarding what we had learned.

On that same date, I reached out to Michele Gilbert, Member Records Coordinator for the New Hampshire Bar Association. Ms. Gilbert confirmed over the phone that she had no record of anyone by your name as a member or past member of the New Hampshire Bar Association. Ms. Gilbert later sent this Office a notarized letter confirming her findings.

By October 31, 2022, we had not heard from you. On that same date, we drafted a letter to you explaining the nature of the complaint against you and our attempts to contact you. We asked you to contact us by November 1, 2022 to explain your actions in this matter so that we could determine what steps should follow. That letter was hand delivered to you by the New Hampshire State Police on October 31, 2022.

On November 1, 2022, I called County Attorney McCormick. I indicated that I was calling about you and I wanted to follow up on what his understanding of the situation was. County Attorney McCormick stated that you had gotten in on a write-in campaign and you were not an attorney in New Hampshire. I asked him how this came to his attention and he said that he checked the New Hampshire Bar Association Member Directory out of curiosity and did not see you listed there. County Attorney McCormick indicated that he was not able to find any evidence of you being an attorney in this or any other state and clarified that “he was not trying to start anything,” but he had reached out because he was not sure what was going on.

On that same date, you called me and left me a voicemail while I was on the phone with County Attorney McCormick. In your voicemail, you indicated that you had received our letter and left a phone number to call you back. I returned your call after speaking with County Attorney McCormick.

I asked you if you were an attorney in New Hampshire. You stated that you believed I already knew the answer to that question. I told you that I wanted to know what your understanding was. You clarified that you were not a member of the New Hampshire Bar. You confirmed that you were not an attorney in any state. You stated that you were not aware that you had to be an attorney. You confirmed that you had signed a declaration of candidacy. On that declaration, you indicated that you believed “qualified” was a more generic term and that the County Attorney was a more administrative position. You believed that the County Attorney simply hired other attorneys to do the work of the county. You told me that when you voted in the September 2022 Primary, the Republican field for County Attorney was blank so you wrote yourself in and then told a few friends about it. You explained that it was not your intention to put a “bind on the system” and you were not able to return my call the week prior because your phone system was “all screwed up” and you got side-tracked after getting the message over the weekend.

You asked if there was anything you could do to withdraw your candidacy. I told you that it was my understanding that the withdrawal date had passed. You asked if there was anything we could do on that day, saying you would even be willing to drive down to Concord. I told you it was unlikely anything could be accomplished that day but I would reach back out if I was mistaken. You asked me if there would be any prosecution. I told you that I was not commenting on that one way or another at the moment and my team and I needed to work on next steps. You

asked if you could call Secretary of State David Scanlan. I told you that you were more than welcome to but I was uncertain what, if any, additional information you would get.

On that same date, this Office filed an Emergency *Ex Parte* Petition for Writ of Mandamus with the Coos Superior Court. That Petition asked for several things including that the court recognize that you were not qualified to hold the Office of Coos County Attorney. The petition further requested that this Office be authorized to work with local election officials to strike your name from the November 8, 2022 General Election Ballots, that this Office be authorized to work with local election officials to not tally, record, or certify votes cast for you for Coos County Attorney, and that the court hold an immediate hearing on the matter.

On November 3, 2022, the Coos Superior Court held a hearing on this matter. You were served notice of the hearing in hand by the Coos County Sheriff's Office on November 2, 2022. You did not appear for the November 3 hearing. At that hearing, the Court ruled in this Office's favor and granted the requested relief.

II. APPLICABLE LAW & ANALYSIS

Under New Hampshire law, every county attorney "shall be a member of the New Hampshire bar[.]" RSA 7:33. This qualification is central to being a County Attorney. In your Declaration of Candidacy, you made the representation that you would be qualified if elected. Between the records provided by the New Hampshire Bar Association and your own admissions, there is no question that you were not and are not qualified to hold the Office of Coos County Attorney.

Under RSA 641:3, I(b)(1), "[a] person is guilty of a misdemeanor if with a purpose to deceive a public servant in the performance of his or her official function, he or she makes any written or electronic false statement which he or she does not believe to be true." There is no question that the statement that you made indicating that you were qualified was false. There is no question that this false statement resulted in public servants placing your name on an official ballot when it should not have been there. However, it is not clear that you had an intent to deceive. Therefore, we have determined that criminal charges are inappropriate in this circumstance.

However, you have now been informed by this Office that since you are not an attorney, you cannot seek the Office of County Attorney in any of New Hampshire's counties. Should you ever become a New Hampshire attorney, this will change.

III. CONCLUSION

We conclude that you were not qualified to hold the Office of Coos County Attorney when you represented that you were. While your intent in this circumstance is unclear, further attempts to pursue that Office would violate RSA 7:33 and RSA 641:3.

Pursuant to RSA 7:33 and RSA 641:3, and based upon the investigation conducted by this Office, you are hereby ordered to **Cease and Desist from pursuing the Office of Coos**

Roger Sylvestre, Alleged Illegal Campaign Activity
Page 4 of 4

County Attorney unless and until you become a member of the New Hampshire bar and satisfy all other qualifications for that office under New Hampshire law. Failure to comply with this Cease and Desist Order may result in this Office pursuing criminal prosecution.

Sincerely,



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

CC: John G. McCormick, Esquire, Coos County Attorney's Office
Secretary of State - Elections Division, 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

August 10, 2023

Jeffrey M. Kratovil

[REDACTED]
New Durham, NH 03855

**Re: Stephanie MacKenzie, New Durham Town Clerk, Alleged Election Official
Misconduct**

Dear Mr. Kratovil:

On September 14, 2022, you sent an email to this Office asking us to investigate the conduct of the Former New Durham Deputy Town Clerk Stephanie MacKenzie (this letter will refer to "Deputy Clerk Mackenzie" for the sake of brevity). This letter is to inform you that, following investigation, this Office finds that no violations of New Hampshire election law occurred.

INVESTIGATION

Chief Investigator Richard Tracy reached out to you a few days after we received your message and spoke with you. You explained that you are a former selectman and former member of the planning board in New Durham. You thought that you always got along well with Deputy Clerk MacKenzie until the last two times that you went to vote, first in 2020 and then more recently in the State Primary on September 13, 2022. You indicated that on both occasions Deputy Clerk MacKenzie questioned your domicile and insisted that you no longer lived in New Durham. You explained that you went through a separation and divorce that was finalized on September 11, 2020, and your ex-wife, Karen Litchfield, now lives in Rochester with a partner.

You stated that in July of 2020 you were speaking with a friend who lived in Alton about your situation at the time. That friend offered you a place to stay in Alton from August 24, 2020, to November 6, 2020. You moved back to New Durham to share a residence with Ms. Litchfield on November 6, 2020. You lived there until January of 2021 when David Bickford, another former New Durham selectman, told you that his father had passed away and you were welcome to live in the now-empty home. You signed a lease to do so and lived there until June of 2021 when you moved back to your original home in New Durham and Ms. Litchfield moved to Rochester. You reiterated that August 24, 2020, to November 6, 2020, was the only period that you have lived outside of New Durham.

In your email to this Office, you indicated that you were stopped in the New Durham Elementary School when you went to vote in November of 2020. You wrote that you presented a New Hampshire driver's license and you were approached by Deputy Clerk MacKenzie. You state that within earshot and sight of a number of other people Deputy Clerk MacKenzie claimed to have heard that you were not living in New Durham. When you corrected her, Deputy Clerk Mackenzie told you that she would check on this before ultimately "let[ting] it go."

In your conversation with Investigator Tracy, you described your interaction with Deputy Clerk MacKenzie on September 13, 2022. You explained that you handed the ballot clerk your driver's license and she verified you were on the checklist. At that point Deputy Clerk MacKenzie in a raised voice asked you when you had moved back into town. You tried to explain that, with the exception of a very brief period of time, you had always lived in New Durham and Deputy Clerk MacKenzie responded, "Nope, nope, you don't live here anymore." You told Deputy Clerk MacKenzie that you could show her your divorce decree and you asked if this had anything to do with the position that you took as a member of the Board of Selectmen when Deputy Clerk MacKenzie's husband was trying to get a contract to "fix up town hall." You stated that this question seemed to strike a nerve and Deputy Clerk MacKenzie allowed you to vote. You indicated that you did not know the names of the two ballot clerks who assisted you, but you were able to physically describe them. You also indicated that a ballot clerk, Cathy Orlowicz, and a police officer, were present that day who should have been able to observe the interaction.

On December 7, 2022, Investigator Tracy reached out to you to ask if you had any issues voting on November 8, 2022. You indicated that you voted without issue, and you did not see Deputy Clerk MacKenzie at the polls. On that same date, Investigator Tracy verified that your driver's license and vehicle registration listed your New Durham address and that your voting record shows that you have voted exclusively in New Durham approximately 30 times since 2006.

On December 8, 2022, Investigator Tracy contacted New Durham Town Moderator Linda Callaway. Moderator Callaway indicated that she was not surprised by the contact and indicated that you had called her on her personal phone number, which she had not given you, after the September Primary. She stated that you asked to meet her in person, which she declined, explaining that any concerns could be discussed over the phone. She indicated that you explained how Deputy Clerk MacKenzie approached you at the Primary and that you had reached out to the Attorney General's Office. Moderator Callaway then called Deputy Clerk MacKenzie and told her about your conversation with her. Moderator Callaway indicated that Deputy Clerk MacKenzie expressed that she felt strongly that you had moved out of New Durham. Moderator Callaway confirmed that she was present for both interactions between you and Deputy Clerk MacKenzie. She indicated that in both instances neither of you were loud but neither were you quiet. In both instances, no one was willing to sign an affidavit stating that you no longer lived in New Durham.

On December 9, 2022, Deputy Clerk MacKenzie spoke with Investigator Tracy. Deputy Clerk MacKenzie acknowledged both interactions with you and believed that you had moved to Rochester as a result of your divorce two or four years ago. She recalled that you were allowed

to vote on both occasions. She referred Investigator Tracy to speak with former Selectman Terry Jarvis and Chair of the Supervisors Pat Grant as both individuals were present for the September incident.

That same day, Investigator Tracy reached out to Supervisor Grant. Supervisor Grant recalled the September interaction and explained that she only heard parts of the interaction. What stood out to her was when you began yelling and stating things about Clerk MacKenzie's husband that had nothing to do with elections—as she recalled it was something about work at town hall. Supervisor Grant believed it was clear that it was you raising your voice that upset Deputy Clerk MacKenzie and others in the room. She further explained that she had asked Deputy Clerk MacKenzie if she wanted to report the issue. Deputy Clerk MacKenzie declined and Supervisor Grant took it upon herself to call New Hampshire Secretary of State David Scanlan to explain the situation. Secretary Scanlan told Supervisor Grant that based on what she told him, you were properly domiciled in New Durham and should vote there.

On December 19, 2022, Investigator Tracy spoke with Ballot Clerk Catherine Orlowicz, a witness that you identified in your initial complaint. Ballot Clerk Orlowicz recalled that Deputy Clerk MacKenzie began to call out to you from across the room and ask you whether you lived in town or not. Ballot Clerk Orlowicz stated that this was the start of a verbal exchange that made for an “unpleasant and uncomfortable” atmosphere. She believed it would have been more appropriate for Deputy Clerk MacKenzie to approach you and speak with you discretely. Ballot Clerk Orlowicz could not recall all the conversation, but did say that it was about your domicile, that no one ultimately challenged your domicile, and the exchange ended when Deputy Clerk MacKenzie stated something to the effect of, “Alright, I’ll let it go.” Ballot Clerk Orlowicz recalled that you were both equally loud and that this was an unpleasant experience that should not have happened.

CONCLUSION

This Office concludes that there was no violation of New Hampshire election law in either incident. You indicated that you were allowed to vote on both occasions. Multiple witnesses confirmed this as did your voting history. It appears that you were properly domiciled in both instances. It does not appear that Deputy Clerk MacKenzie acted unlawfully even if she acted indiscreetly. Deputy Clerk MacKenzie raised concerns regarding your domicile, concerns that were not entirely unfounded by your own admission but did not act improperly based upon the facts she had available prior to your statements to her at the polling place. In fact, following your statements as to your current domicile, it appears that there were no election officials were willing to sign an affidavit stating that you no longer lived in town.

Following the September 2022 incident, New Durham officials reached out to the Secretary of State to clarify their obligations and actions under the law. This course of action is encouraged for all election officials with doubt regarding the execution of their duties.

As this Office finds no violations of law, this matter is closed. Please reach out to me if you have any questions or concerns.

Stephanie McKenzie, New Durham Town Clerk, Alleged Election Official Misconduct
Page 4 of 4

Sincerely,



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

CC: New Durham Town Clerk Alicia Housel
New Durham Town Moderator Linda Callaway
Secretary of State Dave Scanlan
Former New Durham Deputy Town Clerk Stephanie MacKenzie

**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 11, 2023

Constance Kieley

██████████
Temple NH 03084

Re: **CEASE AND DESIST ORDER**
Constance Kieley, Alleged Illegal Campaign Activity

Dear Ms. Kieley:

The Election Law Unit has reviewed and investigated a complaint dated June 18, 2023, in which Nicole Concordia of Temple, New Hampshire alleged that a mailer sent to the residents of Temple violated RSA Chapter 664. Specifically, the complaint alleged that the mailer did not contain proper identifying language under RSA 664:14. The complaint contained a copy of the mailer and showed that it did not contain any identifying language beyond "PAID BY CONCERNED CITIZENS" and urged voters to "VOTE NO TO 'RESCIND WARRANT ARTICLE #9'" and to "VOTE NO TO 'ESTABLISH A NEW EVALUATION COMMITTEE'". The mailer was marked as EDDM, "Every Door Direct Mail", meaning that the responsible party had paid for the mailer to go to every home and post office in Temple. After investigation and contact with the United States Post Office, this Office determined you had paid for the mailers. Chief Investigator Richard Tracy then reached out to you by phone on June 26, 2023. At that time, you confirmed that you and a group of residents in Temple paid for the mailers to be sent out.

After investigating this complaint, we have determined that it does raise an allegation of misconduct that would violate our State's election laws.

Generally speaking, "[a]ll political advertising shall be signed at the beginning or the end with...the name and address of a natural person" who is responsible for the advertisement. RSA 664:14, I. "Political advertising" is defined as "any communication...which expressly or implicitly¹ advocates the success or defeat of any party, measure or person at any election." RSA 664:2, VI.

¹ In 2001, the United States District Court for the District of New Hampshire issued an order enjoining the State from enforcing RSA 664:14 against "implicit" advocacy. *Stenson v. McLaughlin*, 2001 WL 1033614 (D.N.H. 2001). Therefore, our office enforces the disclosure requirements of RSA 664:14 on signs that constitute express advocacy of a party, measure or person at an election.

The mailers that you sent out explicitly called on voters to vote against measures that were voted on in the June 22, 2023 Temple Special Election. Under RSA Chapter 664, the term “measure,” means “any constitutional amendment or question which is submitted or intended to be submitted to a popular vote at an election.” RSA 664:2, X. Therefore, advocacy for the success or defeat of measures at the Special Election falls within the scope of RSA Chapter 664’s registration and political advertising requirements.

, You are to **Cease and Desist from sending any further political communications that do not contain “paid for” information pursuant to RSA 664:14.** Subsequent violations of RSA 664:14 will result in further enforcement action by this Office.

This matter is closed. Please reach out to me if you have any further questions or concerns.

Sincerely,



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

MGC/mgc
cc: Nicole Concordia

Unidentified Individual, Town of Danville, Alleged Illegal Campaign Activity
(Susan Overstreet, Complainant)

To: File
From: Brendan O'Donnell
Re: Alleged Illegal Campaign Activity-Unidentified Individual-Town of Danville
Date: 2023 08 14

Complaint: This matter involved a complaint from Susan Overstreet regarding alleged electioneering in the no-electioneering corridor at a special election in Danville on July 13, 2021.

Background:

On July 13, 2021, the Town of Danville held a special election for Selectman. Several out-of-town individuals came to support write-in candidate Scott Borucki. On that day, this Office received a separate, similar complaint regarding electioneering in the no-electioneering zone. Danville police were notified and reportedly addressed the issue.

On July 14, 2021, Susan Overstreet reported that an individual holding a campaign sign within the electioneering zone stepped in front of her as she was about to enter the Danville Community Center to vote and attempted to give her a pamphlet. Ms. Overstreet provided a photograph of the individual.

This Office investigated but was not able to identify the individual, who may have come from out of town.

On February 24, 2023, Investigator Tracy followed up with Ms. Overstreet, who stated that she has voted three times since the July 13, 2021, special election and has not experienced any further issues entering the polls. Ms. Overstreet also stated that the Town has a new moderator, who reconfigured the no-electioneering corridor such that the corridor is now clearly marked and prevents electioneers from impeding voters' free space to enter the polls. Ms. Overstreet stated that she had not seen the unidentified individual since the July 13, 2021, special election.

The poll inspector checklist for Danville for the November 2022 election did not report any issues regarding the no-electioneering corridor.

Conclusion: Following an investigation, this Office was not able to determine the identity of an individual alleged to have committed an isolated incident of illegal campaign activity by electioneering in the no-electioneering zone. See RSA 659:43. Therefore, this matter is now closed.

To: File
From: BAO
Re: Closure of Talcott Matter
Date: August 28, 2023

This Office received a complaint alleging that Alexander Talcott declared his candidacy for New Hampshire State Representative for the Town of Conway and registered to vote in Conway, despite Mr. Talcott not being domiciled in Conway. See RSA 655:28 (a candidate must swear an affidavit covering their qualifications as to domicile); RSA 659:34 (providing penalties for purposely or knowingly making a false material statement regarding qualifications as a voter when registering to vote). This Office opened an investigation into this matter, and this Office was in the process of finalizing the results of its investigation and taking action regarding the allegations against Mr. Talcott when Mr. Talcott died on or about August 26, 2023. Because Mr. Talcott is deceased, this Office cannot resolve this matter with criminal charges.

Therefore, this matter is now closed.

**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 29, 2023

Sharon Wilson
Carroll County Republican Committee
White Mountain Highway
Conway, NH 03818

Re: Donna Veilleux and Granite State Matters, Alleged Illegal Campaign Activity

Dear Ms. Wilson:

We write to conclude our review of two complaints that you made to this Office. Your first complaint involved allegations of sign theft by Donna Veilleux. Following an investigation, this Office concludes that no unlawful conduct occurred because Ms. Veilleux had permission from the property owner to remove and lay down the signs. Your second complaint involved certain signs not containing identifying information as required by RSA 664:14. Following an investigation, this Office concludes that these signs, posted by Granite State Matters ("GSM"), did not violate RSA 664:14 because the content of the signs did not constitute "political advertising." See RSA 664:2, VI. Furthermore, GSM was not required to register as a political committee because the organization's signs did not promote the success or defeat of a candidate or candidates or measure or measures. See RSA 664:3, I

Facts

On October 26, 2022, you called this Office and spoke with Investigative Paralegal Jill Tekin. You told Paralegal Tekin that Carroll County Republican Committee (CCRC) had approximately 20 senate and house representative signs stolen which had been reported to Madison Police Chief Robert King.

On November 1, you called this Office along with Nicole Norland. You again spoke with Paralegal Tekin to report that over 50 signs had been stolen. You and Ms. Norland asked whether or not: 1) you were allowed to publicize the images of the individual taking down the signs that you had obtained, 2) there was a difference in charges or penalty for moving a sign into the woods versus vandalizing a sign, and 3) "extremist" signs without identification may be removed by anyone if they were not designated as political signs.

On November 2, Chief Investigator Richard Tracy spoke to you and Ms. Norland. He advised you that he had reached out to Chief King to request the police reports and video recordings related to the theft of political signs in Madison. Investigator Tracy asked you to email him a list of locations where signs had been stolen and the cost of those signs. You told him that you would do that and further explained that several signs had been defaced on top of the more than 50 signs that were stolen.

You asked Investigator Tracy if you could post the photo of the “guilty” person caught on camera who stole the signs. He explained that no one had been found guilty yet and this Office would not give you permission to do that. He asked you and Ms. Norland to send him whatever you had for evidence and information related to the theft of the political signs and that this Office would look into the matter.

On that same day, Investigator Tracy spoke with Chief King. Chief King explained that Donna Veilleux admitted to taking the signs. Chief King represented that he had a recording of this, and he hoped that speaking with her had put a stop to the theft of political advertisements in Madison. He told Investigator Tracy that he set up a game camera near where some of the signs were stolen and he had a recording of Ms. Veilleux removing the signs from Route 41 and piling them up in the woods. Investigator Tracy asked Chief King to email the police reports and associated recordings to him.

On November 10, you sent Investigator Tracy an email noting the location of where several of the signs had been taken. Most were signs for Don Bolduc and Karoline Leavitt, and you estimated that the CCRC had lost 85-95 signs. You identified the woman caught on camera removing signs and tossing them into the woods as Ms. Veilleux. You noted that, although you could not prove that Ms. Veilleux took or damaged all of the signs, you wanted Ms. Veilleux prosecuted for the signs that she was on camera removing.

You explained that Ms. Veilleux had only removed signs that were on conservancy land, the Pine Barrens Preserve, and that Ms. Veilleux had Democrats remove signs from the same location. You questioned why Ms. Veilleux did not call the CCRC to remove the signs like she had done with the Democrats. Based on these representations in your email, Investigator Tracy inferred that either you or someone else had spoken to Ms. Veilleux regarding these allegations.

Between November 14 and December 12, Chief King provided Investigator Tracy with documents and video related to this matter. A cell phone camera recording showed Chief King speaking with Ms. Veilleux. Photographs from a game camera showed a light-colored Subaru station wagon and a female that Chief King identified as Ms. Veilleux. Additional photos showed political signs that had been stacked on the ground at the edge of the woods. Chief King observed a white Subaru in Ms. Veilleux’s driveway when he spoke with her.

On December 13, Investigator Tracy interviewed Ms. Veilleux. She indicated that before she removed the four to six Republican signs from the ground and laying them in the woods nearby, she had driven past that same spot and noticed seven to eight Democratic candidate signs. She called someone who she knew might be responsible for placing the Democratic signs and explained to them that the signs were on Nature Conservancy land, and they should not be

there. That person, she said, removed the signs almost immediately. It was one or two days later that Ms. Veilleux saw the Republican signs. Ms. Veilleux did not want to provide the name of the individual who placed the Democratic signs as she is elderly, and Ms. Veilleux did not want her to be upset or involved. Investigator Tracy asked Ms. Veilleux to contact this individual and ask her to contact him.

On the same day, Investigator Tracy received an email from Margaret Merrill who identified herself as a colleague of Ms. Veilleux. Ms. Merrill acknowledged that Ms. Veilleux had called her in the fall to discuss signs that Ms. Merrill had unknowingly placed on the conservation property.

On December 13, Investigator Tracy spoke with Jeff Lougee, Director of Land Management with the Nature Conservancy. Director Lougee confirmed that Ms. Veilleux had texted him on October 26, and he gave her permission to remove the signs from the Pine Barrens Preserve.

You also reported a second issue involving signs that you believed to be in violation of RSA 664:14. Those signs read “NO Extremists. Let’s take back our state! Nov 8.” The signs contained a QR code in the lower right-hand corner. Investigator Tracy followed the QR code and found that it led to granitestatematters.org. Investigator Tracy eventually found a contact email address, admin@granitestatematters.org, and sent an email to that address on January 27, 2023. Jeanne Dietsch received the email and spoke with Investigator Tracy on January 30. Ms. Dietsch explained that she had already spoken with Attorney Myles Matteson about the signs and her website. She stated that she added the appropriate contact information to the website and took it down when the election was over. Attorney Matteson noted that Ms. Dietsch did not know where all of the signs were in order to properly update them with required disclosure information.

Law and analysis

Regarding Ms. Veilleux’s actions, RSA 664:17 reads, in relevant part, [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.” Under RSA 664:2, VI, political advertising is “any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly¹ advocates the success or defeat of any party, measure or person at any election.”

There is no question that the removed signs were placed on the Pine Barrens Preserve – Nature Conservancy property – without Director Lougee’s permission. Director Lougee authorized Ms. Veilleux to take down signs on his behalf, and therefore she did not violate the State’s election laws. *See* RSA 664:17 (“No person shall remove ... any political advertising which is placed on or affixed to ... any private property except for removal by the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising” (emphasis added)).

¹ The language regarding “implicit advocacy” 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).

Regarding the GSM signs, RSA 664:14, I, provides disclaimer requirements that must be included on “political advertising,” which RSA 664:2, VI defines as “any communication ... which expressly or ~~implicitly~~ advocates the success or defeat of any party, measure or person at any election requires.” The GSM signs did not identify or expressly advocate for any specific party, candidate, or measure; therefore, the signs do not constitute political advertising under RSA 664:2, VI and are not subject to the disclosure requirements of RSA 664:14.

Under RSA 664:3, I, “[a]ny political committee, except the political committee of a political party, shall register with the secretary of state as provided in this section.” RSA 664:2, III(a) reads that a political committee is “[a]ny organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party.”

GSM’s advertisements did not expressly advocate for the success or defeat of any specific party, candidate, or measure. Because GSM’s communications did not constitute political advertising, we find that GSM was not an organization of at least two persons that was promoting the success or defeat of a candidate or measure. Therefore, we find that GSM was not required to register as a political committee with the New Hampshire Secretary of State.

This matter is closed. Please reach out to me if you have any questions or concerns.

Sincerely,



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

MGC/mgc

cc: Donna Veilleux
Chief Robert King, Madison Police Department
Nicole Norland
Director Lougee
Jeanne Dietsch

**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 30, 2023

Roberta Boudman

████████████████████
Wolfeboro, NH 03894

Re: Theft of signs

Dear Ms. Boudman:

I write in response to the complaint that you filed on October 5, 2022, regarding theft of political signs. Unfortunately, this Office's investigation was not able to identify any person responsible for the theft of your signs. Please see the enclosed memo explaining that we are closing our investigation into this matter. If you find any new information regarding the theft of your signs, please don't hesitate to reach out, and we will review that information.

Sincerely,

/s/ Brendan O'Donnell
Brendan A. O'Donnell
Assistant Attorney General
Election Law Unit

BAO/jt
Enclosure

Alleged Illegal Campaign Activity-Removal of Political Advertising
(Roberta Boudman, Complainant)

To: File
From: Brendan O'Donnell
Re: Alleged Illegal Campaign Activity-Removal of Political Advertising
Date: 2023 08 22

Complaint: This matter involved a complaint from Roberta Boudman regarding the theft of her campaign signs in Wolfeboro, Tuftonboro, and Ossipee during the 2022 General Election cycle.

Background:

On October 10, 2022, Ms. Boudman reported that over 100 of her political signs had been stolen by one or more unknown persons from various locations in Wolfeboro, Tuftonboro, and Ossipee. Several signs of the signs had been along Route 171, Mountain Road, in Tuftonboro. In some cases, Ms. Boudman replaced the signs only to have the replacement signs stolen as well.

This Office reviewed the information Ms. Boudman submitted and conducted an investigation. However, the investigation was not able to reveal the identity of any individual who may have stolen Ms. Boudman's campaign signs.

On November 21, 2022, Ms. Boudman reported that approximately 250 signs had been stolen during that election cycle.

Conclusion: Based on the evidence Ms. Boudman submitted and following an investigation, this Office was not able to determine the identity of any individuals who were responsible for stealing Ms. Boudman's campaign signs. See RSA 664:17. Therefore, this matter is now closed.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
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JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 31, 2023

SENT VIA EMAIL ONLY

Ken Eyring
Government Integrity Project
[REDACTED]

Re: Campaign Finance Registration and Reporting Information

Dear Mr. Eyring:

On June 25 and 26, 2021, this Office received two complaints about the involvement of a group allegedly supporting a candidate for Danville's July 13, 2021, town election. Specifically, the two complaints questioned the legality of a group soliciting contributions for and spending money to host events in support of a Danville candidate. After further inquiry, we identified the group as the Government Integrity Project. This group has a webpage on the "GiveSendGo" fundraising website, titled "Government Integrity Project," and indicating that the "Campaign [was] Created by: Ken Eyring." The website explained that it was in support of the write-in campaign for former Selectmen Scott Borucki. This Office reached out to you multiple times in relation to this inquiry. While this Office subsequently engaged with you in other settings and on different topics, this matter was never raised following our initial outreach.

RSA 664:1 states that the only campaign finance laws that apply to city, town, village district and school district elections are those set forth in RSA 664:14 through RSA 664:22, which relate to political advertising. By contrast, the entirety of RSA Chapter 664, which includes registration requirements for political committees, applies to all state elections. Under our campaign finance laws, a group or organization that advocates for or against a candidate or measure in a town election is not required to register as a political committee or report its receipts and expenditures. Therefore, Government Integrity Project was not required to register as a political committee for its activities related to the Danville town election. If the Government Integrity Project were to issue mailers or email promoting election related events such as fundraising events for elections for a city, town, school district, or village district election, it would need to comply with the political advertising requirements set forth in RSA 664:14 through 664:22. Further, if the Government Integrity Project engages in conduct promoting the success or defeat of candidates or measures for state or federal elections, then it must: (1) register as a political committee with the Secretary of State; and (2) report any receipts and expenditures.

We hope this information proves useful to you. This matter is closed.

Sincerely,



Matthew G. Conley
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Election Law Unit
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matthew.g.conley@doj.nh.gov

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 8, 2023

Brigitte Codling
Haverhill Town Manager
2975 Dartmouth College Highway
North Haverhill, NH 03774

Re: Haverhill Fire Chief Phil Blanchard, Alleged Illegal Campaign Activity

Dear Manager Codling:

This letter addresses several complaints stemming from the March 14, 2023 Haverhill Town Elections have been filed with this Office.

On March 17, 2023, Ed Ballam contacted this Office to report his concern that Phil Blanchard was elected to a three-year term as Haverhill Selectman on March 14. Specifically, Mr. Ballam indicated that Selectman Blanchard's new position was an incompatible office under RSA 660:7. This complaint followed a February 21, 2023 complaint by Jay Holden that raised the same issue.

This Office received a subsequent complaint from Mr. Ballam and the Haverhill Moderator, Gary Hebert, alleging that Selectman Blanchard had been improperly electioneering.

Finally, this Office received several complaints from Katie Williams regarding several political mailers that went out to Haverhill residents in advance of the March 18, Haverhill Town Meeting. Ms. Williams alleged that these mailers did not contain proper identifying information under RSA 664:14.

This Office investigated these three complaints and finds that Selectman Blanchard's position does not constitute an incompatible office under New Hampshire Law, his conduct did not constitute improper electioneering under RSA 659:44-a, and that while the mailers at issue did not contain appropriate identifying information under RSA 664:14, they are exempt from that statutory requirement under federal case law.

I. FACTUAL BACKGROUND AND INVESTIGATIONS

a. Incompatibility of Offices

On February 21, 2023, Mr. Holden called this Office to clarify whether Mr. Blanchard could properly run for Office or if the positions of Selectman and Fire Chief would cause a conflict of interest. On that same date, I reached out to you. You explained that you were aware of a number of complaints on this issue and that Selectman Blanchard was a part-time employee. You informed me that the town had reached out to their town counsel on this question and verified that Selectman Blanchard could legally run as he was a part time employee. You forwarded the written communications that you had with the town counsel on this subject to this Office. Those records included an appointment letter for Selectman Blanchard as Fire Chief that verified what you had told me on the phone.

On February 28, 2023, I relayed the communications that I had with you to Jay Holden, explaining that we had not found any violation of New Hampshire law in what had been shown to us.

On March 17, 2023, Mr. Ballam emailed this Office to indicate that, on March 14, 2023, Phil Blanchard was elected to the Haverhill Selectboard. He pointed out that Selectman Blanchard is also the Fire Chief of the Haverhill Fire Department. That position, Mr. Ballam wrote, is an appointment made by the Haverhill Town Manager. Conversely, he wrote that “an untenable situation” had been created because the selectboard has the power to hire and fire the town manager. Mr. Ballam called for this Office to disqualify Selectman Blanchard and to overturn his election.

On that same date, I wrote back to Mr. Ballam, indicating that, based on our review, there had been no violation of New Hampshire’s election laws that this Office could enforce and that any action would require either a change in law from the New Hampshire legislature or the enforcement of local policy by the courts and Haverhill officials.

b. Improper Electioneering

On March 20, 2023, Moderator Hebert emailed Chief Investigator Richard Tracy. The email was a forward of an email thread between Moderator Hebert and Mr. Ballum regarding Selectman Blanchard’s conduct, specifically referencing the beginning of the forwarded thread.

The first email in the thread was a message from Selectman Blanchard to a Google Group¹, “Town of Haverhill Fire Department”, dated March 17, 2023. In that message, Selectman Blanchard explained that there would be “a few important items” being voted on in the March 18 Haverhill Town meeting including an article for the “immediate termination of the town manager” and “[f]unding of [W]oodsville fire and road crew.” Selectman Blanchard wrote of the former, “I personally would love to see way more no votes and this article to fail. This

¹ A Google Group is a service from Google that allows individuals to communicate using threaded discussions. A note in the message sent by Selectman Blanchard confirms that one would have to have subscribed to the Google Group “Town of Haverhill Fire Department” to receive messages sent to that group.

article gets brought up almost every year and being that its non-binding it just creates even more divide in our town.” Of the latter, he wrote “I do not support a fire budget that is larger than ours passing and having no say on how the money is spent. I do want to support the districts in town, just want it to be fair.” There is no indication that Selectman Blanchard sent this email to anyone outside of the Haverhill Fire Department.

c. Illegal Mailers

On March 10, Katie Williams emailed this Office a photo of a mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. The mailer specifically asked residents to “Vote No on Article 10 and 11” at Haverhill’s Town Meeting on March 18. The mailer contained no identifying information beyond a postage stamp that did not identify any organization or individual.

On March 11, Ms. Williams emailed this Office a photo of a second mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. This mailer read “It’s Time to Shine the Light on Haverhill’s ‘Shadow Government’” and called on residents to “VOTE **NO** ON ARTICLES 10 & 11”. The mailer contained no identifying information beyond a postage stamp that did not identify any organization or individual.

On March 17, Ms. Williams emailed this Office a photo of a third mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. This mailer discussed the consequences of Article 10 and Article 11 if they were to pass but did not expressly indicate how residents should vote on them. The mailer contained no identifying information.

Investigator Tracy found that the postal permit that had been used to send out the first two mailers was owned by Spectrum Marketing. This Office ultimately subpoenaed Spectrum Marketing and found that a company called Strategic Alchemy had ordered the mailers to be printed and mailed using Spectrum Marketing.

On May 25, Investigator Tracy contacted the owner of Strategic Alchemy, Periklis Karoutas. Mr. Karoutas explained that “an individual” had hired Strategic Alchemy and that it was his understanding that the identity of an individual did not need to be disclosed in this situation. On June 8, Mr. Karoutas sent this Office a signed and sworn-to affidavit in which he swore that his client was an individual acting on their own and that it was his understanding that the identify of his client was not required to be disclosed under the law.

II. LAW AND ANALYSIS

a. Incompatibility of Offices

Under New Hampshire law,

No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway

agent. 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. No person shall at the same time hold the offices of town treasurer and town clerk. **No full-time town employee shall at the same time hold the office of selectman.** No official handling funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

RSA 669:7, I (emphasis added).

The facts of this case show that, while Selectman Blanchard is the Haverhill Fire Chief, that is a part-time employment. Therefore, his acting as selectman does not constitute any violation of RSA 669:7.

This does not prevent the Town of Haverhill from enacting their own ethical codes or standards for office as long as those standards and codes do not conflict with New Hampshire law. However, this Office is not the proper enforcement authority for such municipal standards. Further, and notwithstanding statutorily incompatible offices, conflicts of interest requiring recusal may still arise. We urge Haverhill officials to be aware of these potential conflicts and to be aware of their responsibility to recuse themselves when such conflicts arise, which in turn will help maintain the confidence of the people of Haverhill.

b. Improper 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 official duties.

RSA 652:16-h, which was enacted on January 1, 2020, defines "electioneering" as "information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." RSA 652:16-h. (Emphasis added.)

RSA 659:44-a prohibits "public employees," as defined under RSA 273-A:1, IX, from engaging in electioneering while in the performance of their official duties. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute "public employees." Relevant here, "[p]ersons elected by popular vote" and "[p]ersons appointed to office by the chief executive or legislative body of the public employer" are excluded from the definition of "public employees". RSA 273-A:1, IX(a).

RSA 659:44-a prohibits any "use of government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

Selectman Blanchard does not constitute a public employee sufficient to trigger the electioneering prohibition under RSA 659:44-a, II in his capacity as selectman or as fire chief. Additionally, Selectman Blanchard's comments were in a private Google Group.

This Office acknowledges the general principle that the government may use public funds to support its own measures.² However, fire departments 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 Selectman Blanchard is exempt from the electioneering prohibition, his message could be—and has been—perceived as inappropriate electioneering by an individual holding a position of considerable public responsibility in Haverhill.

When such an individual is seen engaging in such conduct, which appears supportive of a candidate or measure, questions reasonably arise regarding that person's ability to execute their duties dispassionately. Selectman Blanchard must exercise a higher degree of care and diligence to ensure that he and community leaders do not engage in conduct that gives rise to these questions of integrity, nor use governmental resources in violation of RSA 659:44-a, II.

c. Illegal Mailers

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. RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly ~~or implicitly~~³ advocates the success or defeat of any party, measure, or person at any election.

Federal case law creates a limited exception to this requirement where an individual is the party responsible for political advertising.

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their idea from suppression – at the hand of an intolerant society.

McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357 (1995) (citations omitted). Individuals using their own funds to distribute political speech are therefore a limited exception

² 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).

³ 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.

to statutory political advertisement disclosure requirements. Following this Office's investigation, we are satisfied that the party responsible for the mailers at issue here falls into this narrow exception.

III. CONCLUSION

Following an investigation, this Office finds that Selectman Blanchard is not statutorily prohibited from holding both positions, that Selectman Blanchard's messages did not violate RSA 659:44-a, and that the mailers regarding Articles 10 and 11 were violative of RSA 664:14 but fall into a narrow exception created by federal law.

We encourage Haverhill officials to exercise the highest degree of care and diligence to ensure that community leaders do not engage in conduct that gives rise to questions of integrity, nor use of public resources in violation of the laws, standards, and responsibilities outlined in this letter.

This matter is closed.

Sincerely,

/s/ Brendan A. O'Donnell

Brendan A. O'Donnell

Assistant Attorney General

Civil Bureau

(603) 271-3658

Brendan.a.odonnell@doj.nh.gov

cc: Haverhill Board of Selectman
Haverhill Moderator Gary Hebert
Ed Ballam
Katie Williams

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 13, 2023

Steve Marchand
c/o Joseph Foster, Esq.
McLane Middleton
900 Elm Street
Manchester, NH 03101

Re: Portsmouth Election Handbill Alleged Campaign Finance Violation

Mr. Marchand:

On December 23, 2021, this Office received a multi-part complaint about an “attempted manipulation of the [Portsmouth City Council] Election and the business of the Portsmouth City Council before and after the election” from complainants Rick Becksted, Peter Whelan, Paige Trace, and Esther Kennedy. The complaint alleged, in part, that a series of calculated actions by individuals or entities with financial interests in Portsmouth were attempting to influence the election using “fake malicious websites created anonymously” along with anonymous flyers and text messages. Specifically, the complaint identified four sets of communications that were alleged to be unlawful:

- (1) “Preserve-Portsmouth.com,” a website that essentially spoofed a “PreservePortsmouth.com” website;
- (2) “beckstedfive.com,” another website related to City Councilors;
- (3) December 15 and 16, 2021, robo-text messages sent to Portsmouth residents with links to a video critical of the complainants; and
- (4) anonymous handbills.

The first issue regarding “Preserve-Portsmouth.com” was previously addressed under separate cover on October 6, 2022. The second and third issues identified above are being addressed in a separate letter issued today. This letter solely addresses the anonymous handbills, which consisted of double-sided printed cards. The content of the handbills appeared to be largely drawn from Preserve-Portsmouth.com – a website for which you admitted you were responsible. The political advertising content on the handbill included the names of five city councilors, along with the following statements:

- “Learn more about their plan to ‘Make Portsmouth Great Again’ at www.Preserve-Portsmouth.com.”
- “In 2020, Rick Becksted was one of only two councilors to vote against a mask mandate.”

- “Congressman Chris Pappas is one of the GOP’s top targets in 2022 as they seek to take back Congress. Rick Becksted supported his leading GOP rival at this Sep. 24th fundraiser.”
- “The ‘Becksted Five’ block voted against adding Indigenous People’s Day alongside Columbus Day.”
- “This year, the Becksted Five voted 5-4 to a goal of no increased spending, after being told it would lead to school staffing cuts. During a pandemic, they supported a reduction of multiple elementary teachers.”

The handbill in question was published in October prior to the November 2, 2021, Portsmouth city election. The complaint alleged that the handbills violated RSA 664:14 because they failed to display the identification information required for political advertising.

During the course this Office’s investigation, we reviewed the materials submitted with the complaint, conducted interviews, reviewed publicly available information, and issued a subpoena to you for documents pursuant to RSA 7:6-c,

Pursuant to the subpoena, you provided records and represented, through your attorney, that you prepared, printed, paid for, and personally hand-delivered 100 4” x 6” of the above-described handbills. In reviewing the records and information you provided, you ordered and printed the handbills from the Fox Run Mall Staples on October 30, 2021. Based on the information in the complaint, our investigation, and your representations, we conclude that you acted alone in the production and distribution of the handbills.

This Office finds that you were responsible for the handbill and that the content is the functional equivalent of express advocacy. It was, therefore, a violation of RSA 664:14 to fail to provide identification information. However, in light of McIntyre v. Ohio, 514 U.S. 334, 355, 357 (1995), and its narrow protection for the anonymity of political speech when conducted by an individual, this Office will take no further action on this component of the complaint.

ANALYSIS

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidate, person, or entity responsible for it. RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly ~~or implicitly~~¹ advocates the success or defeat of any party, measure, or person at any election.

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).

¹ 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.

Communications are not considered to be the functional equivalent of express advocacy where:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: **The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.**

Id. at 451 (emphasis added). Communications that fail to satisfy these criteria would constitute the functional equivalent of express advocacy and would be subject to RSA 664:14.

As an initial matter, the form of the political advertising is not here determinative for the purposes of the application of RSA 664:14. Whether structured as a print mailer, a newspaper advertisement, a website, or a handbill, the *content* of the communication is the subject of analysis for the purposes of satisfying identification requirements under RSA 664:14.

The handbill you produced, based on the content, constitutes the functional equivalent of express advocacy, within the meaning of RSA 664:2, VI, because, under the criteria laid out in Wisconsin Right To Life, Inc., it is subject to “no other reasonable interpretation” than advocating in support or opposition to candidates in the Portsmouth City Council race. The handbill content focuses on candidates, not legislative issues. It does not exhort the public to adopt a legislative policy position or urge the public to contact public officials with respect to the matter. The handbill content contains indicia of express advocacy in that the material explicitly focused on an election, particular candidates, a political party, and it took positions on candidates’ qualifications and fitness for office. Your own statements in written correspondence clarify that the purpose of the website—from which it appears the handbill content was drawn—was to impact the City Council election by influencing voters. Consequently, the handbill triggers 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, 514 U.S. at 355, 357. The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. Id. at 357.

We caution you, however, that in the twenty-eight 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).

CONCLUSION

Our review of the evidence has concluded that the subject handbill violated the mandatory disclosure requirements set forth in RSA 664:14. However, the evidence did not establish that you coordinated with other individuals in the creation and distribution of the handbill. As such, in light of the evidence available, we accept your claim that you alone were responsible for the handbill. As an individual engaging in the functional equivalent of express advocacy, McIntyre establishes a safe harbor in this circumstance.

Accordingly, this Office will take no further action on this component of the complaint at this time. You are warned, however, that the coordination with candidate campaigns or other non-campaign individuals are factors, among others, that could bar you from being covered by the McIntyre exception.

This component of the matter is closed.

Sincerely,



Brendan O'Donnell
Assistant Attorney General
Attorney General's Office

CC: Rick Becksted
Peter Whelan
Paige Trace
Esther Kennedy

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 13, 2023

Rick Becksted
[REDACTED]
Portsmouth NH 03801

Paige Trace
[REDACTED]
Portsmouth NH 03802

Peter Whelan
[REDACTED]
Portsmouth NH 03801

Esther Kennedy
[REDACTED]
Portsmouth NH

Re: Portsmouth Election Alleged Campaign Finance Violation Concerning Robo-texts

Mr. Becksted, Mr. Whelan, Ms. Trace, and Ms. Kennedy:

On December 23, 2021, this Office received a multi-part complaint about an “attempted manipulation of the [Portsmouth City Council] Election and the business of the Portsmouth City Council before and after the election” from complainants Rick Becksted, Peter Whelan, Paige Trace, and Esther Kennedy. The complaint alleged, in part, that a series of calculated actions by individuals or entities with financial interests in Portsmouth were attempting to influence the election through the use of “fake malicious websites created anonymously” along with anonymous flyers and text messages. Specifically, the complaint identified four sets of communications that were alleged to be unlawful:

- (1) “Preserve-Portsmouth.com,” a website that essentially spoofed a “PreservePortsmouth.com” website;
- (2) “beckstedfive.com,” another website related to City Councilors;
- (3) December 15 and 16, 2021, robo-text messages sent to Portsmouth residents with links to a video critical of the complainants; and
- (4) anonymous handbills.

The first issue with regard to “Preserve-Portsmouth.com” was previously addressed under separate cover on October 6, 2022. The fourth issue identified above is being addressed in a separate letter being issued today. This letter solely addresses the second and third issues.

The texts in question were sent in December, 2021, following the November 2, 2021, Portsmouth city election. These texts contained the following content:

In the final days in office, the Becksted Five are taking revenge on Portsmouth voters by handing out city appointments to cronies and making decisions that could cost taxpayers tens of millions. Tell the Becksted Five to leave the decisions to the City Council Portsmouth elected. Learn more: beckstedfive.com.

The texts also included a link to a video that was critical of the five then-current city councilors.

The website “beckstedfive.com” was similarly published after the November 2, 2021, election. The website beckstedfive.com contained negative information about certain city councilors.

In addition to reviewing the materials submitted by the complainants, this Office subpoenaed materials under RSA 7:6-c, conducted interviews, and reviewed other available information related to the allegations in the complaint.

ANALYSIS

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. RSA 664:2, VI defines political advertising as “any communication, including buttons or printed material attached to motor vehicles, which expressly ~~or implicitly~~¹ **advocates the success or defeat of any party, measure, or person at any election.**” RSA 664:2, VI (emphasis added). RSA 664:2, I states: “‘Election’ means any general biennial or special election, political party primary, or presidential preference primary as provided in RSA 664:1.” RSA 664:2, I.

As an initial matter, the form of the political advertising does not matter for the purposes of the application of RSA 664:14. Whether structured as a print mailer, a newspaper advertisement, a website, a handbill, or a text, the *content* of the communication is the subject of analysis for the purposes of satisfying identification requirements under RSA 664:14.

Fed. Election Comm’n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 469–70 (U.S. 2007) discusses what may constitute the functional equivalent of express advocacy. Communications are not the functional equivalent of express advocacy where:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate’s character, qualifications, or fitness for office.

Id. at 451.

¹ 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.

The beckstedfive.com website and the December texts do not fall with the definition of “political advertising” under RSA 664:2 and under the criteria identified in Fed. Election Comm’n v. Wisconsin Right To Life, Inc. because they are not advocating in support of or in opposition to candidates in the Portsmouth City Council race and were sent or published after the November election. The content of these communications focused on sitting councilors and issues before those councilors. The texts exhort the public to adopt a policy position and urge the public to contact public officials with respect to the matter. No individual identified was a candidate on the ballot for an upcoming election. Consequently, based both on the content and timing of the communications, the website and texts did not trigger the identification requirements for political advertising under RSA 664:14.

CONCLUSION

RSA 664:14 requires that political advertising be signed with the name and address of a person responsible for the advertising or include an internet address at which a website immediately and prominently displays all of the required disclaimer information. However, the website and texts at issue did not constitute political advertising covered by RSA 664:14. As such, the texts are not subject to enforcement action by this Office.

This Office will take no further action on this matter. Each facet of the multi-part complaint has now been addressed and this investigation is closed.

Sincerely,



Brendan O'Donnell
Assistant Attorney General
Attorney General's Office

To: File
From: Brendan A. O'Donnell
Re: ██████████, Alleged Wrongful Voting
Date: September 15, 2023

Issue:

Gorham's Town Clerk reported a potential issue involving ██████████ registering to vote in Gorham.

Background: Following an investigation, this Office determined that ██████████ currently is serving in the United States Air Force. ██████████ obtained a New Hampshire driver's license and registered his vehicle in Gorham. ██████████ owns land in Gorham, but there is no structure on the Property. ██████████ purchased the land about a year and a half prior, and he intends to live on the property when he retires from the Air Force. ██████████ rents a storage shed in Gorham. He uses the shed to store his personal belongings while he is deployed overseas. ██████████ was preparing for deployment overseas ██████████.

Conclusion: Based on these facts, this Office is satisfied that ██████████ established New Hampshire as his domicile, and ██████████ may properly register as a UOCAVA voter.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 15, 2023

Joseph Behling
[REDACTED]

Re: **CEASE AND DESIST ORDER**
664:17 Placement and Removal of Political Advertising
AMOUNT DUE WITHIN 30 DAYS: \$300.00

Mr. Behling:

On August 12, 2022, this Office received a complaint regarding thefts of campaign signs from multiple properties in Hooksett, New Hampshire. Following an investigation, the Attorney General orders you to cease and desist from removing political signs unless you are authorized by the owner of the property. This Office further fines you \$300.00 pursuant to its statutory authority under RSA 664:17 and RSA 664:21.

I. INVESTIGATION

The complainant, J.R. Hoell, contacted this Office to report the theft of campaign signs from his property and from his neighbor's property in Hooksett, NH. Mr. Hoell provided this Office with the names of two witnesses to these thefts. Mr. Hoell explained that the signs were for Carol McGuire, Michael Yakubovich, and himself. He provided a photograph of the suspect's vehicle in which the vehicle's license plate was legible. Mr. Hoell stated that one sign was stolen from his property and one was stolen from Hooksett Family Eye Care and that his signs cost \$8.00 each.

On August 26, Investigator Richard Tracy spoke with Mr. Yakubovich, who was running for State Representative at the time. Mr. Yakubovich told Investigator Tracy that a witness had informed him of at least three of his signs that had been removed and placed in the back of a black Honda Accord. One witness took a photo of the Accord and sent it Mr. Yakubovich. Mr. Yakubovich paid \$5.00 for each sign.

On August 30, 2022, Investigator Tracy spoke with Representative Carol McGuire, who was running for reelection at the time. Rep. McGuire confirmed that she had given Mr. Hoell about a dozen of her signs and that the signs cost between \$7.00 and \$8.00 each.

On August 26, Investigator Tracy spoke with a witness who confirmed that, according to data on her daughter's phone, the theft that they observed took place on August 8, 2022. The witness explained that they watched a black Honda Accord pull into the parking lot and a 30-year-old white male with blonde hair and glasses exited the vehicle. The man removed a total of six or seven signs from their and Mr. Hoell's property, placed them into the Accord, and then drove off.

On August 21, 2023, Investigator Tracy observed two vehicles parked in the driveway at 581 Central Street in Manchester, NH. One was a black Honda Accord. The license plate matched the plate that Investigator Tracy observed in his initial investigation and was registered to you. Investigator Tracy spoke to you, and you indicated that you understood the law to be that people could not place political signs on public property. Investigator Tracy explained that, while you were partially correct, only the owner of the signs, property owners, and maintenance for the property, or law enforcement could remove political signs. You admitted that you did not meet these requirements. You acknowledged that you considered all political signage to be a form of "littering" and that your actions were not politically motivated.

II. ANALYSIS AND LAW

In New Hampshire,

[n]o person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to public property or any private property except for removal by the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising. Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel.

RSA 664:17. Individuals who violate this statute may be subject to misdemeanor criminal prosecution. RSA 664:21, IV. Under RSA 664:21, V(a), "[w]hoever violates any of the provisions of RSA 664:16-a or the provisions of RSA 664:17 relative to removing, defacing, or destroying political advertising on private property shall be subject to a civil penalty not to exceed \$1,000." Section V(b) of that same statute clarified that "[t]he court, upon petition of the attorney general, may levy upon any person who violates the provisions of ...RSA 664:17 relative to removing, defacing or destroying political advertising on private property a civil penalty in an amount not to exceed **\$1,000 per violation.**" (Emphasis added).

Witnesses observed you removing signs, and they photographed your vehicle. You admitted that you were not authorized by the property owner to remove the signs, as required by RSA 664:17.

This Office finds, therefore, that you violated RSA 664:17 by unlawfully removing political signs from Mr. Hoell's property and from 1150 Hooksett Road, Hooksett, NH, without permission from the owners of those properties.

III. CONCLUSION

You violated RSA 664:17 by removing political advertising from private property without the property owner's permission. RSA 664:21 authorizes the Attorney General to notify suspected violators of RSA 664:17 of the State's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the Secretary of State for deposit into the general fund. Accordingly, the Attorney General imposes a civil penalty for your violation of this state's election laws in the amount of \$300.00.

PURSUANT TO RSA 664:21 AND BASED UPON THE INVESTIGATION CONDUCTED BY OUR OFFICE, YOU ARE FURTHER ORDERED TO **CEASE AND DESIST** FROM REMOVING, DEFACING, OR DESTROYING POLITICAL ADVERTISING ON PUBLIC OR PRIVATE PROPERTY IN NEW HAMPSHIRE.

Your payment of the \$300.00 civil penalty must be delivered to our Office within thirty (30) days of receipt of this letter. In the event that you fail to make timely payment of this penalty, this Office will initiate further enforcement action.

Your payment of \$300.00 shall be made by check payable to "Treasurer, State of New Hampshire" and mailed to the Office of the Attorney General, 33 Capitol Street, Concord, NH 03301, Attention: Assistant Attorney General Matthew G. Conley.

This matter will be closed upon receipt of your payment of the civil penalty.

Sincerely,



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

MGC/mgc

cc: Joseph Hoell, Jr.
Michael Yakubovich
Rep. Carol McGuire

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 15, 2023

The Laconia Education Association
ATTN: Tara Columb, LEA Union President
c/o Sean List, Esq.
6 Garvin Falls Rd,
Concord, NH 03301

Re: Tara Columb, Alleged Illegal Campaign Activity
CEASE AND DESIST ORDER

Dear LEA Union President Columb:

On February 2, 2023, this Office received a complaint from the Laconia School Board, Ward 2 Candidate, Laura Dunn, regarding activities conducted on behalf of the Laconia Education Association (LEA) by you and other members of the organization. The complaint alleged that you used a school district e-mail address to distribute two letters to the editor from the Laconia Daily Sun, which explicitly advocated for readers to vote for Candidate Dunn's opponent.

Following an investigation, this Office concludes that this activity violated RSA 659:44-a, II, which prohibits public employees from using government property or equipment for electioneering. Accordingly, this Office orders the LEA and its members to cease and desist from using government property, including government computers and e-mail addresses, for electioneering.

I. Background:

On Friday, November 4, 2022, at 11:59 a.m., you sent an e-mail from your "@laconiaschools.org" e-mail address to Karen Abraham at her "@laconiaschools.org" e-mail address. In that e-mail, you asked Abraham to "send the following letters to the editor to all members regarding Tuesday's Election." You also stated: "Dear Members, Attached are two letters to the editor that provide important candidate information for all voters (but especially individuals in Laconia's Ward 2)."

The first attached letter was a letter to the editor of the Laconia Daily Sun written by Aaron Hayward, the outgoing Laconia School Board chairperson. In that letter, Hayward stated "Laura Dunn and Dawn Johnson have made this last year as difficult as I could have imagined." Hayward asked readers to support Candidate Dunn's opponent for school board in Ward 2, and another candidate for school board in Ward 3.

The second attached document was a letter to the editor of the Laconia Daily Sun written by Matt Lahey. In that letter, Lahey questioned how Candidate Dunn could represent Ward 2 when she was sending her kids to a school in another ward. Lahey further stated that “Ward 2 parents, their children and Woodland Heights School deserve the full support of their Ward 2 School Board Representative” and that he was “voting for [Candidate Dunn’s opponent].”

On Friday, November 4, 2022, at 3:27 p.m., Abraham e-mailed the articles from her “@laconiaschools.org” e-mail address to the LEA Executive Board at its “@laconiaschools.org” e-mail address. Abraham’s e-mail included the message: “I was instructed to forward to all union members. Please forward to your building members. Thanks!”

On Monday, November 7, 2022, at 8:13 a.m., Hayley Rogers e-mailed the articles from her “@laconiaschools.org” e-mail address to 15 other LEA members at their “@laconiaschools.org” e-mail addresses. Rogers’ e-mail included the message “See below on information regarding candidate information relevant to tomorrow’s election. GO VOTE!”

During its investigation, this Office spoke with Attorney List, counsel for the LEA. Attorney List explained that he believed the LEA members’ activity was proper because the 2022-2025 collective bargaining agreement between the Laconia School District and the LEA (the “CBA”) “embraces LEA having open and regular communications with its members.” Article V of the CBA provides that the LEA, as relevant here, “may, with permission of the Building Principal, use school equipment normally used by teachers for Association activities.”¹

II. LAW AND ANALYSIS

RSA 659:44-a, II, provides that “[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, III defines “electioneer” for purposes of this requirement to mean “to act in any way specifically designed to influence the vote of a voter on any question or office.”

You, Abraham, and Rogers were public employees subject to the electioneering requirements of RSA 659:44-a because you were employed by the Laconia School District, which is a public employer. See RSA 273-A:1, IX (defining “public employee” as “any person employed by a public employer”); RSA 273-A:1, X (defining “public employer” as “the state and any political subdivision thereof”).

You, Abraham, and Rogers engaged in electioneering by sending communications that expressly advocated for the success or defeat of any person at an election. Although nothing in the body of your e-mail expressly advocated for the success or defeat of a candidate, your e-mail included two letters that did so. For example, the Hayward letter asked readers to vote for a specific candidate in the Ward 2 school board election and a second specific candidate in the Ward 3 school board election. Similarly, the Lahey letter stated that “Ward 2 parents, their children and Woodland Heights School deserve the full support of their Ward 2 School Board

¹ Notably, Article XII, Section 12.1 provides that if any provision of the CBA is “held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, extent to the extent permitted by law.”

Representative” and that he was “voting for [Candidate Dunn’s opponent].” Thus, each letter expressly advocated for the success of one or more school board candidates. Moreover, your e-mail stated that you were sending the articles to “provide important candidate information for all voters (but especially individuals in Laconia’s Ward 2),” indicating that the purpose of your e-mail was to influence voters by conveying Hayward’s and Lahey’s advocacy statements to LEA members.

Abraham and Rogers subsequently forwarded your email, with the attached letters, to LEA members. Notably, Rogers’ e-mail additionally urged LEA members to read the letters and to “GO VOTE” at the upcoming school board election, which indicates that the purpose of her e-mail was to influence voters by conveying Hayward’s and Lahey’s advocacy statements to LEA members and urging them to vote.

In sum, these LEA communications constitute electioneering within the meaning RSA 659:44-a because the communications were designed to influence the votes of voters in upcoming school board elections.

In making these communications, you and other LEA members used Laconia School District’s computers and/or e-mail domain. Although Article V of the CBA authorizes LEA members to use Laconia School District equipment, with permission, LEA members cannot use such public property or equipment in a manner that violates State law. Therefore, notwithstanding Article V of the CBA, you and other LEA members violated RSA 659:44-a, II by using government property or equipment for electioneering.

III. CONCLUSION

For the reasons described above, this Office finds that you violated RSA 659:44-a, II by using government property or equipment for electioneering.

ACCORDINGLY, THIS OFFICE ORDERS THE LEA AND ITS MEMBERS TO CEASE AND DESIST FROM USING GOVERNMENT PROPERTY OR EQUIPMENT FOR ELECTIONEERING.

This matter is closed.

Sincerely,

/s/ Brendan O’Donnell
Brendan A. O’Donnell
Assistant Attorney General
Civil Bureau

cc: Secretary of State - Elections Division, Secretary of State
Department of Education Commissioner Frank Edelblut
Laconia Superintendent Steve Tucker
Laconia School Board Chair Jennifer Anderson
Laura Dunn

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 18, 2023

Julie Seeley
Bethlehem Supervisor of the Checklist
2155 Main Street
PO Box 189
Bethlehem, NH 03574

Re: Bethlehem Property Tax Mailer and Texts, Alleged Illegal Campaign Activity

Dear Supervisor Seeley:

You raised a complaint regarding a political mailer and a text exchange that were in violation of New Hampshire election law ahead of the March 8, 2022, Bethlehem Town Election. This Office investigated and we conclude that, while most political communications must utilize disclaimer information identifying the origin of the communications, the communications at issue in this matter fall into a narrow exception to these requirements.

I. INVESTIGATION

On February 17, 2022, you sent an email to this Office noting that you were writing as a concerned citizen, attaching copies of a mailer and a text exchange that you had received from a friend. One of the parties to the text exchange was a phone number listed on the mailer. The front of the mailer was addressed to "BETHLEHEM RESIDENTS" and invited them to participate in a survey relating to a proposed 11.5% property tax increase. Residents were to participate in this survey by texting "concern" to 833-798-0248 which your friend claimed that she did.

When your friend texted this number "Concerned. More information please! Thank you!" the number texted back the following message:¹

Please support selectmen candidates "David Wright", Patrick Doughty" and "Cathy Qi"! These candidates are trying hard to cut spending! Other candidates are all together and spending taxpayer's dollar crazy. Bruce is current select board chairman and he proposed

¹ This text message contained several grammatical and spelling errors. The text that appears in this letter recites the original message verbatim.

11% increased budget. And he is the one who signed \$425,000 golf course sale. The sale deal is terrible for Bethlehem residents.

You indicated that your friend replied with “thanks for the information.” The “833” number then replied an acknowledgement and encouraged your friend to “raise your concerns” at the upcoming candidate night on February 22, 2022.

You informed this Office that, based on communications that you observed at the candidate night forum, you believed you knew who was responsible for the texts and mailers.

On February 24, 2022, Bethlehem Selectman Bruce Caplain emailed a letter to the New Hampshire Attorney General’s Office and the New Hampshire Secretary of State’s Office. This letter came to the attention of the New Hampshire Attorney General’s Election Law Unit on March 1, 2022. Selectman Caplain's complaint seemed related to your complaint and contained more information regarding the responsible party.

On March 8, the day of the Bethlehem Town Election, Chief Investigator Richard Tracy stopped by Bethlehem Town Hall. Investigator Tracy spoke with you. Following that conversation, Supervisor Seely sent Investigator Tracy a link to a video recording of candidate night that had been posted to Facebook.

During the course of his investigation, Investigator Tracy spoke to an individual who admitted responsibility for the mailer and text responses. That individual admitted to acting alone in distributing the mailer and text responses, and that individual provided samples of survey language that the individual had sent out:

First text exchange, February 17, at 3:00 PM;

3:00 PM, Survey participant wrote: *Concerned*

3:20 PM, Surveyor: *Thanks for participating our survey! We will share the result with you soon.*

3:24 PM, Surveyor further wrote: *there is “candidate night” next Tuesday Feb 22 from 6 to 8 at town hall. You can raise your concerns to all candidates. Your voice matters!*

Second text exchange, February 17, 4:45 PM;

4:45 PM, Survey participant wrote: *Concern*

4:45 PM, auto response: *Thank you for participating our survey! We will share the survey result with you soon. Any comments are welcome! You could text us back with your thoughts. Love your neighbors, Bethlehem inhabitants.*

4:45 PM, auto response: *concern: Reply STOP to unsubscribe or HELP for help. 4 msgs per month, Msg&Data rates may apply*

4:46 PM Survey participant wrote: *Recommended candidates?*

5:22 PM, Surveyor wrote: *there is "candidate night" next Tuesday Feb 22 from 6 to 8 at town hall. You can raise your concerns to all candidates. Your voice matters! We prefer David Wright Patrick Doughty Cathy Qi.*

6:25 PM, Surveyor wrote: *They were trying hard to cut budget on Feb 8 town meeting. But we didn't have enough supporters. All town employees and elected official were there. Of Course they will approve 11% increase. That is the reason we want to get our group for inhabitants of Bethlehem.*

6:30 PM, Survey participant wrote: *Thanks.*

Following a thorough investigation, this Office is satisfied that this single individual was responsible for both the mailers and the text messages in this instance. Investigator Tracy has spoken to this individual and explained disclaimer requirements to that person for future reference.

II. LAW AND ANALYSIS

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. RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly² advocates the success or defeat of any party, measure, or person at any election.

While the mailers themselves did not contain any express advocacy, the text surveys transformed into explicit advocacy requiring RSA 664:14's disclaimer language when the surveyor made recommendations for candidates and measures that went beyond providing information to voters.

That said, federal case law creates a limited exception to signature and identification requirements where the party responsible for political advertising is an individual.

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to

² 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.

protect unpopular individuals from retaliation – and their idea from suppression –
at the hand of an intolerant society.

McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357 (1995) (citations omitted). This creates a limited exception that allows *an individual* using his or her own funds to distribute political speech that does not follow disclosure requirements. Following this Office's investigation, we are satisfied that the individual responsible for the mailers at issue here falls into this narrow exception to RSA 664:14.

III. CONCLUSION

Following an investigation, this Office finds that the texts and the mailers regarding were violative of RSA 664:14 but fall into a narrow exception created by federal law.

This matter is closed, please contact me if you have any questions or concerns.

Sincerely,



Matthew G. Conley
Assistant Attorney General
Election Law Unit
(603) 271-6765
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Bethlehem 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

September 19, 2023

Ashland Police Department
Attn: Lieutenant Derek Gray
Ashland, NH 03217
By e-mail: dgray@ashland.nh.gov

Re: H.G., Alleged Wrongful Voting

Dear Lieutenant Gray:

On March 27, 2023, you referred a report to this Office that H.G. may have violated RSA 659:34 by voting in the Town of Ashland when H.G. was not domiciled there. Following an investigation, this Office concludes that H.G. did not wrongfully vote in Ashland because H.G. was domiciled there.

Background:

H.G. has lived at [REDACTED] in Ashland for most of the past 20 years (the "Ashland Property"). H.G. had recently begun to renovate the residence at the Ashland Property. During the renovation, H.G. was temporarily residing at a camp on a family member's property in the Town of Bridgewater, but H.G. intends to move back to the Ashland Property.

H.G. receives all their mail at the Thompson Property. H.G.'s driver's license and vehicle registrations identify the Ashland Property as H.G.'s home address. H.G. has been a registered voter in Ashland for the past 15 years. H.G. has never registered to vote in Bridgewater, and H.G. does not own property in that town.

Wrongful Voting Analysis

To vote in a New Hampshire municipality, a person must be domiciled there. "An inhabitant's 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.

Here, H.G.'s claim that Ashland is H.G.'s domicile is supported by sufficient evidence, including H.G.'s history of living at the Ashland Property, mailing address, driver's license,

H.G., Alleged Wrongful Voting
Page 2 of 2

vehicles registrations, and voting history. Under these circumstances, H.G. temporarily staying in another municipality during a renovation project does not affect H.G.'s domicile in Ashland. See RSA 654:2 ("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.").

This Office is satisfied that H.G. was domiciled in Ashland for the purposes of being a qualified voter. Therefore, we find that the report alleging H.G. wrongfully voted is unfounded.

This matter is closed.

Sincerely,

/s/ Brendan O'Donnell _____

Brendan A. O'Donnell
Assistant Attorney General
Election Law Unit Chief
brendan.a.odonnell@doj.nh.gov

BAO/bao
CC: H.G.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 19, 2023

Steve Thomas

Via e-mail [REDACTED]

**Re: M.G., Alleged Wrongful Voting
(Steve Thomas, Complainant)**

Dear Mr. Thomas:

The purpose of this letter is to respond to your November 10, 2022, complaint to this office, which alleged that M.G. may have wrongfully voted in the Town of Epping despite being domiciled in New York City. Following an investigation, this Office finds that M.G. did not wrongfully vote in Epping.

Background

M.G. stated that she lives both in New Hampshire and in New York City, and that she cannot say that she stays in one place more than the other. M.G. stated that she grew up in New Hampshire and travels often throughout the year between New Hampshire and New York City. M.G. stated that she votes absentee more than in person because November is often a time of the year that she is in New York City for work.

M.G.'s statements are supported by her license and vehicle registration, each of which list her home address as being in Epping. M.G.'s voting history indicates that she consistently voted in Epping from 2006 through 2022, twice in-person, and 18 times by absentee ballot. This Office confirmed with the New York City Board of Elections that M.G. was never a registered voter in New York City.

Wrongful Voting Analysis

To vote in a New Hampshire municipality, a person must be domiciled there. "An inhabitant's 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. "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.

M.G.—alleged wrongful voting
Page 2 of 2

Here, M.G.'s claim that Epping is her domicile is supported by sufficient evidence, including her vehicle registration, her driver's license, her voting history, and her statements that she travels frequently between in New Hampshire and New York City and does not stay in either place more than the other.

This Office is satisfied that M.G. was domiciled in Epping for the purposes of being a qualified voter. Therefore, we find that the complaint alleging M.G. wrongfully voted is unfounded.

This matter is closed.

Sincerely,

/s/ Brendan O'Donnell

Brendan A. O'Donnell
Assistant Attorney General
Civil Bureau
brendan.a.odonnell@doj.nh.gov

BAO/bao
CC: M.G.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 21, 2023

Daniel Popovici-Muller

██████████
Windham, NH 03087

Re: Citizens Count Political Survey, Alleged Illegal Campaign Activity

Dear Representative Popovici-Muller:

On August 11, 2022, you reported to the Windham Police Department that you believed someone had impersonated you when filling out a candidate survey through the website "Citizens Count." The Windham Police Department subsequently referred your complaint to this Office for investigation. Following an investigation, this Office was not able to identify a suspect in this case. Because this Office has not identified a suspect, and because the misdemeanor statute of limitations has run on any alleged illegal conduct, this Office is closing its investigation.

Background:

This Office initiated an investigation after receiving your complaint regarding a candidate survey being improperly filled out in your name through the website Citizens Count. Citizens Count sends political surveys directly to candidates to collect and publish information on the political positions of those candidates. The Citizens Count survey at issue here asked candidates to provide basic background information and their positions on 20 political topics. You reported that your name appeared on a survey that you had not filled out.

You indicated to this Office that you could not identify any particular suspect, although you suspected the person was from Windham. An investigator from this Office reached out to Citizens Count, which was not able to identify the particular person who filled out the candidate survey in your name. This Office's investigation included trying to identify potential connections between the Citizens Count survey and your prior political opponents, candidates in the 2022 State Primary, and other Windham residents. However, the investigation ultimately did not identify the particular individual that filled out the Citizens Count survey in your name.

RSA 666:6 makes it a misdemeanor for any person who "shall without authority, sign the name of any other person to any letter or other document, or falsely represent that any other has written such letter or document, knowing such representation to be false, for the purpose of

Citizens Count Closure Letter.
Page 2 of 2

influencing votes, or who shall by false representation, use, employ or assign the name of any other person, or a fictitious name on a radio or television broadcast or other means of communication, to signify endorsement of a political party, candidates or programs, or, for the purpose of influencing votes.” The statute of limitations for misdemeanors is one year. See RSA 625:8, I(c)

Because this Office has not identified the person who filled out the candidate survey in your name, and because any offense would have occurred more than one year ago and is therefore outside the statute of limitations, this Office is closing its investigation.

This matter is therefore closed. Please reach out to Investigator Tracy or me if you come into possession of any additional information or if you have any further questions.

Sincerely,



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

MGC/mgc

cc Officer Shannon Dawes, Windham Police Department

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 26, 2023

Sara Dunn

[REDACTED]
Whitefield, NH

Re: **CEASE AND DESIST ORDER**
Sara Dunn, Alleged Wrongful Voting
AMOUNT DUE WITHIN 30 DAYS: \$750

Dear Ms. Dunn:

This Office received a complaint alleging that you wrongfully registered to vote in the Town of Dalton prior to the special election held on June 7, 2022. Following an investigation, this Office finds that you violated RSA 659:34, I (a) because you registered to vote in Dalton when you were not domiciled in that town. This Office orders you to cease and desist from registering to vote or voting in a municipality in which you are not domiciled, and this Office fines you \$750 pursuant to its statutory authority under RSA 659:34.

Background

You own a residence at [REDACTED] in the Town of Whitefield (the "Whitefield Property"). You also own a second property at [REDACTED] in Dalton (the "Dalton Property").

On May 31, 2022, you registered to vote in Dalton and submitted a domicile affidavit, in which you stated that you resided at the Dalton Property.

However, this Office discovered substantial evidence that you continued to reside in Whitefield during this period. Your voting history revealed that you voted in eleven elections in Whitefield between November of 2012 and March of 2022. In March of 2022, you ran for a seat on the Whitefield select board. Your driver's license, issued in July of 2022, identifies the Whitefield Property as your residence. The registrations for four vehicles, issued between August and October of 2022, list you as the primary or secondary owner and the Whitefield property as your residence. On August 19, 2022, the Whitefield Post Office confirmed that your mailing address continued to be at the Whitefield Property throughout 2022. On August 19, 2022, the Dalton Town Clerk's Office confirmed that you had not registered any vehicles or animals in Dalton. As of December 2022, your Facebook page identified you as living in Whitefield.

Additionally, the investigation revealed that the house on the Dalton Property was not livable during this period. The house had been gutted, and the Dalton Property did not have running water or a working septic system.

During the investigation, you claimed that you had been living in a camper on the Dalton Property. Shane Morton stated that you and your father had moved a camper onto the property and hooked up essential amenities. Mr. Morton stated that you had told him that the Dalton property assessors had visited the Dalton Property. This Office spoke with the Town Property Assessor, Gary Fournier, who confirmed that he had visited the Dalton Property. Mr. Fournier stated that he observed two people and a gutted shell of a house on a cement pad. Mr. Fournier stated that he did not observe a camper and would have noted it as an outbuilding on his notes if a camper had been there. Further, on August 19, 2022, a person who lives near the Dalton Property stated that she had not seen a camper or anyone living at the Dalton Property since the fall of 2021.

Wrongful Voting

A person who submits a voter registration form that contains false material information regarding their qualifications as a voter is subject to a civil penalty not to exceed \$5,000. RSA 659:34, I.

A person must be domiciled in a municipality to register to vote in that municipality. RSA 654:7, I(c). “An inhabitant’s 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. “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.*

Following an investigation, this Office concludes that you were domiciled in Whitefield when you registered to vote in Dalton on May 31, 2022. Your voting history, candidacy for Whitefield select board, driver’s license, vehicles registrations, United States Post Office mailing address, and social media all demonstrate that you continued to be domiciled in Whitefield throughout 2022. Moreover, your assertion that you were living on the Dalton Property is contradicted by the fact that the Dalton Property did not have a livable residence or working utilities, and the statements of multiple witnesses that they never observed a camper on the Dalton Property. Therefore, you violated RSA 659:34, I, when you registered to vote in Dalton while not being domiciled in Dalton.

Conclusion

This Office finds that you violated RSA 659:34 by registering to vote in Dalton when you were not domiciled there. This Office is authorized to provide notice of its intention to seek a civil penalty, to negotiate, and to settle with suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the Secretary of State for deposit into the

Sara Dunn-Wrongful Voting
Page 3 of 3

general fund. Accordingly, this Office imposes a civil penalty for your violation of this State's election laws in the amount of \$750.00 in lieu of criminal prosecution.

PURSUANT TO RSA 659:34, YOU ARE FURTHER ORDERED TO **CEASE AND DESIST** FROM REGISTERING TO VOTE OR VOTING IN A MUNICIPALITY IN WHICH YOU ARE NOT DOMICILED.

Your payment of the \$750.00 civil penalty must be delivered to our Office within thirty (30) days of the date of this letter. If you fail to timely pay this penalty, this Office will initiate further enforcement action.

Your payment of \$750.00 shall be made by check payable to "Treasurer, State of New Hampshire" and mailed to the Office of the Attorney General, 33 Capitol Street, Concord, NH 03301, Attention: Assistant Attorney General Brendan A. O'Donnell.

This matter will be closed upon receipt of your payment of the civil penalty.

Sincerely,

/s/ Brendan O'Donnell _____

Brendan A. O'Donnell
Assistant Attorney General
Civil Bureau
brendan.a.odonnell@doj.nh.gov

BAO/bao

CC: Jon Swan
Dalton Town Clerk

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 26, 2023

Jon Swan
[REDACTED]

Dalton, NH 03598
[REDACTED]

Re: Jon Swan, Alleged Illegal Campaign Activity

Dear Mr. Swan:

On June 1, 2022, you emailed this Office and the Secretary of State's Office, alleging that Sara Dunn registered to vote in the Town of Dalton, despite being not domiciled there. You attached to your e-mail Ms. Dunn's May 31, 2022, completed voter registration form. You stated that you "happened upon this information by mere happenstance, as it was in a folder lying on a table in the meeting room of the municipal building in Dalton." You also noted that the "town clerk is not very adept at safeguarding sensitive information." (Emphasis added). On June 7, 2022, you posted to your Twitter account, @SaveForestLake1, a photograph of Ms. Dunn's voter registration form. You subsequently confirmed to this Office that you sent the email and the tweet referenced above and that you are the only one who uses those accounts.

On June 1, 2023, an investigator from this Office advised you that we would be sending you a letter and requested that you delete your June 7, 2022, tweet containing Ms. Dunn's voter registration form. You indicated that you would delete the tweet, but you have not done so.

New Hampshire law recognizes that voter registration forms are confidential materials, the disclosure of which would result in an invasion of privacy. See RSA 654:31-a; RSA 91-A:5, IV.

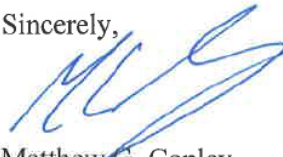
We acknowledge that the purpose of your June 1, 2022, email to this Office was to report a suspected crime to the appropriate authorities. However, you subsequently tweeted Ms. Dunn's voter registration form on social media, which is publicly available. In doing so, you publicly released a confidential voter registration form that you had no authority to possess. In your June 1, 2022, email, you recognized that the voter registration form was "sensitive information" that should have been "safeguard[ed]."

Although you were allowed to be in the meeting room where you discovered the folder with Ms. Dunn's voter registration form, you had no authority to open that folder, to copy the information in that form, or to release that information to the public.

We again ask you to cease from disseminating private voter information, to delete all photographs or other copies of Ms. Dunn's voter registration form that are in your possession, and to delete all photographs or other copies of Ms. Dunn's voter registration form that you have posted anywhere online. We ask that you be respectful of the rights and private information of others and to refrain from taking such actions in the future.

If you have any questions, do not hesitate to contact me.

Sincerely,



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

MGC/mgc

Encl.

cc: Sara Dunn
Dalton Town Clerk

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 26, 2023

Jeanette Charon, Town Clerk
Town of Dalton
756 Dalton Road
Dalton NH 03598

Re: Investigation into the Disclosure of Confidential Election Materials

Dear Clerk Charon:

Enclosed with this letter is (1) a cease and desist order send to Sara Dunn who registered to vote in Dalton prior to the special election held on June 7, 2022, and (2) correspondence sent to Jon Swan in connection with an incident where he disseminated photographs of Ms. Dunn's completed voter registration form. With respect to the second matter, although our investigation showed that Town officials did take some steps to keep the voter registration form secure, ultimately a member of the public was able to access that confidential document.

This Office cautions the Town to take greater care in the future to ensure confidential election materials are not inadvertently disclosed to unauthorized individuals.

Sincerely,

A handwritten signature in blue ink, appearing to read "MGC".

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

MGC/jt
Enclosure

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 26, 2023

Hanover-Lyme Town Democratic Committee
ATTN: Deborah Nelson, Chair
2 Jones Ave
West Lebanon, NH 03784

New Hampshire Democratic Party
ATTN: William Christie, Esquire
Shaheen & Gordon
107 Storrs Street
P.O. Box 2703
Concord, NH 03302

New Hampshire Republican State Committee
ATTN: Bryan K Gould, Esquire
Cleveland, Waters & Bass, P.A.
PO Box 1137
Concord, NH 03302

Dear Chair Nelson, Attorney Christie, and Attorney Gould:

During the 2020 and 2022 election cycles, the Hanover-Lyme Town Democratic Committee (HLTD), the New Hampshire Democratic Party (NHDP), and the New Hampshire Republican State Committee (NHRSN) issued mailers to New Hampshire residents that contained incorrect absentee ballot information, incorrect sample ballots, or other incorrect information. As a result of these actions, this Office issued cease and desist orders to each of you, and you were ordered to undertake remedial efforts. These various mailers caused this Office, the Secretary of State's Office, and local municipal clerks' offices to expend considerable effort and resources to address this issue and to remedy the resulting voter confusion.

Concurrently with this letter, this Office is releasing its Final Report in each of the investigations into your mailers. Each of these Final Reports strongly cautions the responsible party to use every effort to ensure that they are not sending election mailers that contain incorrect information to New Hampshire residents.

The purpose of this letter is to similarly caution each of you to ensure that any mailers or other information that you provide to New Hampshire voters in the upcoming presidential primary and 2024 general election conforms with New Hampshire law and does not contain false or misleading information. Misinformation, even if unintentional, has the potential to deprive voters of their constitutional right to vote. Even when no voters are ultimately deprived of their right to vote, misinformation still undermines public trust in our election systems. Therefore, it is critically important that each of you makes every possible effort to verify the lawfulness and accuracy of election information before you provide such information to New Hampshire voters.

Sincerely,

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

In re New Hampshire Republican State Committee

FINAL REPORT
September 26, 2023

The Attorney General's Office received reports on August 8, 2020, and August 11, 2020, that a mailer issued by the New Hampshire Republican State Committee (NHRSC) was: (1) a possible attempt to suppress the vote of people who received the mailer; and (2) a possible attempt to burden the Town of Durham's Clerk's Office because the mailer included return postcards that were all addressed to the Durham's Clerk's Office, regardless of the address of the recipient. Following an investigation, this Office determined that this was not a case of voter suppression as alleged. Instead, it was a printing error. Additionally, this Office successfully retrieved all the completed mailers that recipients sent to the Durham Clerk's Office prior to the State Primary and State General Elections, and this Office mailed them to the appropriate municipal clerk's office. This report sets forth the factual findings, the actions ordered by this Office, and the results of the Office's review.

I. FACTUAL BACKGROUND

This Office received an email, dated August 8, 2020, and a letter,¹ dated August 11, 2020, from Attorney Bill Christie on behalf the New Hampshire Democratic Party (NHDP), alleging that the mailer issued by NHRSC was a possible attempt to suppress the vote as it related to people who received the mailer and a possible attempt to burden the Durham's Clerk's Office because all of the return postcards were addressed to it.

The mailer consisted of a flyer, which explained that its purpose was to have people apply for absentee registration packets, and return postcards for the voter to send to their municipal clerk's office to process the voter's request. This Office determined that there are two issues that were subject to review:

1. Each of the return postcards correctly provided the name and street address for the municipal clerk's office that corresponded with the voter's domicile, but each of the postcards listed the Town of Durham and its zip code as the municipality to which the postcards would be returned; and
2. Some people on the mailing list were deceased, and several of them had been deceased for many years.

¹ In its letter, NHDP suggested the Attorney General should not be involved in this investigation due to a potential conflict of interest under New Hampshire Rules of Professional Conduct 1.7, 1.9, and 1.11. We note this suggestion and strongly disagree.

II. INVESTIGATION

a. Initial Contact with the State Committee and the Republican National Committee

NHRSC issued a mailer through a vendor, Arena Mail+Digital (Arena) of Salt Lake City, Utah, that was distributed statewide, on or about August 7, 2020, based on a mailing list that the Republican National Committee (RNC) and NHRSC had created jointly.

This Office contacted NHRSC on August 10, 2020, to gather basic information on the extent of the mailer, including the number of pieces mailed and the geographic area of the state the mailing covered. This Office also contacted the Durham Town Deputy Clerk, Rachel Deane, on August 10, 2020, to discuss the postcard issue and determine if the Durham Clerk's Office had received any postcards, which it had not. Deputy Clerk Deane volunteered to forward any return postcards received by the Durham Clerk's Office to the correct municipal clerk office.

On August 10, 2020, this Office also discussed this issue with NHRSC's attorney, Bryan Gould. This Office learned that NHRSC Executive Director, Elliot Gault, had spoken with the Durham Postmaster, Erin Sullivan, and contacted the Regional Postmaster, Anne Cordero, to discuss the issue of the return postcards and how they could be managed. As of August 10, 2020, NHRSC did not yet have a response from the Regional Postmaster.

On August 10, 2020, This Office issued a memorandum through the Secretary of State's Office's Help America Vote Act staff to all New Hampshire election officials, which explained the problem with the mailer and instructed election officials to assist voters with registering or obtaining ballots.

On August 11, 2020, this Office spoke with several people from NHRSC and RNC, including: Chris Carr, Elissa-Ann Voccola, Ellen Bredenkoetter, Elliott Gault, and Bryan Gould. Ms. Bredenkoetter explained where they gathered the information for the mailing list and the challenges that political parties have with trying to clear lists of deceased individuals. She stated that there are no state or national databases listing deceased individuals that are available to political parties. She explained that the mailing list was a compilation of data that RNC had collected from different sources, including past NHRSC information on New Hampshire Republican voters, New Hampshire undeclared voters who sometimes voted Republican, signatures on petitions focused on Republican-leaning issues, and other generally available information related to people's possible political preferences. NHRSC also explained the statement it issued to the press to alert the public to the errors on the mailer. NHRSC also informed this Office that it did not intend to issue another mailer at that time.

b. The Vendor and Mailer

RNC provided the voter information for the mailer to Arena, a vendor which NHRSC had retained to print and mail the mailer. On August 14, 2020, this Office spoke with Brandon Waters, the Chief Executive Officer of Arena. Arena is a large print company that does mailers in all 50 states and has done other mailers in New Hampshire. Arena works with RNC often. Mr. Waters explained that when Arena first receives a mailing list, it runs it through a postal

software that sorts the mailing list into postal delivery routes and corrects the attached addresses so they correspond with postal delivery requirements. This process is referred to as a Coding Accuracy Support System (“CASS”) certification. The intent is to use correct addresses to limit or prevent non-deliverable mail.

Mr. Waters stated that when Arena set up the process to do the printing for the mailers, it did not follow its regular procedure by performing a quality control review of the proofs of some of the sets of flyers and return postcards while they were printing. It also did not do any spot checking of the finalized flyers or postcards. Mr. Waters did not have an explanation for why this final review was not done. He simply stated that Arena failed to follow its procedures and was embarrassed by the mistakes. He stated that it was a “blanket error” by one of their data analysts and that the production manager did not review any of the final proofs. Mr. Waters confirmed that the list that was sent to Arena had all of the correct information for voters and their corresponding town or city clerks.

As a result, Arena was not aware when it sent out the mailer that all of the postcards listed Durham as the town on the postcards. Mr. Waters stated that if Arena staff had done the final review, they would have noticed the error with respect to the Durham address because they would have seen that the names of the clerks and the street addresses were changing on different documents but that the town information was not changing.

This Office asked Mr. Waters questions about the quality of the data on the mailing list RNC provided and the fact that many people on the list were deceased, some of whom had been deceased for many years. Mr. Waters stated that he was only generally familiar with the information on the mailing list because Arena did not create this mailing list. He said that generally consumer data from different sources is used and that it often has challenges with containing information for people who are deceased. He stated that there is not a national or state list that provides information about deceased individuals. He explained that sometimes a company will have access to consumer information related to insurance claims that might show that someone has died or veterans’ lists that contain similar information and that information can be used to scrub a mailing list for names of deceased individuals. Mr. Waters confirmed that Arena was not requested to do that for the mailer involved in this investigation and did not do so.

Arena ultimately mailed approximately 50,000 flyers and postcards, with the incorrect information on the return postcards, to individuals across New Hampshire. This Office requested and received copies of the original mailing list sent from RNC and the Arena mailing list showing the incorrect information. The original mailing list sent from RNC had correct corresponding information for the addresses of town and city clerks as they related to the voters’ addresses. The Arena mailing list did not have correct information and listed Durham as the return municipality.

On August 18, 2020, this Office spoke with Arena Vice President Steven Ostrow. Mr. Ostrow learned of the error on August 8, 2020, when he received a phone call from Elissa Voccola, a representative of RNC, who explained to him that all of the return postcards appeared to have Durham, New Hampshire written as the return town and zip code. Mr. Ostrow learned that same day that the error was caused by Arena.

Mr. Ostrow explained that RNC and NHRSC sent a list of New Hampshire citizens with their address information and a separate list of corresponding town and city clerk's with their address information. Mr. Ostrow stated that Arena runs the list of addresses through the CASS system, which corrects and matches street addresses. Mr. Ostrow explained that Arena's data team caused the error when it listed Durham and its zip code for all the municipal clerk offices in the State.

Mr. Ostrow stated that Arena used the CASS system to clean up the mailing list by removing undeliverable addresses and to otherwise create an accurate and up-to-date list. He stated that each mailer was assigned its own bar code, which allows Arena to track who returned their postcard.

On August 18, 2020, this Office spoke with Natalie Wright, a Reporting Analyst with Arena. She explained that she is the analyst who works on mail and digital advertisement flyers. Ms. Wright stated that she has worked with Arena since August of 2018 and that her role in the NHRSC flyer was to add the shared mail bar codes. She said that Cary Nieman, a newer employee with Arena, worked exclusively on the project at the beginning. Ms. Nieman added the "courtesy mailer" bar codes to NHRSC's flyers and not the "shared mailer" bar codes. Ms. Wright reported that Ms. Nieman had not been trained on how to add shared mailer bar codes.

Ms. Wright explained that sequential numbers are needed for the shared bar codes and NHRSC's project was for more than 49,000 mailers. A shared mailer has prepaid postage, and sequential numbers for such a mailer allow Arena to track which mailers were returned by the recipient and which ones were not. Arena shares this information with the client so the client can track the return rate of the mailer. Ms. Wright learned of the mistake on August 8, 2020, when she received a phone call from a co-worker. Her co-worker sent her a photo of the mailers, and she immediately observed that the same town and zip code were printed for each return mailer.

Ms. Wright acknowledged that she did not proof the mailer list after adding the shared bar codes, which she normally would scan once completed. Ms. Wright stated that she should have proofed the list, but she assumed Ms. Nieman had done everything correctly and that Ms. Wright's only responsibility was to add the shared bar codes, something that Ms. Nieman did not know how to do at that time. Ms. Wright stated that the two appended files were not joined correctly which is what caused the error where Durham was listed as the return town. Ms. Wright stated that she did not have any direct contact with NHRSC or RNC.

On August 18, 2020, this Office spoke with Cary Nieman, who is the Direct Mail Data Processor for Arena. She started working for Arena on June 29, 2020, but had 20 years of experience in the field. Ms. Nieman stated that this project was assigned to her, and it was a larger project that would normally take from twenty minutes to two hours to complete. Ms. Nieman explained that her role was to process the project, except for adding the bar codes, which was done by Ms. Wright. Ms. Nieman explained that she used "Fox Pro" and the CASS system when working on this project.

CASS allows Arena to automate the address verification from USPS, which saves Arena time and effort. This means that if the address came to Arena as 123 North Main Street, 12345 (zip code), CASS would change the address to 123 N. Main St. 12345-6789, adding the last four digits of the zip code and abbreviating certain portions of the address. In addition, CASS ensures that the addresses on the mailers and return post cards are deliverable. Ms. Nieman described how at times, an error may occur where the town clerk has a post office box, but the return address is listed as the physical address for the town clerk. She stated that most of the time the town clerk would still receive the return post card because the local USPS office knows the correct P.O. Box for the town clerk.

Ms. Nieman explained that she runs a “unique” report on the appended list. Once Arena receives the list, it runs the list through Fox Pro. The recipient and the town clerk information is separated, and each line of data is given a unique identifier. For example the recipient and the clerk along with their street address or P.O. Box, town or city, and zip code are each given their own “identifier.”

After the information is run through CASS, a unique identifier is assigned, the two lists are joined. Ms. Nieman said that the last recipient listed had a return address for the Durham Town Clerk’s office. Somehow during the joining of the two lists, this entry with the Durham Town Clerk as the return address populated into each of the other recipients’ respective return address fields. Meaning for each recipient, instead of his/her corresponding municipal clerk for the return address, the program inserted the Durham Town Clerk address for the mailers to all recipients. Ms. Nieman acknowledged that she did not proof the list prior to sending the link to Ms. Wright to add the bar codes.

When asked if she was influenced by anyone at Arena, RNC, or NHRSC to add the Town of Durham as the return address for all recipients, Ms. Nieman said she was not. She added that she does not have contact with clients during this process. Moreover, she did not know specifically who the client was other than that it was the Republican Party. She did not know which state this project was targeted toward either.

On September 18, 2020, this Office spoke with Faye Feola, Director of Production for Arena. Ms. Feola stated that once she receives a work order, her responsibility is to coordinate with the printer to get the job ready for print and mail. Once a printer is selected, Ms. Feola will send the printer the mailer design and recipient data. For this project, she worked with Craig Weinkes at Crossmark Graphics (Crossmark).

After forwarding the design and data to Crossmark, Ms. Feola stated that she got the design work back from the printer, which she reviewed and approved on behalf of Arena before sending this proof back to Crossmark. She said that she did not receive a final proof for approval prior to Crossmark sending out the mailer. Ms. Feola believed this may have been an oversight by Crossmark because Mr. Wienkes was out of town at the time. However, even if she received a final proof of the mailer, she was unsure if she would have identified that all post cards had the Town of Durham’s information listed as the return address for all the clerks’ offices.

Ms. Feola stated that she learned of the error when Mr. Water informed her on August 8, 2020. She reported that Arena has since added additional steps in the approval process to ensure that a mistake like this is not made in the future. Ms. Feola said that she did not have contact with RNC or NHRSC while working on this project. She indicated that no one from RNC, NHRSC, Arena, or Crossmark discussed or intentionally wanted all of the mailers to be returned to the Town of Durham.

c. Printing Company

On August 25, 2020, this Office spoke with Craig Wienkes, Director of National Sales for Crossmark. Crossmark printed the 49,000 mailers at issue.

Mr. Wienkes explained that Crossmark does not change the information provided by Arena. Crossmark runs the addresses through postal software to ensure that the mailers are sent to the proper post office for delivery. He stated that in lieu of running the recipients' addresses through the National Change of Address program, they usually add "or Current Resident" to a mailer, which was done in this case. Crossmark does not run the list through any type of program that would remove deceased recipients.

Mr. Wienkes' primary contact at Arena for this project was Faye Feola. Once the mailer was printed, a final proof was not sent to Ms. Feola for approval. He said that although this does not happen often, it is not unusual to complete a project for Arena and not send it back for their final approval. Additionally, he said that Arena did not request final approval for this project. Nonetheless, Mr. Wienkes said that Crossmark should have reached out to Arena once the printing had completed to confirm whether Arena wanted a final proof for approval.

While Crossmark does conduct its own proof of a printed project, it is not for the information contained in the project itself. Instead, a staff member examines random samples to look for ink clarity. Even had the staff member proofing the project read the mailer, they would not have known there was an issue with the return address. Mr. Wienkes noted that this proofing process was not conducted in this case.

When asked if anyone from RNC or NHRSC pressured or asked Crossmark to have all mailers returned by the recipient sent to the Town of Durham, Mr. Wienkes answered no. He also pointed out that he deals with Arena, not its clients.

d. Republican National Committee

On October 8, 2020, this Office spoke with Kristian Hemphill, Director of External Support for RNC. Mr. Hemphill oversaw the creation of the data file containing the addresses of the mailers' recipients, and each recipient's respective town clerk and address. He explained that the file is comprised of data specific to Mr. Hemphill's coverage area, which Michelle Techklits, who is not affiliated with RNC, pulled together. He described how the data for this particular file was obtained from 4 main sources:

1. Any digital lists created and maintained by RNC, related to Facebook petitions supporting President Trump and any matches from RNC's social media involving the same;
2. 2nd Amendment supporters list;
3. Pro-life supporters; and
4. National change of address list where the voter was a registered Republican in another part of the country.

All this information was run through CASS to validate addresses and compare with RNC's checklists. Mr. Hemphill said that RNC did not use any commercial data when creating this data file. Aside from using CASS, Mr. Hemphill stated that there are no other lists or databases that could be used to help ensure the accuracy of this data file, and ensure deceased individuals are not part of the final recipients list. Once the data file was finalized, Ms. Techklits sent the file to Arena. Arena was ultimately responsible for designing and creating the mailer using the data file to determine who the mailer was sent to.

Mr. Hemphill denied there being any conversation about intentionally having the return post cards be sent exclusively to the Town of Durham.

III. REMEDIATION

a. Management of the Return Postcards

Everyone involved in the discussions with NHRSC and RNC on August 11, 2020 expressed concerns that any voter who submitted a postcard would have an expectation of having it acted on. At that time, this Office was informed that the Regional Postmaster stated that the postcards were being stopped and held at the Durham Post Office. After discussion, this Office stated that they would work with the Durham Postmaster to regularly retrieve any return postcards delivered to the Durham Post Office.

This Office collected, separated, and collated the return postcards by municipality and sent them to the correct municipality. This Office continued this process until October 28, 2020, successfully sending 2,683 return postcards to the appropriate municipal clerk's office.

b. Contact from the Public and Clerks' Offices

Beginning on August 11, 2020, this Office received calls and emails stating that flyers had been received for past residents of a property; deceased family members, some of whom had been voters in New Hampshire but some of whom had not been voters; and people who had never been registered as New Hampshire voters.

This Office was also contacted by clerks outside of Durham who have received the postcards in their offices and processed the voters' requests.

IV. LEGAL ANALYSIS

RSA 659:40 defines voter suppression as follows:

III. No 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:

- (a) 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.
- (b) Attempting to induce another person to refrain from registering to vote or from voting by providing that person with information that he or she knows to be false or misleading.
- (c) Attempting to induce another person to refrain from registering to vote or from voting at the proper place or time by providing information that he or she knows to be false or misleading about the date, time, place, or manner of the election.

IV. Whoever violates the provisions of this section or whoever conspires to violate the provision of this section shall be guilty of a class B felony.

No other provision in the elections laws appears to possibly apply to NHRSC's mailer.

Based on this Office's investigation, this Office finds that NHRSC did not attempt to induce New Hampshire citizens to refrain from registering to vote or voting by providing information that NHRSC knew to be false or misleading. Arena is responsible for the serious error in printing the incorrect return town and zip on the return postcards. Moreover, NHRSC would have been harmed, not benefited, by suppressing the vote of individuals who NHRSC thought were most likely to vote for Republican candidates. Instead, the mailer has caused concerns with New Hampshire citizens who did not understand why they were receiving mailers for former residents or deceased family members.

V. CONCLUSION

There is no evidence that either NHRSC or RNC was involved in voter suppression either through having the incorrect town name and zip code printed on the return postcards or including the names of deceased individuals in the mailing lists. While New Hampshire citizens are rightly concerned when they receive mailers for former residents or deceased family members, that type of situation occurs when consumer information is gathered and stored and not checked for accuracy. NHRSC and RNC have been advised to work to develop systems that provide for more accurate information being used in their mailings.

Additionally, there is no evidence that the use of the Town of Durham's name and zip code on each return postcard was intended to either prevent a voter in another community from receiving absentee voting materials or to overload the Durham Town Clerk's Office just prior to an election with a flood of incorrect mail. Again, however, NHRSC and RNC have been advised

to institute systems to confirm the accuracy of their mailings as much as possible to avoid incorrect information on their mailings.

This matter is closed.

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 E. 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

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.

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

In re Hanover-Lyme Town Democratic Committee

FINAL REPORT
September 26, 2023

On October 14, 2020, this Office received a report of an error contained in an election-related mailer sent by the Hanover-Lyme Town Democratic Committee (HLTD). Following an investigation, this Office ordered HLTD to undertake remediation. This report sets forth this Office's factual findings, the actions ordered by this Office, and the results.

I. FACTUAL BACKGROUND

On October 14, 2020, counsel to the New Hampshire Democratic Party (NHDP) reported that NHDP had been notified of an error contained in a mailer sent out by HLTD. Specifically, NHDP reported that the mailer contained a sample ballot for the November 2020 General Election on which the oval next to each of the Democratic candidates was filled in, but the word "sample" did not appear on the ballot.

NHDP learned of the error on October 14, 2020, and was taking steps to inform voters that any sample ballots received from HLTD mailer should not be sent to the Hanover or Lyme clerks' offices. Prior to this report from NHDP, this Office had not been contacted by any New Hampshire residents about this mailer.

According to a *Valley News* article, recipients received the mailers as early as October 13, 2020, and HLTD was aware of the missing language by at least the morning of October 14, 2020. However, NHDP did not inform this Office until 5:29 PM on October 14, 2020. The newspaper reported that the word "sample" included on the Secretary of State's version of the sample ballots had been dropped when the printer adjusted the margins, as requested by HLTD, to fill in the ovals for the Democratic candidates.

On October 15, 2020, this Office spoke with HLTD Chair Deborah Nelson. During the call, Chair Nelson confirmed that she saw that the sample ballot from the Secretary of State's website said "sample." Further, Chair Nelson stated that the sample ballot she downloaded onto her laptop also showed the "sample" language.

Chair Nelson sent the sample ballots for both Hanover and Lyme to the printer. At her request, the printer filled in the ovals beside each Democratic candidate name appearing on the sample ballot. The printer sent her a proof of the final version, which she reviewed to ensure the appropriate candidates were marked off. Chair Nelson did not notice that the word "sample" was missing. She stated that she believed it was still printed on the sample ballot. After reviewing to ensure that the appropriate candidates' ovals were filled-in, Chair Nelson approved the version the printer provided. The printer finalized and printed the version she approved on October 2,

2020. Upon receipt, Chair Nelson stated that she did not open the boxes to check the printed materials.

The mailers were sent to approximately 5,500 Hanover and Lyme voters. The envelope that the mailer was sent in contained the language “Sample Ballot Enclosed.” Additionally, NHDP informed this Office that it had an approval process that local committees are directed to follow before sending out mailers. HLTD did not follow this process and did not submit the mailer to NHDP for approval prior to sending this mailer.

II. APPLICABLE LAW

RSA 656:18 provides: “The secretary of state shall cause to be printed for each town 10 sample ballots. Such ballots shall be printed on tinted paper without facsimile endorsement but shall otherwise be identical to the state general election ballot.”

This statute is interpreted to require the word “sample” to appear on the sample ballots. As a result, the word “Sample” appears prominently at the top-right corner and at the bottom of sample ballots published by the Secretary of State for the November 3, 2020 General Election.

III. CEASE AND DESIST ORDER

On October 15, 2020, this Office issued a Cease and Desist Order to HLTD for violating RSA 656:18 by failing to write the word “sample” on its sample ballot enclosed with 5,500 mailers. A copy of the Cease and Desist Order is attached as Exhibit 1. The Order stated that HLTD shall cease and desist from publishing any other sample ballots for the 2020 election cycle unless they are accurate and include the “sample” disclaimer prominently on the sample ballot.

Additionally, this Office required HLTD to provide a written plan, by close of business on October 16, 2020, explaining how HLTD would urgently remedy this situation, including all remedial steps to be taken to notify recipients of its sample ballot mailer so that voters knew they could not use the enclosed sample ballot to vote in the November 3, 2020 General Election.

IV. REMEDIATION

On October 16, 2020, NHDP on behalf of HLTD submitted its remediation plan to this Office. A copy of that plan is attached as Exhibit 2. The plan provided that:

1. HLTD would send to all mailer recipients a postcard containing corrective information. (A draft of the postcard had been submitted to and approved by this Office).
2. HLTD would participate in phone banking to call as many mailer recipients as possible and alert them to the issues raised by the erroneous mailer and the corrective information contained in the postcard.

Chair Nelson additionally stated in the remediation plan that, upon learning of the mailer error, she immediately informed the Hanover Town Clerk and alerted the *Valley News* to communicate the error to as many people as possible. *Valley News* published the story the following day to their readership of 16,522 readers.

On October 16, 2020, NHDP provided this Office with a final draft of the corrective postcard outlined in its remediation plan. (Attachment B). It was mailed to all 5,500 recipients of HLTD's mailer.

On October 23, 2020, NHDP provided an update on its phone banking efforts. NHDP conducted two phone canvases. In the first phone canvas 4,545 people were called, 609 were spoken-to, and messages were left for 298 people. In the second round of phone canvassing 236 people were called and 53 were spoken-to.

This Office did not receive any reports of voters submitting HLTD's sample ballot instead of official absentee ballots. This Office similarly did not receive any reports of absentee ballots being rejected on Election Day because HLTD's sample ballot was used.

V. CONCLUSION

Conveying correct information to voters ensures that the election process is as clear and unambiguous as possible. Errors such as these lead to voter confusion and can cause a vote not to be counted.

The "sample" disclaimer language, although simple, is critical to ensure that voters do not attempt to use sample ballots in lieu of official absentee ballots, which can actually be counted and cast. By failing to include the word "sample" on the ballots provided in the mailer, HLTD created a situation that could have caused voter confusion.

Providing sample ballots to voters who may have believed that they could substitute the sample ballots for official absentee ballots could have prevented those voters from having their votes counted. If a voter already had his or her absentee ballot return envelope and affidavit envelope, since the ballot does not indicate it was a "sample," a voter could have believed that submitting this already-completed ballot meant that his or her vote would be counted. Moreover, election officials would not be able to discover the use of HLTD's sample ballots until opening sealed absentee ballot envelopes on election day.

In the future, HLTD must ensure that all mailers issued by it using sample ballots are accurate and clearly display the word "sample" on the ballot used.

This matter is closed.

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



GORDON J. MACDONALD
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL



October 15, 2020

Deborah Nelson, Chair
Hanover-Lyme Town Democratic Committee
2 Jones Ave
West Lebanon, NH 03784

Re: CEASE AND DESIST ORDER
Violation of RSA 656:18

Dear Chair Nelson:

On October 14, 2020, at 5:29 PM, Attorney William Christie notified this Office that the Hanover/Lyme Town Democratic (HLTD) Committee had sent a mailer containing a sample ballot to voters. According to reports, approximately 5,500 mailers containing this sample ballot were sent to area residents. HLTD failed to include the word "sample" on the ballots contained in each of the 5,500 mailers.

Factual Background

According to a *Valley News* article, published on October 14, 2020, the mailers reportedly were received by recipients as early as Tuesday, October 13, and HLTD was aware of the missing language by at least the morning of Wednesday, October 14. However, the Attorney General's Office was not informed until 5:29 PM on October 14.

Allegedly, the word "sample" that was written on the Secretary of State's version of the sample ballots was dropped when the printer made adjustments to the margins, as requested by HLTD, in order to fill in the ovals for the Democratic candidates.

The envelope that the mailer was sent in bears the language "Sample Ballot Enclosed." Additionally, Attorney Christie also informed this Office that the New Hampshire Democratic Party ("NHDP") has an approval process that local committees are directed to follow before sending out mailers. HLTD did not follow this process and did not submit the mailer to NHDP for approval prior to sending this mailer.

On October 15, 2020, you spoke with Chief Investigator Richard Tracy of the New Hampshire Attorney General's Office. During the call, you confirmed that you saw that the sample ballot from the Secretary of State's website said "sample." Further, you stated that the sample ballot you downloaded onto your laptop also showed the "sample" language.

You sent the sample ballots for both Hanover and Lyme to the printer. At your request, the printer filled in the ovals beside each of the Democratic candidates' names appearing on the sample ballot. The printer sent you a proof of the final version, which you reviewed to ensure the appropriate candidates were marked off. You did not note that the word "sample" was missing. You stated that you believed it was still printed on the sample ballot. After reviewing to ensure that the appropriate candidates' ovals were filled-in, you approved the version the printer provided you. The printer finalized and printed the version you approved on October 2, 2020. Upon receipt, you stated that you did not open the boxes to check the printed materials.

Attorney Christie indicated that NHDP is taking steps to inform voters that any ballots received from HLTLD should not be sent to the Hanover or Lyme clerks' offices. This includes a corrective mailing that will explain this error to voters. However, while HDLT knew of this issue, from the NHDP, by the morning of October 14, no one from either NHDP or HDLT informed our Office until 5:29 PM. Instead of notifying this Office of the issue, NHDP sent an email about purported errors on town and city websites, which NHDP asserts have created a "good deal of voter confusion and questions."

Analysis

RSA 656:18 states that --

"The secretary of state shall cause to be printed for each town 10 sample ballots. Such ballots shall be printed on tinted paper without facsimile endorsement but shall otherwise be identical to the state general election ballot."

This statute is interpreted to require the word "sample" to appear on the sample ballots. As a result, on the sample ballots published by the Secretary of State for the November 3, 2020 General Election, which are the sample ballots that are available to different political organizers to use for their mailers, the word "Sample" appears prominently at the top-right corner of the sample ballot. It also appears prominently at the bottom of the sample ballot.

The importance of having the correct information conveyed to voters, particularly during a public health crisis, is to ensure that the election process is clearly and unambiguously outlined. Errors such as this not only lead to voter confusion, but ultimately can cause a vote not to be counted.

The purpose of this disclaimer with the "sample" language, although simple, is critical to ensure that voters do not attempt to use sample ballots in lieu of official absentee ballots that can

Deborah Nelson
October 15, 2020
Page 3 of 3

actually be counted and cast. By failing to include the word "sample" on the ballots provided in the mailer, HLTD has created a situation that can cause voter confusion.

Providing sample ballots to voters who may believe that they can substitute their official absentee ballots for the sample ballots provided by HLTD could actually prevent those voters from having their votes counted. If a voter already has his or her absentee ballot return envelope and affidavit envelope, since the ballot does not indicate it is a "sample," a voter could believe that submitting this already-completed ballot means that his or her vote will be counted. However, if sealed in the affidavit envelope, the mistaken use of HLTD's sample ballot will not be discovered by election officials until Election Day.

Order

In light of our finding that HLTD violated RSA 656:18 by its failure to write the word "sample" on its sample ballot enclosed with 5,500 mailers, HLTD is hereby ordered to CEASE AND DESIST any and all activities which violate this provision in the future. Furthermore, HLTD shall CEASE AND DESIST from publishing any other sample ballots for the 2020 election cycle unless they are accurate and include the "sample" disclaimer prominently on the sample ballot.

Additionally, HLTD is required to provide the Attorney General's Office with a written plan, by close of business on Friday, October 16, 2020, explaining how it will urgently remedy this situation, including all remedial steps to be taken to notify recipients of its sample ballot mailer so that voters know they cannot use the enclosed sample ballot in order to vote in the November 3, 2020 General Election.

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


Nicholas Chong Yen
Assistant Attorney General
Election Law Unit
(603) 271-3650

cc: William M. Gardner, Secretary of State
William Christie, Esquire



Written Plan by Hanover/Lyme Town Democratic Committee

Pursuant to the October 15, 2020 Cease and Desist Order issued by the New Hampshire Attorney General's Office, the Hanover/Lyme Town Democratic Committee ("HLTD") submits the following written plan explaining how it will urgently remedy the mailing of sample absentee ballots to voters that erroneously did not contain a "sample" mark on the ballot.

1. HLTD will send to all voters who received the original mailer a postcard containing corrective information. A draft of the postcard has been submitted to the Attorney General's Office for review and approval. A copy of the final version of the postcard is attached.
2. HLTD will participate in phone banking to call as many voters who received the mailer as possible and alert them to the issues raised by the erroneous mailer and the corrective information contained in the postcard.

Moreover, the HLTD, through Chairperson Deborah Nelson, took the following steps to address the error without prompting from the Attorney General's Office.

1. Upon learning of the erroneous sample absentee ballots, Ms. Nelson immediately informed the Hanover Town Clerk.
2. Ms. Nelson immediately alerted the Valley News in order to communicate the error to as many people as possible. The Valley News published the story the following day to their readership of 16,522 readers.

Submitted by Deborah Nelson, Chair, Hanover/Lyme Town Democratic Committee

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

In re New Hampshire Democratic Party

FINAL REPORT
September 26, 2023

On September 21, 2022, this Office notified the New Hampshire Democratic Party (NHDP) that certain NHDP mailers, which contained absentee ballot application forms, had incorrect addresses for the Kington and East Kingston Town Clerks. Following an investigation, this Office ordered NHDP to cease and desist from publishing further absentee ballot application mailers unless those mailers included accurate return mail addresses and voter domicile information. This Office further ordered NHDP to undertake remediation. This report sets forth this Office's factual findings, the actions ordered by this Office, and the results.

I. FACTUAL BACKGROUND

On September 16, 2022, this Office received a complaint from the Greenland Town Clerk regarding two voters who were upset that they had received an absentee ballot mailer, which stated that it had been "Paid for by the New Hampshire Democratic Party." The mailer included a return envelope with prepaid postage for the voter to return their absentee ballot application; however, that return envelope was addressed to "Rockingham Board of Elections, PO Box 100, Greenland NH 03840." Although the "Rockingham Board of Elections" does not exist, P.O. Box 100, Greenland, NH is the correct mailing address for the Greenland Town Clerk. The absentee ballot application in the mailer was the appropriate application that was publicly available on the Secretary of State's website.

On September 19, 2022, and over the next few days, this Office, the Secretary of State's Office, and various municipal clerks' offices received additional reports from voters regarding NHDP's mailers. One complaint reported that the voter, whose address is in Kingston, received a mailer that included a return envelope addressed to "Rockingham Board of Elections" at "P.O. Box 249 E, Kingston NH," which is not the mailing address for the Kingston Town Clerk. A second complaint reported that the voter and their spouse received a mailer that indicated they were registered voters in Bradford, despite them being residents of Sutton and not Bradford.

On September 21, 2022, this Office notified counsel for NHDP of the complaints regarding NHDP's mailers. NHDP's counsel confirmed that NHDP had issued the mailers with pre-addressed postage pre-paid envelopes for voters to return their absentee ballot applications. NHDP issued these mailers based on mailing lists that NHDP had in its possession. NHDP's counsel informed this Office that NHDP had become aware of a printing error in at least two towns and was working to confirm if other towns were involved. This Office explained that it was aware of an issue involving Kingston and East Kingston where the return envelopes had the Post Office Box for the East Kingston Town Clerk but had the Town of Kingston's name and its zip code. Although these envelopes were apparently supposed to be returned to the Kingston Town Clerk, the envelopes did not have correct address information. This Office further

informed NHDP's counsel that these return envelopes were addressed to the "Rockingham Board of Elections," which does not exist. This Office further informed NHDP's counsel of a report that the domicile information for a voter in another town was incorrect.

On September 21, 2022, this Office contacted the United States Post Office in Kingston, requesting that it hold any return envelopes from the mailer to ensure that those voters' requests for absentee ballots were directed to the correct town clerk. The Kingston Postmaster stated they had received 6 or 7 envelopes addressed to P.O. Box 249 E, Kingston, NH that should have been addressed to the Kingston Town Clerk and the E. Kingston Town Clerk. This Office requested the Kingston Postmaster forward the envelopes with a return address of a Kingston resident to the Kingston Town Clerk's Office.

On September 22, 2022, NHDP's counsel stated that it had identified 926 voters across 39 municipalities who were sent an envelope with the wrong clerk's office address and information. NHDP's counsel stated that this was caused by the "mail firm matching town clerks to voters using the city names in the mailing address of each voter." For example, some voters reside in Goffstown (Pinardville) but have Manchester addresses. There were other "mismatches in towns where the town clerk's office has a mailing address that includes the city of a neighboring town." For example, the Town of Bridgewater has an actual mailing address in Plymouth: P.O. Box 419, Plymouth, NH 03264. NHDP's counsel provided a list of the municipalities and the number of voters in those municipalities that were affected. NHDP's counsel stated that NHDP would contact the 926¹ affected voters by calling or directly contacting the voter.

During this period, this Office additionally contacted other affected municipal clerks' offices and post offices to ensure that absentee ballot requests were forwarded to the appropriate town clerk and to ensure that absentee ballot requests were processed.

II. APPLICABLE LAW

RSA 659:40 prohibits a person from "engag[ing] 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."

RSA 657:6 sets forth the procedure for voters to apply for an absentee ballot. As relevant here, the application must be "sent to the clerk of the town or city in which [the voter] desires to vote."

III. CEASE AND DESIST ORDER

On September 23, 2022, this Office required NHDP to cease and desist "from publishing any other absentee ballot application mailers for the 2022 election cycle unless they are accurate and include accurate return mail addresses and voter domicile information." A copy of the Cease and Desist Order is attached as Exhibit 1. This Office additionally required NHDP to submit a remedial plan explaining how NHDP would urgently remedy this situation.

¹ NHDP's subsequent remediation plan corrected that 995 voters were affected.

By sending absentee ballot application mailers with incorrect return mail addresses and domicile information, NHDP caused voter confusion and frustration and could have misled voters into unintentionally violating RSA 657:6 by sending their absentee ballot applications to the wrong clerk's office. NHDP's mailers could also have disenfranchised voters by leading them to complete absentee ballot applications, believing they would receive absentee ballots for the State general election, only to discover that their applications were never delivered to their municipal clerk's office. Furthermore, NHDP's mailers created an additional strain on clerks' offices around the state, where those clerks' offices ultimately had to expend resources determining which municipality affected applications should be forwarded to.

IV. REMEDIATION

On September 27, 2022, NHDP provided a remediation plan to this Office. A copy of NHDP's remediation plan is attached as Exhibit 2. As relevant here, the remediation plan provided:

- NHDP would call each of the 995 affected voters up to three times.
- NHDP would leave a voicemail message if the voter did not answer the call.
- NHDP would explain, either in the call or the voicemail message, that the mailer had an incorrect return address, and NHDP would provide the correct address for the voter's correct clerk's office.
- NHDP would suggest remedial steps for the voter to take to make sure absentee ballot applications would be sent to the correct address.
- If NHDP determined that a voter returned an absentee ballot application with the wrong return address, NHDP would attempt in-person contact with that voter.
- For each of the 269 voters for which NHDP did not have a telephone number, NHDP would attempt in-person contact with that voter.
- NHDP would provide this Office with updates regarding the status of remediation efforts.

This Office did not receive any reports of voters not receiving absentee ballots because of NHDP's mailer.

V. CONCLUSION

There is no evidence that NHDP intended to induce New Hampshire citizens to violate RSA 657:6 or to fill out absentee ballot requests in a manner that would lead such person to not be able to cast an absentee ballot. NHDP acted promptly to identify affected voters and to provide corrected information to those voters regarding submission of absentee ballot requests to the proper municipal clerk's office. Furthermore, this Office is not aware of any affected voter ultimately not receiving an absentee ballot that they requested.

Regardless, conveying correct information to voters ensures that the election process is as clear and unambiguous as possible. Errors such as this lead to voter confusion and could cause a voter to not timely receive and cast an absentee ballot.

In the future, NHDP must ensure that any mailers to voters contain correct information. NHDP is advised to work to develop systems that ensure mailers include accurate information and systems to detect inaccurate information before mailers are sent to New Hampshire voters.

This matter is closed.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL



September 23, 2022

William Christie, Esquire
Shaheen & Gordon
107 Storrs Street
P. O. Box 2703
Concord, NH 03302

Re: **CEASE AND DESIST ORDER**

Dear Attorney Christie:

On September 21, 2022, our Office called the New Hampshire Democratic Party to report that mailers, published by the New Hampshire Democratic Party ("NHDP"), which contained absentee ballot application forms, had incorrect addresses for the Kingston and East Kingston Town Clerks.

On September 21, you confirmed that the NHDP had issued the above-referenced mailers with postage pre-paid and pre-addressed envelopes for voters to return their absentee ballot applications. These mailers were issued based on mailing lists that the NHDP had in its possession. You also informed me that the NHDP had become aware of a printing error in at least two towns and was working to confirm if other towns were involved. I confirmed that the issue our Office was aware of involved Kingston and East Kingston where the return envelopes had the Post Office Box for the East Kingston Town Clerk but had the town of Kingston's name and its zip code. It appears these envelopes were supposed to be returned to the Kingston Town Clerk, but the address is not correct. *See* attached copy of the mailer. I also informed you that these return envelopes were addressed to the "Rockingham Board of Elections" which is an entity that does not exist. Finally, I informed you that we had received a report involving another town that a voter's domicile information was incorrect.

As we discussed, before speaking with you, our Office, on September 21, through Chief Investigator Richard Tracy, had contacted the United States Post Office in Kingston requesting that it hold any return envelopes from the mailer to ensure that those voters' requests for absentee ballots are directed to the correct Town Clerk. Additionally, during our September 21 discussion, you informed me that the NHDP had begun remediation efforts, including reaching out to each voter to whom a mailer was sent, either by telephone or email, to explain the corrective actions that the voter needs to take in order to obtain an absentee ballot. You also

confirmed that the NHDP planned to do in-person visits to voters it could not contact by telephone or email.

Finally, on September 22, you provided information from the NHDP that the issues of incorrect return addresses and incorrect domicile information on the mailers apply to 39 towns and cities with a total of 926 voters affected.

On September 21, the Secretary of State's Office was contacted by the Kingston Town Clerk regarding the address issue. And, our Office has now been contacted by several voters concerned about these mailers. Some of the concerns raised by these voters are that the mailer states, "You have a history of requesting absentee ballots" when the voter has not voted by absentee ballot in the past, the voter's domicile address is listed as a town or city in which they do not live, the return envelopes are addressed to "[County Name] Board of Elections" which are entities that do not exist, and the return envelopes have incorrect addresses for the Clerks.

The NHDP published and mailed the absentee ballot application mailers for the November 2022 General Election. While the NHDP's absentee ballot application complies with RSA 657:4, II(a), the return mail names and addresses to the Town and City Clerks and the voters' domiciles are incorrect in 39 municipalities for 926 voters.

The NHDP's mailer, with incorrect return mail addresses and voter domicile information, is causing voter confusion and frustration. The return mail addresses on the mailer are likely to mislead voters into unintentionally violating RSA 657:6. It could also disenfranchise some voters in that voters may complete the absentee ballot applications, believing they will receive absentee ballots for the State General Election, only to discover that their applications were never delivered to their Town or City Clerks. This discovery could be made at a time when the voters are not able to file follow-up applications for absentee ballots.

Additionally, given the already heavy burden on Clerks' offices around the state, Clerks have limited resources to determine which town or city the forms used by voters should be forwarded to. However, after ensuring that the forms are delivered to the correct town or city, we will instruct Clerks to accept these absentee ballot applications despite not being correctly addressed and directed to their offices.

In light of our conclusion that the NHDP has caused voter confusion given the incorrect return addresses to Clerks on its mailers, the incorrect direction to non-existent "boards of election," and the incorrect voter domicile information, the NHDP is hereby ordered to CEASE AND DESIST any and all activities which violate the law by causing voter confusion in the future. Furthermore, the NHDP shall CEASE AND DESIST from publishing any other absentee ballot application mailers for the 2022 election cycle unless they are accurate and include accurate return mail addresses and voter domicile information.

Additionally, the NHDP is required to notify each recipient of this mailer of the necessary remediation steps that they must take, including using the correct address for their

Cease and Desist Order
Page 3 of 3

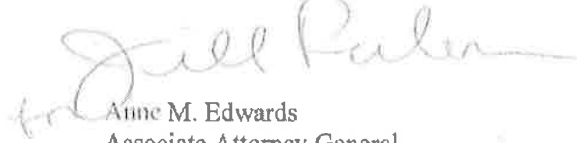
Clerk's Office, in order to obtain an absentee ballot for the 2022 General Election and assist each recipient with explaining how they can obtain an absentee ballot prior to the General Election.

The NHDP shall provide the Attorney General's Office with a written plan by close of business on Tuesday, September 27, 2022, explaining how it will accomplish this requirement and how it will update the Attorney General's Office on the status of its efforts under the plan.

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:

JOHN M. FORMELLA
ATTORNEY GENERAL

A handwritten signature in cursive script, appearing to read "Anne M. Edwards", is written over the typed name.

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

William F. Christie
Attorney At Law



September 27, 2022

VIA ELECTRONIC MAIL

Anne Edwards, Assistant Attorney General
NH Attorney General's Office
33 Capitol Street
Concord, NH 03301

Dear Attorney Edwards:

As you know, I am Legal Counsel to the New Hampshire Democratic Party ("NHDP"). I am writing in response to the September 23, 2022 correspondence/Cease and Desist Order issued by the New Hampshire Attorney General's Office.

As noted in the correspondence on September 22, 2022, NHDP provided information that the issues of incorrect return addresses and incorrect domicile information on the mailers apply to 39 towns and cities with a total of 926 voters affected. Based upon additional information that has become available, we wish to modify the number of voters affected.

NHDP has determined that 13 of the 926 voters previously identified were never actually sent the mailer at issue. Moreover, 3 voters in Hart's Location identified in the previous list received the correct address on the return envelope. However, NHDP has also determined that 85 voters in Center Ossipee were provided a return address with the incorrect zip code. As a result, based upon current information, 995 voters were affected by the mailing.

As you know, prior to receiving the Order, NHDP put a remediation plan in place. The plan is as follows:

- NHDP will call each of the 995 voters impacted by the issue up to three times in an effort to contact the voters;¹

¹ NHDP does not have telephone numbers for 269 of these voters. NHDP will provide your office a list of these voters to determine if the Secretary of State's Office or local clerk's office have telephone numbers for these voters. If the State is unable to provide telephone numbers for these voters, NHDP will attempt an in-person contact with the voter.

Anne Edwards, Assistant Attorney General
September 27, 2022
Page 2

- A voicemail message will be left if the voter does not answer the call;
- Either in the voicemail message or through direct telephonic voter contact, NHDP will explain that the mailer had an incorrect return address and will provide the correct address for the voter's correct clerk's office;
- NHDP will also suggest remedial steps for the voter to take to make sure absentee ballot applications are sent to the correct address; and
- If NHDP determines that a voter has returned an absentee ballot application with the wrong return address, NHDP will attempt an in-person contact with that voter.

NHDP will provide weekly updates to the Attorney General's Office regarding the status of the remediation plan. If new information becomes available, I will contact you in order to keep the State informed of the status of the remediation plan.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

/s/ William E. Christie

William E. Christie
wchristie@shaheengordon.com

WEC/

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Carroll Superior Court
96 Water Village Rd., Box 3
Ossipee NH 03864

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. Scott P Kudrick**

Case Number: **212-2022-CR-00173**

Name: **Scott P Kudrick, [REDACTED]** Norwell MA 02061

DOB: [REDACTED]

Charging document: Complaint

Offense: Voter Fraud - RSA 659:34, I (a,c,d,e,f)	GOC:	Charge ID: 2004959C	RSA: 659:34,II	Date of Offense: April 13, 2021
--	-------------	-------------------------------	--------------------------	---

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Misdemeanor

Sentence: see attached

September 27, 2023
Date

Hon. Mark D Attorri
Presiding Justice

Abigail Albee
Clerk of Court

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Defendant Defense Attorney Alan J. Cronheim, ESQ
 Sex Offender Registry Other CCHOC _____ Dist Div. _____

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

Court Name: Carroll Superior Court
 Case Name: State v. Scott Kudrick
 Case Number: 212-2022-CR-173 Charge ID Number: 2004959C
 (if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	
Crime: Voter Fraud	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 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 212-2022-CR-173 2004960C
 - 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. Scott Kudrick

Case Number: 212-2022-CR-173

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 \$ 2,000.00, plus a statutory penalty assessment of \$ 480.00 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. Scott Kudrick

Case Number: 212-2022-CR-173

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:

The defendant shall not have the right to vote in NH until such right has been restored by order of the NH Supreme Court pursuant to Part 1, Article 11 of the NH Constitution.

For Court Use Only


Honorable Mark D. Attorn
September 27, 2023

**THE STATE OF NEW HAMPSHIRE
COMPLAINT**

Case Number: 212-2022-CR-00173 Charge ID: 2004959C

<input type="checkbox"/> VIOLATION	MISDEMEANOR <input checked="" type="checkbox"/> CLASS A <input type="checkbox"/> CLASS B <input type="checkbox"/> UNCLASSIFIED (non-person)
	FELONY <input type="checkbox"/> CLASS A <input type="checkbox"/> CLASS B <input type="checkbox"/> SPECIAL <input type="checkbox"/> UNCLASSIFIED (non-person)

You are to appear at the: 3rd Circuit - District Division - Conway Court, Court,
Address: E Conway Road Rt 302 Conway NH 03818 County: Carroll County
Time: _____ Date: _____

Under penalty of law to answer to a complaint charging you with the following offense:
THE UNDERSIGNED COMPLAINS THAT: PLEASE PRINT

Kudrick Scott Peter
Last Name First Name Middle
[REDACTED] Norwell MA 02061
Address City State Zip

Sex _____ Race _____ Height _____ Weight _____ Eye Color _____ Hair Color _____
DOB _____ License #: _____ New Hampshire OP License State


COMM. VEH. COMM. DR. LIC. HAZ. MAT. 16+PASSENGER

AT: 409 Eagle's Way, North Conway, NH 03860

On 04/13/2021 at _____ in _____
RSA Name: Wrongful Voting
Contrary to RSA: 659:34, I (a)

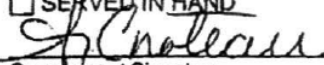
Inchoate:
(Sentence Enhancer):
And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:
When registering to vote, knowingly submits a voter registration form, containing false material information regarding his or her qualifications as a voter; to wit putting an invalid mailing address to obscure his physical address.

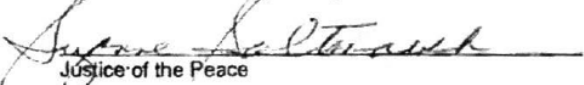
Plea of Guilty
Entered September 27, 2023


Honorable Mark D. Attori

Suzanne R. Saltmarsh
New Hampshire
Justice of the Peace
Notary Public
My Commission Expires 08-04-2028

against the peace and dignity of the State.

SERVED IN HAND

Complainant Signature Inv. Anna R. Brewer-Croteau Complainant Printed Name NH AGO Complainant Dept.

Making a false statement on this complaint may result in criminal prosecution.
Oath below not required for police officers unless complaint charges class A misdemeanor or felony (RSA 592-A:7.1).
Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true
4/13/2021 Date

Justice of the Peace

NHJB-2962-D (06/27/2016)

Case Number: _____ Charge ID: _____

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Carroll Superior Court
96 Water Village Rd., Box 3
Ossipee NH 03864

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. Scott P Kudrick**

Case Number: **212-2022-CR-00173**

Name: **Scott P Kudrick**, [REDACTED] Norwell MA 02061

DOB: [REDACTED]

Charging document: Complaint

Offense: Unsworn Falsification	GOC:	Charge ID: 2004960C	RSA: 641:3	Date of Offense: April 13, 2021
--	-------------	-------------------------------	----------------------	---

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.

Conviction: Misdemeanor

Sentence: see attached

September 27, 2023

Date

Hon. Mark D Attorri

Presiding Justice

Abigail Albee

Clerk of Court

J-ONE: State Police DMV

C: Dept. of Corrections Offender Records Sheriff Office of Cost Containment
 Prosecutor Defendant Defense Attorney Alan J. Cronheim, ESQ
 Sex Offender Registry Other CCHOC _____ Dist Div. _____

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

Court Name: Carroll Superior Court
 Case Name: State v. Scott Kudrick
 Case Number: 212-2022-CR-173 Charge ID Number: 2004960C
 (if known)

HOUSE OF CORRECTIONS SENTENCE

Plea/Verdict: Guilty	
Crime: Unsworn Falsification	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 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 212-2022-CR-173 2004959C
 - D. The court recommends to the county correctional authority: (except for fines and fees)
 - Work release consistent with administrative regulations.
 - Drug and alcohol treatment and counseling.
 - Sexual offender program.
 - _____

Case Name: State v. Scott Kudrick

Case Number: 212-2022-CR-173

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 \$ 2,000.00, plus a statutory penalty assessment of \$ 480.00 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. Scott Kudrick

Case Number: 212-2022-CR-173


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:

The defendant shall not have the right to vote in NH until such right has been restored by order of the NH Supreme Court pursuant to Part 1, Article 11 of the NH Constitution.

For Court Use Only


Honorable Mark D. Attorn
September 27, 2023

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 27, 2023

Richard Giehl
Campton Town Moderator
[REDACTED]
Campton, NH 03223

Re: Jade Hartsgrove, Town of Campton, Alleged Illegal Campaign Activity

Dear Moderator Giehl:

On February 16, 2023, you reported that Town Clerk candidate Jade Hartsgrove was allegedly handing out campaign signs and asking residents to vote for her while working for the Town of Campton. See RSA 659:44-a (prohibiting public employees from electioneering while in the performance of their official duties). Following an investigation, this Office finds that Ms. Hartsgrove did not electioneer while in the performance of her official duties.

I. Background

Ms. Hartsgrove is employed as the Planning & Zoning Coordinator for Campton.

You reported that Ms. Hartsgrove may have handed out campaign signs and asked residents to vote for her while she was working for the Town. You did not personally observe Ms. Hartsgrove taking these actions. Rather, you spoke with M.Y., who stated that he had gone to the Town Hall on business, where Ms. Hartsgrove asked M.Y. to support her candidacy and gave M.Y. a campaign sign.

Ms. Hartsgrove denied that she handed out signs or asked residents to vote for her while she was working for the Town. Security footage confirmed Ms. Hartsgrove's statements. M.Y. can be seen entering the Town Hall on February 16. However, Ms. Hartsgrove did not appear to hand M.Y. a sign, and M.Y. can be seen preparing to exit the Town Hall without a sign in his possession.

During the investigation, this Office discovered that Ms. Hartsgrove's campaign signs did not include the disclaimer that RSA 664:14 requires. Upon being informed of RSA 664:14's requirements, Ms. Hartsgrove promptly added the required disclaimers to her campaign signs.

II. Analysis

RSA 659:44-a provides that no “public employee . . . shall electioneer while in the performance of his or her official duties.”

Here, Ms. Hartsgrove allegedly gave a campaign sign to M.Y. while working at the Town Hall. However, Ms. Hartsgrove denied that she gave M.Y. a sign, and security footage corroborated Ms. Hartsgrove’s claim that she did not electioneer while working at the Town Hall. Accordingly, this Office concludes that the allegation that Ms. Hartsgrove electioneered in violation of RSA 659:44-a is unfounded.

RSA 664:14 provides that all “political advertising shall be signed at the beginning or the end with the names and addresses of the candidate.” Although Ms. Hartsgrove’s campaign signs initially did not include her name and address, as required, Ms. Hartsgrove promptly added the required information to her campaign signs after this Office contacted her.

III. Conclusion

This Office concludes that Ms. Hartsgrove did not improperly electioneer while in the performance of her official duties for the Town of Campton. Although Ms. Hartsgrove’s campaign signs initially did not comply with RSA 664:14, Ms. Hartsgrove promptly added the required disclaimer to her campaign signs. This Office cautions Ms. Hartsgrove to ensure that she complies with RSA 664:14 on any future political advertising.

This matter is closed.

Sincerely,

/s/ Brendan O'Donnell

Brendan A. O'Donnell
Assistant Attorney General
Election Law Unit
brendan.a.odonnell@doj.nh.gov

BAO/bao
CC: Jade Hartsgrove

Note to File

603 Forward - Hollis mailer, Alleged Illegal Campaign Activity 2022158498 9/28/2023 9:43:00 AM Note to File

2023 09 28
BAO

On October 20, 2022, the Election Law Unit sent a letter to 603 Forward regarding a mailer that listed the incorrect polling location for the November 8, 2022 General Election. 603 Forward had self-reported this issue, and 603 Forward proposed to remediate the error by sending a correction notice to each of the 1,590 affected Hollis residents.

On October 25, 2022, 603 Forward confirmed that it had completed the remediation steps.

The Election Law Unit has not received any subsequent complaints regarding 603 Forward's mailer.

Accordingly, this matter is now closed.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 20, 2022

Molly Lunn Owen
Executive Director
603 Forward
PO Box 676
Concord, NH 03302

Re: 603 Forward mailers to Hollis residents

Ms. Lunn Owen:

On October 16, 2022, you contacted this Office to self-report that 603 Forward, a 501(c)(4) advocacy organization, sent a mailer to Hollis residents that listed an incorrect polling location for the November 8, 2022 General Election. 603 Forward is taking corrective action to contact each of the 1,590 Hollis residents who received the incorrect polling information. This letter serves to document the mailer issue and accept 603 Forward's remediation plan.

603 Forward acquired the incorrect polling location information from the Secretary of State's website, which, at that point, listed the September 13, 2022 Primary Election polling location as local officials had not updated the polling location information for the upcoming General Election location. The town clerk is required to keep the polling place information up to date under RSA 654:45, VII. The Secretary of State updated its website on October 17, 2022, to prevent any further confusion.

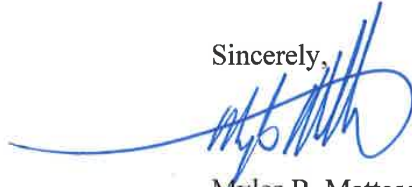
Following discussion with this Office, 603 Forward proposed a remediation plan to print and mail, to the 1,590 impacted Hollis residents, a postcard containing a "correction" notice with the accurate General Election polling location. The remediation postcard is scheduled to be mailed today, Thursday, October 20, from Manchester, with the postcards likely arriving at the same Hollis households on Friday, October 21, and Saturday, October 22.

Please update the Attorney General's Office, by October 25, on the status of 603 Forward's efforts to complete the remediation plan, including when all the remediation postcards have been mailed and confirmation that a postcard was sent to every Hollis

603 Forward mailers to Hollis residents
Page 2 of 2

resident who received the previous mailer containing incorrect polling location
information.

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

October 3, 2023

Katie Williams

[REDACTED]
Haverhill NH 03780

Re: March 2023 Haverhill Mailers

Dear Ms. Williams:

This Office has completed its investigation and review of your March 10, 2023, complaint regarding political mailers sent to the residents of Haverhill, New Hampshire. Following our investigation, this Office will take no further action in this case because the mailers were sent by a single individual and therefore fall into a narrow exception protecting anonymous political speech by individuals. See McIntyre v. Ohio, 514 U.S. 334, 355, 357 (1995).

The first mailer that you reported to this Office reminded Haverhill voters that the Town Meeting would be held at the Haverhill Cooperative Middle School on Saturday, March 18, 2023 at 1:00 pm and requested that voters "Vote No on Article 10 and 11." The mailer did not include any information regarding who was responsible for it, but you noted that it used postal permit #575.

On March 11, you reached out to this Office again and provided a copy of a second mailer sent to Haverhill residents using the same postal permit. This mailer again reminded voters of the time and place of the Haverhill Town Meeting and again asked voters to vote no on Articles 10 and 11 adding "FIGHT SHADOW GOVERNMENT".

On March 15, Investigator Tracy learned that postal permit #575 belonged to Spectrum Marketing. Investigator Tracy subsequently subpoenaed Spectrum Marketing for any invoices related to the two mailers that you brought to our attention. When he received responsive documentation, Investigator Tracy learned that invoices for both mailers were billed to Periklis Karoutas of Strategic Alchemy.

On May 25, Investigator Tracy spoke with Mr. Karoutas. Mr. Karoutas confirmed that Strategic Alchemy produced and mailed both mailers. Mr. Karoutas would not identify who had ordered the mailers beyond saying that it was a "lone individual." He explained his

understanding that an individual sending out political mailers did not have to disclose their identity in New Hampshire.

On June 8, 2023, Mr. Karoutas provided this Office with a sworn affidavit indicating that his client was an individual and “not a corporation, labor union, political action committee of any kind, including a candidate committee, non-candidate committee or political advocacy organization. Furthermore, my client was not a group of individuals, or any group or combination of individuals...”

RSA 664:14, I, provides that all “political advertising shall be signed at the beginning or the end with the names and addresses of the candidate.” However, in McIntyre, 514 U.S. at 355, 357, the United States Supreme Court an exception protecting the anonymity of political speech when conducted by an individual.

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.

McIntyre, 514 U.S. at 357.

Given this Office’s investigation and the sworn statements of Mr. Karoutas, we are satisfied that the mailers that you raised fall into the narrow exception created by McIntyre. As such, this Office will take no further action in this case.

This matter is closed.

Sincerely,



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

MGC/mgc

cc: Strategic Alchemy

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 3, 2023

Town of Raymond
ATTN: Wayne Welch, Raymond Town Moderator
ATTN: Jonathan Wood, Raymond Assistant Town Moderator
109 A Main Street
Raymond, NH 03077

Re: Jonathan Wood, Alleged Election Official Misconduct

Dear Moderator Welch and Assistant Moderator Wood:

This Office has completed its investigation of a complaint regarding the recount of the board of selectmen results that occurred after the March 24, 2023, election in the Town of Raymond. Specifically, the complaint alleged that Assistant Moderator Jonathan Wood failed to follow proper election procedures during that recount. Although this Office has identified mistakes that occurred during the Town's recount, we conclude that those mistakes did not affect the outcome of the board of selectmen election. This Office cautions Town election officials to take greater care to ensure that such errors do not reoccur.

Raymond held its town election on March 14, 2023. Following the election, board of selectmen candidate Dawn "Ranie" Merryman requested a recount. The Town conducted a recount on March 24, 2023. During the recount, procedural errors arose that were addressed in candidate Merryman's subsequent complaint that she filed in the Rockingham Superior Court. The court's order on that action is attached and explains the events of March 24, 2023 in great detail. The court ruled in the Town's favor on the merits and dismissed the complaint. The court reasoned that, although the recount "was not perfect," it was "done according to law" and corroborated the machine count.

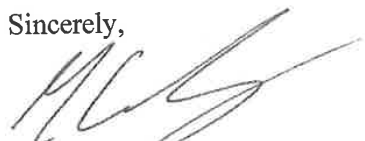
Although we concur with the court and conclude that Town election officials made errors in the March 24, 2023, recount, those errors did not affect the results of the election. We caution Town election officials to take greater care to ensure that such errors do not reoccur.

This Office provided Moderator Welch and Assistant Moderator Wood with suggested practices to prevent this mistake from occurring in the future, including: **(1) every election official and volunteer should have a narrow set of responsibilities that does not overlap; (2) the Town should use clearly identified "ballot runners"; (3) ballot runners should only carry one set of ballots at a time; (4) ballot runners should not move a set of ballots until**

counters confirm they are satisfied with the results of their tally; and (5) election officials should make each person's role and responsibilities clear to every observer in the room. Moderator Welch and Assistant Moderator Wood acknowledged the mistakes and indicated that they would make changes to run more efficient, mistake-free recounts in the future.

This matter is closed. Please reach out to me if you have any questions.

Sincerely,



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

MGC/mgc

cc: James McLeod
Raymond Board of Selectmen

STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss.

Dawn Merryman

v.

Town of Raymond, NH

218-2023-CV-00466

FINAL ORDER

This matter is a statutory appeal from a municipal election recount. See RSA 669:35.

The court held a hearing on the merits on May 2, 2023. The hearing was scheduled as a preliminary injunction hearing. However, pursuant to Superior Court Rule 48(b)(2) the court consolidated the preliminary hearing with the final hearing on the merits.

Given the question presented, the parties would have been ill-served by prolonging the proceeding. Had there been a need, the court would have allowed time for discovery, depositions and a more fulsome trial. However, for the reasons set forth below, the evidence at the hearing proved beyond cavil that the (a) the two candidates with the most votes were properly certified as the winners of the two open seats at issue, (b) plaintiff did not win either of the open seats, (c) there are no grounds for a

second recount and (d) there are no grounds for any other species of equitable relief.

Factual Findings

A. Background

Plaintiff Dawn Merryman was a candidate in the 2023 election for the Town of Raymond Select Board. There were a total of four candidates for two open positions on the Select Board. Voters were instructed to vote for no more than two candidates. The totals for each candidate were as follows:

<u>Candidate</u>	<u>Machine Count</u>	<u>Hand Recount</u>
Bridges	660	661
Plante	574	573
Merryman	549	550
Long	456	457

As the chart makes clear, there was very little variance between the machine count and the hand recount. Candidate Plante lost one vote as a result of the recount. The other three candidates each gained one vote in the recount. Thus, the recount corroborated the machine count and vice versa. (The slight difference between the two counts is to be expected because sometimes voters make stray or confusing marks on their ballots.)

The votes were first counted by machine immediately following the election. Merryman came in third place (meaning that she lost). She had twenty-five fewer votes than the second

place finisher, Plante, who was deemed to have won one of the two open seats.

Merryman timely requested a recount pursuant to RSA 669:30. Recounts in municipal elections are conducted by a municipal Board of Recount rather than the Secretary of State. RSA 669:32. The Board of Recount consists of the Town Clerk, the Town Moderator and the members of the Select Board (less any of those individuals who is a candidate for the office being recounted). Id. The Board of Recount may employ assistants. Id.

The recount in this case took place in a middle school gymnasium. The Board of Recount established a perimeter within the gym. Inside that perimeter were four counting tables, referred to as Tables 1, 2, 3 and 4. There was also a table for ballots that were yet to be recounted and a table for ballots that had been recounted. Thus every ballot was to be initially placed on the "yet to be recounted" table, then moved to one of the counting tables, then moved to the "already recounted" table.

The recount was open to the public. Members of the public observed from gymnasium bleachers. The recount was videotaped by at least one member of the public. A seven minute portion of his video was admitted as evidence (although the arrows and commentary he added to the video were not admitted as evidence).

Ballots were moved from the "yet to be recounted" table to one of the counting tables in stacks of 50 ballots. Each member of the counting team would then inspect each of the fifty ballots in the stack. One member of the team would then make hash marks (i.e. short straight lines) on graph paper, with each hash mark representing a vote for a particular candidate. When all 50 ballots were processed in this manner, the counting team would place a red mark on the graph paper next to the last hash mark. Then the recounted ballots would be taken by the Assistant Moderator to the "already recounted" table.

A ballot that contained votes for two Select Board candidates would result in two hash marks, one for each candidate. A ballot that contained a vote for only one Select Board candidate would result also result in two hash marks, one for the candidate and one described as an "undervote." A ballot with no discernable votes for a Select Board candidate would result in two "undervote" hashmarks. A ballot that contained votes for more than two Select Board members would result in two hash marks described as "overvotes."

Thus, the total number of (a) hash marks representing votes for candidates, (b) hash marks representing "undervotes," and (c) hash marks representing "overvotes" should have always equaled 100 for every stack of 50 ballots.

Following the recount, plaintiff Merryman remained in third place. However, she narrowed the difference between her and the second place finisher to 23 votes. The outcome of the Select Board election was not changed.

B. The Issue Of The "Already Recounted" Ballots That Were Moved Back To Table 1

A video taken by a member of the public showed the Assistant Moderator moving a stack of ballots from the "already recounted" table back to Table 1 where they were seemingly counted again. Merryman opines that this occurred due to the following **alleged** chain of events: (A) The officials at Table 1 allegedly counted a stack of 50 ballots--which will be referred to as "Stack A"-- from the "yet to be recounted" table and made hash marks on the recount worksheet, (B) Stack A was then brought to the "already recounted" table and placed at the top of a stack of ballots, (C) The Table 1 officials then realized they made some sort of counting error and asked to have the Stack A returned so they could check their work, (D) In the meantime another stack of ballots had been placed on the "already recounted" table on top of Stack A, but this escaped the notice of the Assistant Moderator, (E) The Assistant Moderator brought this other stack of already counted ballots to Table 1, (F) The officials at Table 1 then used the already counted ballots in place of Stack A. Thus, according to

Merryman, the ballots in Stack A were never accounted for in the recount and the ballots in the other stack were counted twice.

However, according to the testimony of one of the individuals who was sitting at Table 1, a different chain of events occurred. The court credits the testimony of this witness based on (a) the fact that the testimony is consistent with the video, (b) the inherent plausibility of the testimony, (c) the witness' demeanor on the stand, and (d) the fact that the testimony is corroborated by the Table 1 worksheet.

The witness explained--and the court finds--that the following occurred: (A) Stack A was counted at Table 1 and the officials made hash marks on the worksheet, (B) Stack A was then taken to the "already recounted" table, (C) Thereafter, the officials at Table 1 realized that they had made 102 hash marks rather than 100, (D) Thus, either they had 51 ballots or they made an extra two hash marks, (E) The officials asked to have Stack A returned so they could check their work, (F) By this time, another stack of "already recounted" ballots had been placed on top of Stack A, (G) The Assistant Moderator mistakenly brought this other Stack to Table 1; (H) Table 1 began counting the other stack, only this time instead of making hash marks, **the officials placed diagonal lines across the already existing hash marks, thereby creating "Xs."**, (I) This process left all of the hash marks from Stack A in place; (J) At some point,

after approximately 60-odd cross marks were made, the officials realized that the stack they were recounting was not Stack A, so they stopped, (K) Accordingly, the official at Table 1 ignored all of the cross marks, and (L) The hash marks--all of which were written during the Table's counting of the real Stack A were included in the Table's final count.

Thus, either the officials at Table 1 recorded two extra votes from Stack A (as undervotes as they suspected or otherwise) or Stack A held 51 ballots. No amount of litigation or discovery is likely to shed any additional light on what occurred.

However, the chain of events posited by Merryman did not occur. Stack A was not replaced by another stack. No stack was double counted.

The two vote discrepancy did not affect the outcome of the election.

C. The Issue Of The Total Number Of Ballots

Following the machine count the Moderator certified that a total of 1359 ballots had been cast. Accordingly, the recount worksheets from all four counting tables should have contained a total of 2,718 hash marks (representing 2241 candidate votes plus undervotes and overvotes, as explained above).

The parties did not introduce all four recount worksheets. Instead, the parties introduced (a) the worksheet from Table 1 and (b) the Moderator's worksheet with the totals from all four tables. Thus, the court cannot simply count the hash marks.

The Moderator's worksheet lists 2241 candidate votes (which jibes with the number of votes for each candidate in the chart above), plus 458 undevotes, plus 123 overvotes. This works out to 2,822 hash marks or 1,411 ballots (which is 52 ballots more than the amount certified following the machine count).

However, the Moderator explained, and the court accepts, that one of the counting tables included undervotes in its count of overvotes as well (thereby overstating its hash marks by the number of undervotes). The Moderator believes there were only 8 overvotes. That would result in 2241 candidate votes, 458 undervotes and 8 overvotes, for a total of 2,707 hash marks. This would work out to 1,353.5 ballots. These numbers are obviously incorrect because there cannot be half a ballot. However, the Moderator's number is within easy striking distance of the number of ballots certified after the machine count.

The court believes that the error is almost certainly in the calculation of the number of overvotes. However, without all four worksheets this is impossible to verify. In any event, even if the recount was off by five or six ballots, this would not affect the outcome of the election.

C. Absentee Ballots

Plaintiff Merryman opines that the absentee ballots were never counted. Merryman proffered that she could produce witnesses from each of the four counting tables who would testify that they did not see ballots that had been folded or filled out with different inks or pencil. However, the Moderator stated that all of the absentee ballots were placed on one counting table.

The court accepts the Moderator's first-hand account. Further, if no absentee ballots were counted, there would have been 200 fewer hash marks and, presumably, significantly fewer candidate votes. Thus, the number of hash marks and the number of candidate votes corroborate the Moderator's in-court statement that the absentee ballots were counted.

LEGAL ANALYSIS

This action is governed by RSA 669:35. That statute provides, in pertinent part, as follows:

Any person aggrieved by a ruling of the board of recount with respect to any ballot may, within 5 days thereafter, appeal to the superior court for the county in which such town is located[.]

The statute does not provide a standard of review. However, the court proceeds upon the supposition that a plaintiff who seeks to vacate a decision of the municipal Board of Recount has the burden to prove that the Board committed

error(s) that could have affected the outcome of the election. It is not enough for a plaintiff to prove that the recount was imperfect; the plaintiff must also prove that if the recount were done according to law the result could be different.

The hand recount in this case was not perfect. Perfection is rare in human affairs. The recount was done according to law and the minor discrepancies discussed above could have not possibly altered the outcome of the election. The recount corroborated the machine vote and vice versa.

JUDGMENT FOR THE TOWN OF RAYMOND.

May 5, 2023



Andrew R. Schulman,
Presiding Justice

**Clerk's Notice of Decision
Document Sent to Parties
on 05/05/2023**

Note to File

Carolyn McKinney, Perception Studios, Alleged Illegal Campaign 2022158703 10/4/2023 4:24:00 PM Note to File

Closeout Memo

Office never obtained any further leads on who made/set out the other signs. Email to Ms. McKinney sent, closed out with permission of BAO.

Note to File

Edward (Ned) McElroy, Alleged Illegal Campaign Activity 2021149643 10/5/2023 4:12:00 PM Note to File

10/5/2023--BAO

The Election Law Unit previously investigated the Herings domicile following a complaint from Mr. McElroy, which the Unit determined to be unfounded.

On June 14, 2021, the Unit received a complaint from Sean Tole regarding Edward (Ned) McElroy allegedly harassing property owners in Waterville Estates Village District by inquiring with Town officials and filing complaints with this Office regarding those owners not being domiciled for voting purposes. On November 15, 2021, the Unit received a similar complaint from Michael & Susan Hering.

The Unit followed up with the Herings and with Sean Tole on October 5, 2023. None of them reported any Mr. McElroy filing any further complaints or challenging anyone's right to vote since 2021.

Therefore, the Election Law Unit is closing this matter.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 10, 2023

Adrian Champagne

[REDACTED]
Plymouth, NH 03264

Re: **CEASE AND DESIST ORDER**
Adrian Champagne, Alleged Wrongful Voting
AMOUNT SUSPENDED FOR TWO YEARS: \$1,000.00

Mr. Champagne:

On November 8, 2022, this Office received a complaint alleging that you attempted to unlawfully vote in the Town of Plymouth. Following an investigation, we conclude that you: (1) unlawfully registered to vote in the September 2022 Primary Election; (2) unlawfully cast a vote in the September 2022 Primary Election; and (3) unlawfully attempted to register to vote in the November 2022 General Election. However, you do not appear to have attempted to deceive election officials regarding your citizenship when completing your voter registration form. The officials who reviewed your registration should have determined that you are not a United States citizen and should not have let you register to vote. Nevertheless, this Office orders you to refrain from attempting to register or vote in the State of New Hampshire for as long as you are not a United States citizen. This Office is also imposing a civil penalty of \$1,000 that shall be suspended for a period of two (2) years.

I. Background

You are a lawful permanent resident ("green card" holder) and are not a United States citizen. You initially registered to vote in Plymouth in the September 13, 2022, primary election. At that time, you registered using your green card. In response to question 5.a. on the voter registration form "Are you a citizen of the United States? Yes ___ No ___," you marked "No." However, in response to question 5.b. "If naturalized citizen, give name of court where naturalized (Town/City and State)," you stated "Buffalo NY¹." An election official accepted your voter registration form, and you subsequently cast a ballot in that election. However, that

¹ The United States Department of Homeland Security confirmed that you were issued your visa on December 13, 1986, the same date that you indicated you had been "naturalized." While you became a lawful permanent resident in the United States while you lived in Buffalo, you were not naturalized.

election official had been assigned to the registration table by mistake and had not been properly trained in that role.

When you went to vote again in November, election officials noticed that your name was misspelled on the checklist and asked you to fill out a second voter registration form. You again marked “No” in response to the question asking if you were a citizen of the United States, and you again stated that you became a naturalized citizen in Buffalo, NY.

You were given a ballot but the official who registered you in November noticed that there might be a problem with your citizenship. The volunteer who re-registered you in November accepted your registration, but questioned your eligibility and brought her concerns about your citizenship to the moderator’s attention. The moderator confirmed that you were not a United States citizen and took your ballot back before you could cast it.

II. APPLICABLE LAW & ANALYSIS

A person must be a United States citizen to vote in New Hampshire elections. See RSA 654:1, I; see also RSA 659:34, I(e); II (setting forth civil and criminal penalties for registering to vote and voting when not qualified to do so). Notably, a permanent resident is a non-citizen who is lawfully authorized to permanently live in the United States. Because you are not a citizen of the United States, you violated RSA 659:34 when you registered to vote and voted in September 2022, and when you attempted to register to vote in November 2022.

However, one of the duties of election officials is to verify that an individual is a citizen of the United States before allowing that individual to register to vote. See RSA 654:12. Town election officials clearly should not have accepted your registration to vote. On your registration, you marked “No” in response to the question asking if you were a United States citizen. The election official reviewing your registration should have recognized that you were not a United States citizen.

Although it is clear that you registered to vote and voted in violation of state law, it does not appear that you attempted to deceive election officials regarding your status as a permanent resident and not as a citizen. Therefore, election officials should have refused to accept your registration and should have explained to you that permanent residents are not eligible to vote. Because you were forthright with election officials that you were a green card holder, and because of the errors on the part of election officials, this Office is exercising its discretion not to pursue further investigation and potential criminal charges.

You are ordered to cease and desist from registering to vote or voting unless and until you obtain United States citizenship. We have also notified Plymouth 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 violated RSA 659:34 by registering to vote and voting in Plymouth. 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 all other qualifications to vote in this State.** This Office is also imposing a civil penalty of \$1,000 that shall be suspended for two (2) years on the condition that you not violate any election laws in this State.

This matter is closed.

Sincerely,



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

MGC/mgc

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 10, 2023

Erin Orion, Interim Plymouth Town Clerk
8 Post Office Square
Plymouth, NH 03264

Re: Adrian Champagne, Alleged Wrongful Voting

Dear Clerk Orion:

Please see the attached letter to Mr. Champagne. We urge you to use this letter as a training tool. In the future, all Plymouth election officials should be aware that lawful permanent residents, who are known as "green card" holders, are not United States citizens. Therefore, Town election officials should not permit lawful permanent residents to register to vote or vote in any election.

Sincerely,

A handwritten signature in blue ink, appearing to read "MGC".

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

MGC/mgc
Enclosure

cc: Secretary of State - Elections Division, Secretary of State
Town of Plymouth Supervisors of the Checklist

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

September 6, 2023

Town of Hooksett, Town Council
Attn: Chair Tsantoulis
35 Main Street
Hooksett, NH 03106

Re: Town of Hooksett plan to meet statutory obligations regarding absentee ballots in upcoming elections.

Dear Chair Tsantoulis and members of the Town Council:

During the 2022 general election, the Town of Hooksett experienced significant problems fulfilling its statutory obligations to timely process absentee ballot requests. As described in further detail below, this Office is requiring you to submit a detailed plan that demonstrates how the Town will timely and properly meet its statutory obligations regarding absentee ballots during the upcoming presidential primary and general election. We strongly encourage you to contact municipal counsel regarding your absentee ballot obligations and to assist you in preparing this plan. If this Office does not receive a satisfactory plan by **October 6, 2023**, we may take legal action to compel the Town to take additional actions to ensure the Town will meet its obligations during the upcoming election cycle.

Town's statutory responsibilities regarding timely processing absentee ballot requests:

The State Constitution requires that certain qualified voters be allowed to vote absentee. See N.H. CONST., Pt I, Art. 11 (requiring the legislature to enact laws allowing for absentee voting). To that end, RSA chapter 657 sets forth numerous statutory requirements regarding absentee voting. This statutory scheme requires municipalities to promptly act on absentee ballot requests, including but not limited to:

1. Upon receipt of an application for an absentee ballot, the town clerk "shall forthwith ascertain if the party is on the checklist." RSA 657:12 (emphasis added); see also RSA 657:13.

2. After making this verification, the town clerk “shall retain the application and, without delay, personally deliver, email, or mail” absentee ballot materials to the voter. RSA 657:15, I (emphasis added).
3. The town clerk must keep a list of the names and addresses of all applicants to whom absentee ballots have been sent, and the town clerk must record absentee voter applicant information in the statewide centralized voter registration database. RSA 657:15, I.
4. If the town clerk refused to certify an absentee ballot application, the clerk “shall notify the applicant in writing within 7 days to that effect.” RSA 657:16 (emphasis added). The town clerk must additionally provide the applicant with an absentee ballot and a notice regarding the documents necessary to complete absentee registration. *Id.*
5. Upon receipt of an outer envelope purporting to contain an official absentee voting ballot, the town clerk must attach that voter’s absentee ballot application and record the information. RSA 657:18.
6. The town clerk is subject to additional requirements and deadlines related to receiving applications from and sending absentee ballots to UOCAVA voters. *See, e.g.*, RSA 657:19.

Town’s issues timely processing absentee ballot requests during 2022 general election:

This Office received reports and information of significant issues regarding the Town’s handling of absentee ballots during the 2022 general election, including:

1. That on October 26, 2022, the Town had 49 outstanding absentee ballot requests for which the Town had not processed and mailed absentee ballots, including some requests dating back to September of 2022.
2. A report on November 1, 2022, that 17 voters may not have received or had their absentee ballot requests processed.
3. When an investigator from this Office went to the Town Clerk’s Office on November 1, there was a line of at least 10 residents waiting for service. Supervisor of the Checklist Michael Horne stated that he had been deputized to assist the Town Clerk with processing absentee ballot requests, that the Clerk’s Office had received 433 absentee ballot requests to date, and that 31 of those requests still needed to be processed. A resident at the Clerk’s Office expressed frustration with not getting her absentee ballot and filled out what she said was her second request.
4. As of November 4, 2022, the Town Clerk was still having issues with 14 absentee ballots.
5. On November 6, 2022, a resident e-mailed the Secretary of State’s Office to report that they did not receive their absentee ballot, despite having hand-delivered their absentee ballot request to the Hooksett Town Offices on October 6, 2022. This resident reported that they called the Clerk’s Office six times and left five voicemails regarding their request, and they never received a return call.

6. On November 7, 2022, a second resident e-mailed this Office reporting that their son never received an absentee ballot, despite having hand-delivered the absentee ballot request to the Clerk's Office on October 12. ElectioNet indicated that this resident's son ultimately did not vote in the November 8, 2022, general election.
7. On November 8, 2022, a third and fourth resident reported that they requested absentee ballots on September 15, 2022, but they had still not received their absentee ballots by October 25, 2022, despite repeatedly calling the Clerk's Office regarding their absentee ballot requests. Because they had not timely received their absentee ballots, these residents went to the Clerk's Office in person on October 25, 2022, to cast their ballots. These residents additionally reported that as of 2:00 p.m. on November 8, 2022, the Hooksett NH Community Group Facebook page included posts from at least seven people who reported not having received their absentee ballots.
8. On November 16, 2022, two additional residents complained that they had been trying to confirm whether their absentee ballots were received and processed, but they had not received a return call from the Clerk's Office despite leaving multiple messages.

Following the 2022 general election, Town Clerk Sullivan and Deputy Clerk Conner-Yearke resigned their positions. Although the Town subsequently filled these positions with Town Clerk Jessica Lomanno and Deputy Town Clerk Karina Towne, neither appears to have had prior experience processing absentee ballot requests.

It is this Office's understanding that the Town Clerk's office is only open 10 hours per week, and the Town Clerk and Deputy Town Clerk are only part-time positions.

Concern regarding Town's ability to timely and properly process absentee ballot requests in upcoming presidential primary and general elections.

This Office takes the reports regarding the issues with the Town's handling of absentee ballot requests in the 2022 general election very seriously. Residents of the Town have a constitutional right to vote, and the Town's ability to timely and properly process absentee ballot requests is crucial to ensuring none of the Town's residents are improperly denied their right to vote.

Based on the reports set forth above, it is apparent that the Town was not able to fully meet all of its statutory obligations to timely and properly process absentee ballot requests during the 2022 general election.

Part of the Town's failure appears to be related to the Town not sufficiently staffing its Clerk's Office in terms of hours of operation, number of full-time and part time clerk positions, and funding. Hooksett is one of the larger New Hampshire municipalities, having a population of 14,871 as of the 2020 federal census. Nevertheless, the Town Clerk's Office is open just ten hours a week. By comparison, similarly sized New Hampshire municipalities have clerk's offices with substantially larger hours of

operation. For example, Durham's (15,490) town clerk's office is open 42.5 hours per week; Windham's (pop. 15, 817) town clerk's office is open 44 hours per week; and Amherst's (pop. 11,753) town clerk's office is open 32 hours per week. Moreover, the Town's current budget includes just \$30,000 in appropriations for the work of the Town Clerk and Deputy Town Clerk for an entire budget year (total Town Clerk's Office budget of \$57,099). This is well below the amount that similarly-sized municipalities have appropriated for their town clerk's offices. For example, Durham appropriated \$298,450 for its town clerk's office for 2022; Windham appropriated \$272,173 for its town clerk's office for fiscal year 2023; and Amherst appropriated \$238,274 for town clerk duties.

This Office notes that the Town's issues meeting its absentee ballot obligations in 2022 occurred during a midterm election, and election turnout is typically higher during presidential election years (such as the upcoming presidential primary and 2024 general election). In other words, the Town should be prepared to process a greater number of absentee ballot requests in the upcoming election cycle than the number of requests that the Town had issues timely and properly handling during the 2022 election cycle.

This Office further notes that the Town's new Town Clerk and Deputy Town Clerk do not appear to have experience processing absentee ballot requests. This may additionally affect the Town's ability to timely and properly handle all absentee ballot requests in the upcoming election cycle.

Taken together, the Town has not demonstrated that it is able to meet all of its statutory obligations to timely and properly process absentee ballot requests during the upcoming election cycle.

Order to submit a plan that shows how the Town will meet its obligations regarding absentee ballot processing during the upcoming election cycle:

The Town must submit a plan to this Office by **October 6, 2023**, which sets forth in detail the steps that the Town will take to ensure that the Town is able to timely and properly meet all of its statutory obligations regarding absentee ballot requests.

Some examples of actions the Town could include in a plan include: committing to expanding the Clerk's Office's hours of operation ahead of the 2024 presidential primary and 2024 general election; identifying how many people will be deputized to assist the Town Clerk, who those people are, and when they will be deputized; identifying additional resources that will be allocated to the Clerk's Office; and identifying additional trainings that the Town Clerk and Deputy Town Clerk will attend.

If this Office is not satisfied that the Town's proposed plan will enable the Town to timely and properly meet all of the Town's statutory obligations regarding absentee ballot requests, this Office may take legal action to compel the Town to take additional actions to ensure the Town will meet its obligations during the upcoming election cycle.

Town of Hooksett
September 6, 2023
Page 5 of 5

This Office strongly encourages the Town to consult with its legal counsel regarding the Town's statutory obligations, the Town's ability to meet its statutory obligations, and preparing a plan that will enable the Town to meet its statutory obligations in the upcoming election cycle.

Please reach out to me if you have any questions.

Sincerely,

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell
Assistant Attorney General
Brendan.a.odonnell@doj.nh.gov
603-271-3650



TOWN OF HOOKSETT

TOWN COUNCIL

35 MAIN STREET
HOOKSETT, NEW HAMPSHIRE 03106

TELEPHONE (603) 485-8472 WEBSITE www.hooksett.org FAX (603) 268-0049

Date: October 5, 2023

Dear Assistant Attorney General Brendan A. O'Donnell,

I, Chair Timothy Tsantoulis, and members of Town Council received your letter dated September 6, 2023, in regard to Town of Hooksett's plan to meet obligations regarding absentee ballots in upcoming elections.

The Town of Hooksett recognizes that the handling of absentee ballots in the 2022 election was not handled at the same level or expertise as it had in previous national elections. I do appreciate the efforts of Pam Sullivan, Former Town Clerk, and Karen Connor-Yearke, Former Deputy Town Clerk, for stepping up to take on the respective responsibilities of the office where no one else did.

It was noted in your letter that Hooksett's 2024 budget for the Town Clerk office is \$57,099. Your office also mentioned other communities of comparable size having substantially higher budgets for its Town Clerk's offices. Hooksett notes that the duties and responsibility of the other communities are not the same as Hooksett's. It is our understanding that each of these communities are responsible for tax collection, elections, car registration, vital records, marriage licenses and dog registrations. Hooksett's Town Clerk's office responsibilities are limited to elections, dog registrations, vital records, and marriage licenses.

It should also be noted that the Town Clerk in Hooksett is Karina Towne, and the Deputy Town Clerk is Jessica Lomanno. Town Clerk Karina Towne has past experience processing absentee ballots. She participated in several elections as an elections volunteer prior to becoming Town Clerk. She also handled absentee ballots and ran the 2023 Town and School Election.

In the 2022 budget process, Hooksett increased the stipend paid to the Town Clerk and Deputy Town Clerk from \$5000 to \$20,000 for the Town Clerk and from \$2500 to \$5000 for the Deputy Town Clerk. The Town Clerk also receives an additional \$5000 for federal election years. The additional \$5000 stipend for federal election years was in response to the additional time and commitment needed to service the residents and absentee ballots.

Hooksett has initiated action to provide the Town Clerk's office with an Administrative Assistant to help with the administrative and election duties of the Town Clerk office. Funds have been transferred from the Finance Department to the Town Clerk's budget to hire a part-time Administrative Assistant now. The Town Clerk and the Administration Department have included funds in the FY 24/25 budget to continue funding the part-time Administrative Assistant position.

The new part-time Administrative Assistant, Megan Richardson, started on September 28th and is currently being trained in the duties and responsibilities of the Town Clerk's office. Starting the week of October 16th, the office hours will expand from 10 hours per week to 20 hours per week. Also, the new Administrative Assistant is a town resident and, therefore, has been appointed Assistant Town Clerk with all the allowable access to the state's election databases to help process absentee ballots, amongst their other duties and responsibilities.

As mentioned above, Hooksett is preparing its FY 24/25 budget to include an increase to the Town Clerk budget from \$59,099 to \$93,557. Part of the increase in the Town Clerk's budget is the continued staffing of a part-time Administrative Assistant.

Hooksett's plan

- The Town of Hooksett has increased the stipend for the Town Clerk's office and added additional funding to address the additional hours anticipated for federal elections.
- Hooksett has provided funding for a part-time Administrative Assistant to expand the hours of operation from 10 hours to 20 hours. The new Administrative Assistant is a resident of Hooksett and therefore has been appointed as an Assistant Town Clerk, allowing her to assist with the upcoming elections-up to the Federal Elections.
- The Deputy, Jessica Lomanno, is attending the NHCTCA Fall training conference next week.
- Available training and information provided by the Secretary of State on ElectioNet and the Election Procedure Manual are being utilized.
- All Town Clerk staff will attend training offered by the Secretary of State in leadup to the Federal Elections.
- Former Town Clerk, Todd Rainier, has been and will continue to offer assistance as necessary.
- The Town Clerk, Deputy and Administrative/Town Clerk Assistant are currently coming up with a plan to increase the office hours. Specific dates and times are unknown as the primary date has not been announced.
- Office hours will expand from 10 to 20 hours a week on October 16th. 30 days prior to the Primary Elections we will offer 30 hours a week. They also intend to work more hours if it is necessary to process absentee ballots.
- Town Clerk staff is aware of the UOCAVA process and the 45- day deadline.
- The Town Clerk intends to hire and appoint additional staff to assist with reconciliation of absentee ballots and requests with the report generated in ElectioNet.

The Town of Hooksett takes the right to vote very seriously. I cannot recall a time, other than the 2022 election, that the community experienced an issue with its ability to appropriately process absentee ballots. It has been recognized by the Attorney General's office and the Secretary of State office that the actions of the previous Town Clerk and Deputy Town Clerk

regarding their issues with processing absentee ballots were not intentional, but they were simply overwhelmed with the amount of absentee ballot requests. It is Hooksett's intention to improve this aspect of the election process and restore the trust and confidence of its residents in the election process in Hooksett.

Sincerely,

Handwritten signature of Timothy Tsantoulis in cursive, with the word "chairman" written in a simpler font to the right of the signature.

Timothy Tsantoulis, Town Council Chair

Cc:

Karina Towne, Town Clerk
Andre Garron, Town Administrator
Michael Lizotte, Town Moderator
Michael Horne, Supervisor of Checklist
Matthew Serge, Town Legal Counsel

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 12, 2023

Town of Hooksett, Town Council
Attn: Chair Tsantoulis
35 Main Street
Hooksett, NH 03106

**Re: Town of Hooksett plan to meet statutory obligations regarding
absentee ballots in upcoming elections.**

Dear Chair Tsantoulis and members of the Town Council:

This Office received your letter dated October 5, 2023, which set forth the Town's plan to meet its obligations regarding absentee ballots in upcoming elections.

We appreciate your prompt response and the Town Council's willingness to take these additional steps to ensure Hooksett will be able to timely comply with absentee ballot requirements. Your proposed plan addresses this Office's concerns, and we will be closing this matter.

If the Town nevertheless experiences any difficulties timely processing absentee ballot requests during the upcoming elections, we encourage you to promptly reach out to this Office or to the Secretary of State's Office for assistance.

Thank you again for your attention to this matter,

Sincerely,

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell
Assistant Attorney General
Brendan.a.odonnell@doj.nh.gov
603-271-3650

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

October 16, 2023

Chelsea Moore

[REDACTED]
New York, NY 10028

Re: **CEASE AND DESIST ORDER**
Chelsea Moore, Alleged Wrongful Voting
AMOUNT DUE WITHIN 30 DAYS: \$500.00

Dear Ms. Moore:

On November 8, 2022, you called our Office to report that you had accidentally voted in two states in the November 8, 2022, midterm election. Following an investigation, this Office finds that you violated RSA 659:34-a because you voted in the midterm election in both Colorado and New Hampshire. This Office orders you to cease and desist from voting in more than one state in the same election. Because you immediately self-reported and sought to cancel your New Hampshire vote before it was counted, and due to a lack of any evidence that you have previously voted in more than one state, this Office is exercising its discretion to not seek criminal penalties in this matter. In lieu of criminal prosecution, this Office is imposing a civil penalty of \$1,000, with \$500 of that civil penalty suspended for a period of two (2) years.

I. Background:

You are originally from Aspen, Colorado where your parents live. You attended college at Dartmouth College in Hanover, NH, and you graduated in 2022.

In Colorado, every registered voter receives a mail ballot at the mailing address in their voter registration file. Prior to November 8, you voted in Aspen by completing and mailing a mail ballot. On November 8, you went to vote in Hanover with a group of your friends because you "thought [you] could do a local one." Later in the day, you realized that your New Hampshire vote might constitute a second vote in the same election. At approximately 3:25 pm, you called this Office to explain what had happened, to seek guidance on what to do, and to ask if you could somehow cancel your New Hampshire vote.

After speaking with you, an investigator from this Office contacted Colorado election officials to determine if your Aspen ballot could be spoiled, but Colorado election officials informed him that your ballot had already been processed.

New Hampshire election officials confirmed that you registered to vote in this state on the day of the November 8, 2022, election. You had never previously voted or registered to vote in this state. Colorado election officials provided records confirming that you had consistently voted in Pitkin County, Colorado in five prior elections since 2018.

II. **Wrongful Voting:**

RSA 659:34-a prohibits a person from knowingly checking in at the checklist and casting a New Hampshire ballot on which one or more federal or statewide questions are listed and doing the same in an election in the same election year in another state. See RSA 659:34-a, I. Two elections occur in the same election year if 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 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.” RSA 659:34-a, II. In a prosecution under 659:34-a, the state does **not** need to prove that a ballot was specifically marked for the same or equivalent offices, the state only needs to prove that the person cast a ballot in both elections. See RSA 659:34-a, III.

III. **Conclusion:**

This Office finds that you violated RSA 659:34-a, I, by casting a ballot in both Colorado and the New Hampshire in the November 8, 2022, midterm election. Because you immediately self-reported and sought to cancel your New Hampshire vote before it was counted, and because nothing indicates you have previously violated an election law, this Office exercises its discretion to not seek criminal penalties for your conduct. In lieu of criminal prosecution, this Office is imposing a civil penalty of \$1,000, with \$500 of that civil penalty suspended for a period of two (2) years on the condition that you not violate any election laws in this State.

PURSUANT TO RSA 659:34-a, YOU ARE ORDERED TO CEASE AND DESIST FROM VOTING IN MORE THAN ONE STATE IN THE SAME ELECTION.

Your payment of the \$500.00 civil penalty must be delivered to our Office within thirty (30) days of the date of this letter. If you fail to timely pay this penalty, this Office will initiate further enforcement action.

Your payment of \$500.00 shall be made by check payable to “Treasurer, State of New Hampshire” and mailed to the Office of the Attorney General, 33 Capitol Street, Concord, NH 03301, Attention: Assistant Attorney General Matthew G. Conley.

This matter will be closed upon receipt of your payment of the civil penalty.

Chelsea Moore, Wrongful Voting
Page 3 of 3

Sincerely,



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

MGC/mgc