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 July 1, 2021, to December 31, 2021

Issued September 1, 2022

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. The Unit is now staffed by two full-time attorneys, Deputy General Counsel Myles Matteson and Attorney Matt Conley, one full-time elections investigator, Chief Investigator Richard Tracy, and one full-time investigative paralegal, Jill Tekin.

Pursuant to RSA 7:6-c, II, (a), the Attorney General hereby submits to the New Hampshire House of Representatives and the Senate this report on the status of all complaints of alleged violations of election laws received from July 1, 2021, to December 31, 2021.[1] This report is divided into three parts. Section I, pursuant to RSA 7:6-c, II (b), includes a summary of complaints received from July 1, 2021, to December 31, 2021, 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 which remain open. 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.

[1] The Attorney General is submitting three status reports within one week, covering the period from July 2020 to December 2021. All three reports are written to reflect the status of cases as of August 22, 2022. This means, for example, that a matter opened 2021 and closed in 2022 will be listed as "Closed" in the report covering the applicable period in 2021.

I.

SUMMARY OF COMPLAINTS RECEIVED FROM July 1, 2021, to December 31, 2021

Complaint Against	Complainant	Date of complaint	Allegations	Status	Bates No.
Dover Teachers' Union	Jeffrey Clay	5/30/2021	RSA 659:44-a – Alleged Illegal Campaign Activity	Closed on 1/28/2022	000142-000146
New Boston Tax Payers	Kaleb Jacob	6/9/2021	RSA 664:14 – Alleged Illegal Campaign Activity	Closed on 7/23/2021	000013-000015
John McLaughlin	Denys Draper	6/19/2021	RSA 669:6, RSA 669:19 – Alleged Election Official Misconduct	Closed on 7/1/2021	000001-000003
Government Integrity Project	Sheila Johannesen and Eric Walsh	6/25/2021	RSA 664:3, RSA 664:6 – Alleged Illegal Campaign Activity	Open	
Town of Ashland	Sherrie Downing	7/8/2021	RSA 659:27 – Alleged Election Official Misconduct	Closed 8/19/2022	000177-000184
Unidentified Individual, Town of Danville	Susan Overstreet	7/13/2021	RSA 659:43 – Alleged Illegal Campaign Activity	Open	
Nashua Mayor's Office	James Tollner	7/29/2021	RSA 659:44 – Alleged Illegal Campaign Activity	Open	

Debra Altschiller/Stratham Town Democratic Committee	Amy Jeffrey	9/1/2021	RSA 664:7, RSA 664:9, RSA 664:14 – Alleged Campaign Finance Violation	Open	
Unknown	Chris Vigneault	9/8/2021	RSA 664:17 – Alleged Illegal Campaign Activity	Closed 8/26/2022	000204
Alleged Wrongful Voting	Jennifer Paveglio	9/16/2021	RSA 654:1 RSA 659:12, RSA 659:34 – Alleged Wrongful Voting	Open	
Mark Brighton	Doug Roberts	9/27/2021	RSA 664:17 – Alleged Illegal Campaign Activity	Closed on 11/19/2021	000108-000109
Sonia Prince	Alex Comeau & Laura Colquhoun	9/28/2021	RSA 664:14 – Alleged Illegal Campaign Activity	Open	
Carolyn Carr	Michelle Cedrone, Jill Asjman King	9/29/2021	RSA 659:40 – Alleged Illegal Campaign Activity	Closed 7/29/2022	000176
Neil Wetherbee, Derry Conservative Taxpayers	Peter Torosian	10/7/2021	RSA 664:5, RSA 664:21 – Alleged Campaign Finance Violation	Closed on 11/19/2021	000106-000107
Nashua Police Department	Sonia Prince	10/27/2021	RSA 659:44 – Alleged Illegal Campaign Activity	Open	

Joe Hart	Avery Turner, Emma Mintz	11/2/2021	RSA 659:21, RSA 659:37, RSA 642:1 – Alleged Illegal Campaign Activity	Closed 7/25/2022	000173-000175
Kelly Walters	Richard and Katina Parsons	12/6/2021	RSA 654:8 – Alleged Election Official Misconduct	Closed on 2/7/2022	000147-000148
Tony Felch – Ward 6 Laconia	Greg Page	12/6/2021	RSA 659:98 – Election Review and Follow Up	Open	
Douglas Wilson	Greenland Residents	12/15/2021	RSA 664:16 – Alleged Illegal Campaign Activity	Closed on 2/7/2022	000149-000151
Portsmouth City Council	Peter Whelan	12/21/2021	RSA 664:14 – Alleged Illegal Campaign Activity	Open	

A. Number of Complaints Received Per Month

Month/ year	Number of Complaints
May 2021 (not opened in prior report)	1
June 2021 (not opened in prior report)	3
July 2021	3
August 2021	0
September 2021	5
October 2021	3
November 2021	1
December 2021	4
TOTAL:	20

B. Complaints Received by Type of Complaint

Type of Complaint	RSA Violations	Number of Complaints
Alleged Wrongful Voting	RSA 654:1 (Temporary Absence); RSA 654:12 (domicile); RSA 659:34 (Wrongful Voting)	1
Alleged Illegal Campaign Activity	RSA 659:21 (guardrail); RSA 659:40 (voter intimidation); RSA 659:43 (distributing campaign materials at polling place); RSA 659:44-a (electioneering by public employee); RSA 664:14 (political advertising disclosure requirements); RSA 664:16 (political advertising identification); RSA 664:17 (placement and removal of political advertising)	14
Alleged Election Official Misconduct	RSA 654:8 (voter ward placement); RSA 659:27 (challenge voter affidavit); RSA 669:6 (qualification of officer).	3
Alleged Campaign Finance Violation	RSA 664 (limitations on expenditures)	1
Election Review & Follow-Up	RSA 659:98 (delivery of ballots)	1
TOTAL:		20

II.

INVESTIGATIONS OPEN PRIOR TO THE

REPORTING PERIOD

Alleged Violation	Date Opened	Date Closed	Bates No.
Wrongful Voting RSA 659:34 – Dismissed without prejudice by the court due to competency order pursuant to RSA 135:17-a	11/15/16	8/12/22	000170-000172
Wrongful Voting RSA 659:34 – Guilty Plea	7/18/18	4/22/22	000159-000164
Wrongful Voting RSA 659:34 – Guilty Plea	1/7/19	5/4/22	000165-000169
Wrongful Voting RSA 659:34 – Active Investigation	10/30/19		
Wrongful Voting RSA 659:34 RSA 654:7 – Charges Filed	12/3/19		
Wrongful Voting RSA 659:34 – Guilty Plea	12/22/20	4/6/22	000152-000158

III.

INDEX OF CLOSURE LETTERS/COMMUNICATIONS

Alleged Violation	Date Closed	Bates Page Number
RSA 669:6 Qualification of Officer	July 1, 2021	000001 – 000003
RSA 664:13 Campaign Finance	July 2, 2021	000004-000007
RSA 659:22 Absentee Ballot	July 21, 2021	000008-000012
RSA 664:14 Identification on Signs	July 23, 2021	000013 – 000015
RSA 659:43 Electioneering	August 5, 2021	000016-000017
RSA 659:53 Absentee Ballot	August 5, 2021	000018-000020
RSA 664:17 Destruction of Sign	August 5, 2021	000021-000022
RSA 659:43 Electioneering	August 18, 2021	000023-000024
RSA 659:43 Electioneering	August 18, 2021	000025-000026
RSA 664:17 Removal of Signs	August 23, 2021	000027-000028
RSA 659:34 Wrongful Voting	August 24, 2021	000029-000032
RSA 659:34 Wrongful Voting	August 24, 2021	000033-000036
RSA 658:9 Polling Location	August 24, 2021	000037-000038
RSA 659:34 Wrongful Voting	August 24, 2021	000039-000042
RSA 664:17 Destruction of Sign	September 2, 2021	000043-000044
RSA 657:23 Delivery to Moderator	September 21, 2021	000045 – 000052
RSA 657:23 Delivery to Moderator	September 21, 2021	000053 – 000058
RSA 657:23 Delivery to Moderator	October 21, 2021	000059 – 000072
RSA 659:40 Voter Suppression	October 28, 2021	000073 – 000074
RSA 659:44-a Electioneering C&D letter	November 4, 2021	000075 – 000089
RSA 659:44 Electioneering	November 4, 2021	000090-000096
RSA 659:34 Wrongful Voting	November 8, 2021	000097-000098
RSA 659:34 Wrongful Voting	November 8, 2021	000099-000100
RSA 659:34 Wrongful Voting	November 12, 2021	000101-000105
RSA 664:2 Campaign Finance	November 19, 2021	000106 – 000107
RSA 664:14 Placement of Signs	November 19, 2021	000108 – 000109
RSA 664:17 Removal of Signs	December 10, 2021	000110
RSA 659:41 Assault on Election Official	December 10, 2021	000111-000114
RSA 657:12 Provisions for General Election	December 10, 2021	000115-000134
RSA 657:26 Absentee Ballot Supervision	December 10, 2021	000135-000137
RSA 657:26 Absentee Voter Website	December 10, 2021	000138-000141
RSA 659:44-a Electioneering	January 28, 2022	000142 – 000146
RSA 657:18 Absentee Ballot	February 7, 2022	000147 – 000148
RSA 664:14 Political Mailing	February 7, 2022	000149 – 000151
RSA 659:34-a Wrongful Voting	April 6, 2022	000152-000158
RSA 659:34-a Wrongful Voting	April 22, 2022	000159-000164

RSA 659:34-a Wrongful Voting	May 4, 2022	000165-000169
RSA 659:34-a Wrongful Voting	August 12, 2022	000170-000172
RSA 659:21 Guardrail	July 25, 2022	000173-000175
RSA 659:40 Intimidation	July 29, 2022	000176
RSA 666:2 Official Misconduct	August 19, 2022	000177-000184
RSA 659:44 Electioneering	August 19, 2022	000185-000203
RSA 664:17 Theft of Sign	August 26, 2022	000204

Closure Letters, Settlement Agreements,

Cease and Desist Orders, Complaints Filed With A Court,

Or Other Official Communications

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 1, 2021

SENT VIA EMAIL ONLY
Denys Draper
[redacted]

Re: John McLaughlin, Alleged Election Official Misconduct (2021149978)

Dear Ms. Draper:

On Saturday, June 19, 2021, we received your complaint regarding Mr. McLaughlin and his qualifications to hold elected office. Specifically, your complaint reported that at the time Mr. McLaughlin filed his declaration of candidacy, he was not a registered voter. In addition, you also raised concerns about potential incompatibility of offices involving certain selectboard members also serving in deputy and assistant town clerk positions. After careful consideration, we have concluded that no violation of New Hampshire's election law has occurred.

On June 23, 2021, Chief Investigator Richard Tracy called and spoke with you, and your husband Ed Draper. You informed Investigator Tracy that Mr. McLaughlin registered to vote in Easton on March 9, 2021, the day of the town election. You both shared that Mr. McLaughlin recently moved to Easton from Arizona, and should have known that he was not a registered voter.

That same day, Investigator Tracy also attempted to contact Easton Town Clerk Peggy King. While he was unable to reach Clerk King, Deputy Clerk Robert Thibault returned Investigator Tracy's call on June 24, 2021.

Deputy Clerk Thibault explained that Mr. McLaughlin was unaware that he was not registered to vote in Easton, until being notified of the same upon arriving at the polling place on town election day.

Deputy Clerk Thibault stated that approximately 63 people voted in Easton during its town election. He reported that for the Tax Collector race: 59 votes were for Mr. McLaughlin, two write-in votes were for you, and two voters did not vote or write-in a candidate for tax collector.

He also explained that after the discovery of this inadvertent mistake by Mr. McLaughlin, the town officials contacted the New Hampshire Municipal Association (or "NHMA") for guidance on how to proceed. NHMA advised that since Mr. McLaughlin is now a registered voter, he could resign as Tax Collector, creating a vacancy in the position. NHMA stated that the remaining selectboard members could appoint Mr. McLaughlin – now a fully registered voter in Easton – to fill this vacancy.

On July 1, 2021, Investigator Tracy called and spoke with Mr. McLaughlin. He explained that he had moved to Easton in 2019 from Arizona. Mr. McLaughlin also shared that he is a tax accountant by trade, and was asked to be the Deputy Tax Collector in either August or September, 2020. He stated that the former tax collector made it known that she did not intend to run for re-election in 2021, and he (Mr. McLaughlin) was asked if he would run for the position. Mr. McLaughlin told Investigator Tracy that he thought he had registered to vote in Easton in August or September, 2020. He was surprised to discover on town election day – March 9, 2021 – that he was not a registered voter.

RSA 669:63 states that, "[v]acancies in the board of selectmen shall be filled by appointment made by the remaining selectmen." A "vacancy" can occur when the person elected to that office resigns. RSA 652:12, I.

In this case, Mr. McLaughlin has lived in Easton since 2019. While he may not have been a registered voter at the time he filed his declaration of candidacy, there is no evidence to establish he did so knowingly. Furthermore, Mr. McLaughlin cured this issue by registering to vote immediately upon this discovery.

With respect to his ability to occupy the role of Tax Collector, this Office is in agreement with NHMA's suggested remedy. Mr. McLaughlin was duly elected by the voters, and appointing him to the position through the method NHMA provided, would honor the will of the voters.

With respect to your concern about incompatibility of offices, RSA 669:7 states in relevant part that: "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."

The deputy town clerk and assistant town clerk position would not be encompassed by this statute. Therefore, there would not be an incompatibility of office.

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

Sincerely,

Nicholas A. Chong Yen
Assistant Attorney General

Election Law Unit
(603) 271-3650
nicholas.chongyen@doj.nh.gov

cc: Easton Selectboard
Robert Thibault, Easton Deputy Town Clerk
John McLaughlin

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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 2, 2021

SENT VIA EMAIL ONLY
Woodburn for Senate, Candidate Committee
c/o Donna Brown, Esq.
dbrown@wadleighlaw.org

Re: **CEASE AND DESIST ORDER** (2020144978)
Violation of RSA 664:13, 664:21, V

Dear Woodburn for Senate:

On August 26, 2020, this Office received a report that the Woodburn for Senate Campaign improperly used campaign funds for personal expenses. Specifically, it was alleged that $500 had been withdrawn from the campaign's bank account and used to pay for Jeff Woodburn's bail for his pending criminal case.

I. FACTUAL BACKGROUND

The complainant reported that the "Woodburn for Senate" candidate committee listed an expenditure on August 2, 2018 to "Denny Ruprecht" for $500. The complainant stated that this was the same day that Mr. Woodburn posted bail, and according to a New Hampshire Public Radio article[1], the amount of his bail was $500. The complainant stated that Mr. Ruprecht was Mr. Woodburn's campaign manager during the 2018 campaign.

On the statement for the August 22, 2018 reporting period, the Woodburn for Senate candidate committee listed the following expense:

- **Paid to Whom**: Denny Ruprecht
- **Amount of Expense**: $500
- **Date**: 8/2/18
- **Nature of Expenditure**: "ATM withdrawal error (personal matter)".

Under the list of receipts on the Statement was the following transaction:

- **Contributor Name**: Jeff Woodburn –Woodburn Properties
- **Amount**: $500.00
- **Date**: 8/7/18

[1] https://www.nhpr.org/post/state-sen-jeff-woodburn-arrested-domestic-violence-assault-charges#stream/0

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On September 18, 2020, this Office contacted Mr. Ruprecht for clarification of this reported transaction. After explaining the purpose of the call, Mr. Ruprecht indicated that he would need to consult an attorney before providing an answer. He also wanted an opportunity to review the statement in question.

On September 22, 2020, this Office was contacted by Attorney Alan Cronheim about this matter. After explaining the nature of the complaint, and the objective of this Office's inquiry, Attorney Cronheim said he would speak with Mr. Ruprecht, and determine what information, if any, he could provide.

On September 25, 2020, Attorney Cronheim contacted this Office and stated that Mr. Ruprecht declined to respond to the complaint.

On December 22, 2020 following the 2020 general election, this Office notified Attorney Cronheim it would be issuing an administrative subpoena to interview Mr. Ruprecht.

On January 21, 2021, pursuant to this subpoena, this Office spoke with Mr. Ruprecht, who was accompanied by Attorney Cronheim.

During the interview, Mr. Ruprecht explained that he was the campaign manager during Mr. Woodburn's 2018 campaign. With respect to the campaign's reporting obligations under Chapter 664, Mr. Ruprecht explained that Mr. Woodburn kept track of all of his candidate committee's receipts and expenses using a spreadsheet, which he himself maintained. Mr. Ruprecht also shared that Mr. Woodburn assigned each expenditure its own description. As a result, Mr. Ruprecht asserted that he did not put together the candidate committee's August 22, 2018 statement.

With respect to the day of the reported expenditure, Mr. Ruprecht stated that he and Mr. Woodburn were at the New Hampshire Democratic Party's (or "NHDP") headquarters in Concord. Throughout the day, Mr. Ruprecht said he was working on an assignment from Mr. Woodburn to have his (Woodburn's) voting record available in every library in his jurisdiction.

In the afternoon, he said Mr. Woodburn left and walked to the State House. Mr. Ruprecht said that Mr. Woodburn left his car keys and wallet with Mr. Ruprecht. After Mr. Woodburn's departure, Mr. Ruprecht stated that he received a phone call from Andrew Hosmer. Upon answering, Mr. Hosmer gave the phone to Mr. Woodburn. Mr. Ruprecht said Mr. Woodburn asked him to withdraw $500 and meet him at the offices of Preti Flaherty in Concord.

Mr. Ruprecht explained that he only had access to one of Mr. Woodburn's debit cards, and that was the one for the candidate committee's bank account. He said there was only one debit card associated with this account, and this debit card bore the name "Woodburn for Senate." Mr. Ruprecht added that Mr. Woodburn would often give him the candidate committee's debit card. Consequently, Mr. Ruprecht also knew the candidate committee's PIN number.

Mr. Ruprecht told this Office that Mr. Woodburn did not explain what the $500 was for. Additionally, Mr. Ruprecht represented that Mr. Woodburn did not inform him that he (Woodburn) had a warrant for his arrest.

After taking this call. Mr. Ruprecht said he went to the Bank of New Hampshire in Concord and withdrew $500 using the candidate committee's debit card. Mr. Ruprecht said he could not recall having used this debit card at an ATM before, but he asserted he had no reason to be suspicious of this withdrawal.

Upon arriving at Preti Flaherty, Mr. Ruprecht said he was met by Mr. Hosmer, and gave him the $500. Mr. Ruprecht reported when he dropped off the cash, he did not see Mr. Woodburn.

After dropping off the cash, Mr. Ruprecht said he returned to the NHDP headquarters to resume his library assignment from earlier that day.

Mr. Ruprecht said he returned to Preti Flaherty and was present inside a conference room while Mr. Hosmer and Mr. Woodburn spoke. Mr. Ruprecht asserted they did not discuss the $500 or what it was used for.

At some point in the discussion Mr. Ruprecht said Mr. Woodburn asked which bank account he used to withdraw the $500 from. When Mr. Ruprecht answered it was the candidate committee's bank account, he described how Mr. Woodburn remarked that the money was not supposed to come from this account. According to Mr. Ruprecht, Mr. Woodburn thought aloud that he would have to reimburse the candidate committee's bank account to correct the withdrawal error.

II. APPLICABLE LAW

RSA 664:13 states in relevant part –

> "No member of such committee shall make or permit any unlawful expenditure or act by said committee, in whole or in part, or consent thereto, or aid, abet or conspire to make or permit the same."

RSA 664:2, IX defines an "expenditure" as "the disbursement of money or thing of value or the making of a legally binding commitment to make such a disbursement in the future or the transfer of funds by a political committee to another political committee or to a candidate for the purpose of promoting the success or defeat of a candidate or candidates or measure or measures."

III. ANALYSIS

In the instant case, it is clear that the funds withdrawn by Mr. Ruprecht at the direction of the candidate committee was used to pay Mr. Woodburn's bail in his criminal matter. The value of the withdrawal matches the reported bail amount that was ordered in Mr. Woodburn's

criminal case. The purpose of the withdrawal is further established by the attempt to reimburse the candidate committee. The receipt entry dated August 7, 2018, shows the exact same amount being received by the candidate committee from "Jeff Woodburn –Woodburn Properties," two business days after the $500 withdrawal was made. This receipt by the candidate committee, an apparent attempt to rectify an unlawful expenditure, is additional evidence that the withdrawal was used for a non-campaign purpose.

While it was necessary for the candidate committee to be reimbursed for this non-campaign related expense, the expenditure should not have occurred in the first place.

The candidate committee and Mr. Woodburn should have been aware that Mr. Ruprecht only had access to the committee's debit card, and not Mr. Woodburn's personal bank account. There is no argument that would permit using campaign contributions to pay for a candidate's bail in a criminal matter as a legitimate "expenditure" within the meaning of RSA 664:2, IX.

Candidates, committees, and elected officials must be held to a high standard of care with respect to their campaign finance obligations. These obligations are required by law to maximize transparency, and to ensure the public can trust their contributions to their chosen candidate will not be used improperly.

Failure to comply with these obligations and using these contributions for non-campaign purposes undermines this trust, the confidence of the public in their chosen candidate, and the electoral process as a whole.

IV. CONCLUSION

RSA 664:18, II(a) authorizes the attorney general to issue an order requiring the violator of Chapter 664 to cease and desist from his or her violation. If the attorney general's order is not obeyed, the attorney general or designee may petition the superior court of the county in which the violation occurred for an order of enforcement. RSA 664:18, II(a).

Based on the forgoing, this Office concludes that the candidate committee has violated RSA 664:13, by using campaign contributions for a non-campaign purpose, specifically, to pay for Mr. Woodburn's bail in his criminal matter. The candidate committee is hereby ordered to **Cease and Desist from making further expenditures for non-campaign purposes.** Failure to do so could constitute a violation of RSA 664:13

This matter is closed.

Sincerely,

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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 21, 2021

Nicole Bottai, Town Clerk
Town of Windham
PO Box 120
Windham, NH 03087

Re: Town Clerk's Office Clerical Error (2020145572)

Dear Clerk Bottai:

On October 20, 2020, this Office was notified that a Windham resident had requested an absentee ballot for the November 3, 2020 general election. It was reported that on October 16, 2020, the voter was given a completed, sealed absentee ballot belonging to another voter. This voter did not realize the absentee ballot package he received was one containing a completed absentee ballot, until he opened the envelope.

On October 21, 2021, Chief Investigator Richard Tracy met with this voter, and took possession of the opened affidavit envelope containing the completed absentee ballot. He met with you at the Windham Town Clerk's Office, and the voter, whose affidavit envelope was opened, was contacted and successfully submitted another absentee ballot. This voter's original absentee ballot was properly spoiled in accordance with RSA 659:22.

The voter who received the completed absentee ballot, was similarly provided with a fresh absentee ballot package and voted using it.

While present at your office, Investigator Tracy observed other Windham residents applying for and/or dropping off absentee ballots. The assistant clerks serving these residents were seated behind a counter. Investigator Tracy saw that in front of these assistant clerks were a stack of completed absentee ballot packages on one side, and a stack of blank absentee ballot packages on another.

Fortunately, in this case, Windham election officials in cooperation with this Office were able to quickly address the situation to ensure both voters were able to vote. Furthermore, this Office has not obtained any evidence to suggest that there were any other instances of this error occurring prior to the 2020 general election. However, had the receiving voter not informed this

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Office of this error, this situation may not have been detected in time to adequately deploy sufficient remedies.

This Office recognizes the unprecedented challenges and burdens upon election officials during the 2020 election cycle. However, this was a significant error that could have resulted in one or two voters' votes not being counted.

Consequently, we require the Windham Town Clerk's Office to submit a written remediation plan within 30 days, outlining the steps it will take to keep track of completed absentee ballots submitted by voters to ensure these envelopes are not inadvertently provided in response to new absentee ballot requests.

We will follow-up upon receipt of an acceptable remediation plan. Please contact me if you have any questions.

Sincerely,

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cc: William M. Gardner, Secretary of State
Attorney Bernard Campbell, Windham Town Counsel

TOWN OF Windham NEW HAMPSHIRE

TOWN CLERK'S DEPARTMENT
3 N Lowell Road, Windham, NH 03087
(603) 434-5075 / Fax (603) 965-1275
TownClerk@WindhamNH.gov

August 24, 2021

Acknowledgment and Remediation Plan

Overview:

The Windham Town Clerk's Department received correspondence from the Attorney General's office dated July 21, 2021 regarding an absentee voter that received another voter's completed absentee ballot. During the Covid pandemic, and the months and weeks leading up to the 2020 November General Election, Windham received triple the amount of absentee ballot requests and new voter absentee ballot requests than we have ever seen historically. Unfortunately, we did not have a Deputy Town Clerk during this unprecedented and peculiar time. We managed to recruit the help of our Town Moderator and Deputy Town Moderator some days to manually alphabetize absentee requests, match up the absentee requests with completed absentee ballots, alphabetize received completed ballots, accept absentee applications from "in person" voters, and issue and prepare absentee ballots and all instructions and envelopes associated.

Background:

As Investigator Tracy witnessed, our office environment has an extremely limited amount of space, and while practicing social distancing, we were working in the very best manner that the space, and tools within allowed us, all while doing other important required duties such as processing motor vehicle registrations and title applications, providing vital record assistance, support for any record requests, notary services, and other election duties such as voter registration and preparing our large polling place with the new Covid guidelines that was temporarily put into place. Unfortunately, the election volunteers don't have access to the ElectioNet system, so we had to be hyper aware of additional piles of "not inputted" and "inputted" requests and absentee ballots into the ElectioNet system. These system updates are extremely important to the voter whom also has access to verify that their absentee ballot was requested, issued, and received on the correct dates. At that time, we only had 3 ElectioNet users that could continuously update all of the absentee ballot requests in the system concurrently. We needed to make sure that all received requests were in fact in the system, all ballots issued and received were also date stamped and updated in the system. At the time of the occurrence, there were 2 Assistant Clerks at the counter, along with one of the Moderators, helping the incessant line that wrapped around Town Hall all day, every day.

In an effort to work efficiently, one of the Clerks had a pile of pre-prepared absentee ballot packages ready for new absentee ballot requests, and a pile of just received completed absentee ballots from the few dozens of "in person" absentee voters in line. Inadvertently a ballot was selected from the incorrect pile and given to the next voter. We never have our own election material working piles in front of us, in fact we have dedicated areas within our office space where we prepare absentee ballots and envelopes and then another dedicated area for received absentee ballots.

Town of Windham New Hampshire

TOWN CLERK'S DEPARTMENT
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(603) 434-5075 / Fax (603) 965-1275
TownClerk@WindhamNH.gov

Even though we were short staffed, and had the most requests that we have ever seen in our careers, we tried our best to spend the time and care for the completion of each task, even if the voter had to wait some time. At times, many voters would also try to simply leave their completed absentee ballots on the counter, forcing us to call them to remedy the situation. Needless to say, voters were impatient and looking to get in and out as quick as possible.

During a normal circumstance, when we receive completed absentee ballots, we update the ElectioNet system immediately, locate the absentee ballot request, and file the completed ballot in our records vault alphabetically as soon as the voter finishes. More often than not during October, we didn't have many opportunities to break away from the counter due to the in person demand, wait line times, and pressure of the voters. This specific occurrence is something that is extremely rare, due to the sheer quantity of requests received, and limited staff. This has never happened due to our checks and balances that are in place, and specifically our dedicated areas and processes that we have already established.

Remediation:

- Recruit more volunteers or temporary employees if there is a staff shortage during Election times, specifically people that can utilize ElectioNet if space and time allows during any Presidential Election, or there happens to be another health emergency crisis.
- Even under intense stress and pressure, pause after each voter's request and focus on completing entries in the system, matching requests, and filing manually all materials immediately and successfully before entertaining the next customer/voter.
- Continue to keep all various "status" absentee ballot piles organized however, ensure that they remain in the specific dedicated areas assigned and not in personal work stations.
- Continue to keep open communication with staff, and distribute this correspondence as a reminder.
- Continue to meet periodically with office staff and other Election officials leading up to each Election and post-Election. Continue facilitation and incorporating brainstorming sessions of best practices for the office regarding Elections.

Thank you for bringing this to our attention, and we will continue to do the very best that we possibly can.

Sincerely,

Nicole Merrill
Town Clerk

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 31, 2021

SENT VIA EMAIL ONLY
Nicole Merrill, Town Clerk
Town of Windham
NBottai@WindhamNH.gov

Re: Town Clerk's Office Clerical Error (2020145572)

Dear Clerk Merrill:

This Office is in receipt of the Windham Town Clerk's Office's remediation plan dated August 24, 2021 relative to this matter.

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

Sincerely,

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

cc: Bernard H. Campbell, Esq., Windham Town Counsel

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 23, 2021

Joyce Welton
New Boston Taxpayers
[redacted]
New Boston, NH 03070

Re: New Boston Taxpayers, Alleged Illegal Campaign Activity (2021150086)

Dear Ms. Welton:

On June 7, 2021, the Secretary of State's Office forwarded a complaint that alleged that a mailer, which stated that it was paid for by "New Boston taxpayers supporting our community," failed to include the identification information required by RSA 664:14. After careful consideration, we conclude that no violation of New Hampshire's election law has occurred.

On June 9, 2021, this Office contacted New Boston Town Clerk Kim Colbert to ask if she knew who was responsible for sending this mailer. Clerk Colbert answered that she and her colleagues did not know who sent the mailer.

On or around June 14, 2021, this Office also reached out to the New Boston Post Office to determine if the postal permit on the mailer could identify the sender. The New Boston Post Office advised that while the postal permit was of general retail usage, they were aware that you were responsible for sending the mailer.

On July 2, 2021, you spoke with Chief Investigator Richard Tracy. You explained that you and a group of volunteer residents were responsible for sending the mailer. You told Investigator Tracy that the group is comprised of approximately 12-15 volunteers. You added that you would notify the group organizer of any requirements that must be followed in order to publish mailers, such as the one in question, in the future.

Under RSA 664:14, political advertising must 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."

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

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

In terms of the mailer in question, it appears its primary intent was to provide information to the reader, and does not expressly advocate for a particular candidate or measure. Based on the forgoing, we conclude that this mailer does not constitute a political advertisement within the meaning of RSA 664:2, VI (as narrowed by Stenson). Therefore, the mailer in this case did not trigger the identification requirements under RSA 664:14.

However, there is questionable language contained in the mailer. The mailer states that "[s]upporting the budget supports the services that make our town such a great place to live!" While this likely falls under the category of "implicit" advocacy, and therefore does not trigger the requirements under RSA 664:14, there are instances where such language could be construed as "express" advocacy. For example, if the mailer, instead, directed the reader to support a particular warrant article in support of a specific budget item, the mailer could be required to contain the identification information under RSA 664:14.

There are also other campaign finance-related obligations that you should be mindful of. It is important to be aware of these obligations, should you and your fellow volunteers wish to support candidates or measures in state or federal elections.

RSA 664:1 states that the only campaign finance laws that apply to presidential primary, city, town, school district, and village district elections, are those contained in RSA 664:14 through RSA 664:22.

The entirety of Chapter 664 applies to all state primary, general, and special elections.

RSA 664:2. III provides a definition of what constitutes a "political committee." While there are five different sub-provisions under this law, we believe the definition applicable here is the following:

(a) Any 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;

Additionally, RSA 664:3, I requires a political committee to register with the Secretary of State's Office "not later than 48 hours after the committee meets at least one of the criteria under RSA 664:2, III." Political committees are also required to submit reports of their receipts and expenditures to the Secretary of State's Office according to specific deadlines. See RSA 664:6.

Taken together, these laws mean that if you and your group engage in conduct promoting the success or defeat of candidates or measures for state or federal elections, you must: (1) register as a political committee with the Secretary of State; and (2) report any receipts and expenditures.

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

Sincerely,

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

cc: Orville Fitch, Assistant Secretary of State
Kaleb Jacob

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 5, 2021

Alfred LeBlanc
[redacted]
Sunapee, NH 03782

Re: **CEASE AND DESIST ORDER** (2020145888)
Violation of RSA 659:43

Dear Mr. LeBlanc:

On November 9, 2020, this Office received a report from the Town of Sunapee Moderator, alleging unlawful electioneering inside the polling place during the November, 2020 general election. Specifically, the Moderator alleged that on election day, you refused to remove a "Trump" hat while inside the polling place. The Moderator also reported that you contested the existence of any law prohibiting the wearing of electioneering clothing inside the polling place. You were not otherwise prohibited from entering the polling place, or prevented from voting during this election.

On August 4, 2021, Chief Investigator Richard Tracy reached out and spoke with you. After explaining the purpose of his call, you acknowledged that you did in fact wear your "Trump" hat inside the polling place and refused to take it off as directed. During that conversation with Investigator Tracy, you were informed of the prohibition against electioneering inside the polling place pursuant to RSA 659:43.

Please be advised, RSA 659:43 states in relevant part that "[e]lectioneering shall be prohibited within the polling place building."

"Electioneering" means "visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." RSA 652:16-h. This includes, but is not limited to, wearing clothing that displays a candidate's name. RSA 652:16-h, I.

The law further contemplates penalties for violations, which include –

- Whoever violates any of the provisions of this section shall be guilty of a violation.

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

RSA 659:43, VIII & IX.

In this case, you wore a hat bearing the name of a candidate on the November, 2020 general election ballot. As such, your hat would constitute "electioneering" within the meaning of RSA 652:16-h, and was prohibited from being displayed or worn inside the polling place.

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

This matter is closed.

Sincerely,

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

cc: Town of Sunapee Moderator

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 5, 2021

Joanne O'Brien
[redacted]
Raymond, NH 03077

Re: Town of Raymond, Alleged Election Official Misconduct (2020145250)

Dear Ms. O'Brien:

On October 2, 2020, you contacted this Office to report a concern you had regarding the receipt of your absentee ballot for the September, 2020 state primary. Specifically, you reported that your completed absentee ballot was received at the polling place by two male election officials. You stated that after accepting your absentee ballot, you observed one of the male election officials remove your absentee ballot from the envelope and add it to what appeared to be a stack of ballots. Next, you reported that this male election official tossed your absentee ballot envelope into a waste basket. You were concerned given, what you observed, about whether your absentee ballot was actually counted. You explained that you checked the Secretary of State's website and learned that your absentee ballot was rejected.

On October 3, 2020, Chief Investigator Richard Tracy spoke with Raymond Town Clerk Alyssa Richard. She assured us that the two male election officials stationed for receipt of dropped-off absentee ballots were experienced selectboard members. Furthermore, upon receipt of dropped-off absentee ballots, these individuals would have brought them inside for processing. Clerk Richard also shared that your absentee ballot was rejected because you did not sign the affidavit envelope. Clerk Richard informed us that she would contact you and explain the situation.

On July 27, 2021, you spoke with Investigator Tracy, and shared that you did not submit the appropriate envelopes with the submission of your absentee ballot for the September, 2020 state primary. Having learned from this mistake, you informed Investigator Tracy that you successfully voted absentee during the November 2020 general and March, 2021 town elections.

As discussed with Investigator Tracy, please be advised that in order to properly submit your absentee ballot, it first must be sealed in a signed affidavit envelope. The signed and sealed affidavit envelope containing your absentee ballot must be sealed inside of the outer envelope.

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RSA 659:53 provides that a moderator shall reject an absentee ballot for reasons including, but not limited to: (1) Affidavit improperly executed; or (2) Not signed by a proper person.

Based on the forgoing, we conclude that your absentee ballot for the September, 2020 state primary was properly rejected for the reason outlined by Clerk Richard.

For your convenience, a copy of the one-page absentee ballot instructions from the 2020 election cycle has been included for your review.

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

Sincerely,

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

Enclosure
cc: Alyssa Richard, Raymond Town Clerk

STATE OF NEW HAMPSHIRE
Instructions for
STATE PRIMARY OR GENERAL ELECTION

HOW TO MARK YOUR BALLOT:
To Vote: Completely fill in the oval ● to the right of your choice. For each office, vote for not more than the number of candidates stated in the sentence: "Vote for not more than _____." If you vote for more than the stated number of candidates, your vote for that office will not be counted.
To Vote by Write-In: To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval ● to the right of your choice.
To Vote on a question on the ballot: Completely fill in the oval ● opposite either YES or NO indicating your choice on that question.

PROCEDURE AFTER MARKING YOUR BALLOT:

After marking the ballot, the voter or the person assisting a blind voter shall enclose and seal the same in the small inner affidavit envelope. The voter shall execute the affidavit. If you are voting absentee because of COVID-19 concerns, execute the affidavit "Absence Because of Religious Observance or Physical Disability. Even if you do not consider yourself a person with disability in other circumstances, this term applies for registering to vote and voting in 2020. Make sure you read the affidavit before signing. A person assisting a blind voter or a voter with a disability in executing the affidavit shall sign a statement on the affidavit envelope acknowledging the assistance and shall enclose and seal the small inner envelope with the affidavit in the larger outer envelope. On the larger outer envelope, fill in the name of the town or city where you are entitled to vote, write your full name, address and voting place in the upper left hand corner.

Affix postage and mail the larger outer envelope to the clerk in the city or town in which you are entitled to vote **OR** the voter may personally deliver it or have it delivered by the voter's "delivery agent."

A delivery agent may be:

a) The voter's spouse, parent, sibling, child, grandchild, father-in-law, mother-in-law, daughter-in-law, son-in-law, stepparent, stepchild; or
(b) If the voter is a resident of a nursing home as defined in RSA 151-A:1, IV, the nursing home administrator, licensed pursuant to RSA 151-A:2, or a nursing home staff member designated in writing by the administrator to deliver ballots; or
(c) If the voter is a resident of a residential care facility licensed pursuant to RSA 151:2, I(e) and described in RSA 151:9, VII(a)(1) and (2), the residential care facility administrator, or a residential care facility staff member designated in writing by the administrator to deliver ballots,; or
(d) * A person assisting a blind voter or a voter with a disability who has signed a statement on the affidavit envelope acknowledging the assistance. **A person assisting blind/disabled voters may not deliver more than 4 absentee ballots in any election.*

If delivered to the polls on election day by a "delivery agent" he or she will be required to complete a form provided there by the clerk and to present government issued photo identification or have his or her identity verified by the clerk. RSA 657:17.

Absentee ballots delivered through the mail or by the voter's delivery agent shall be received by the town, city or ward clerk no later than 5:00 PM on the day of the election.

In accordance with RSA 659:34, the penalty for knowingly or purposely providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed $2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed $5,000.

Visit the web site: **https://app.sos.nh.gov** to track your ballot. You may verify receipt of your application, the date when your absentee ballot was mailed to you, the date the clerk receives your completed absentee ballot, and after the election learn if your absentee ballot was rejected/not counted and why. Contact your clerk if you have questions regarding the information on the track your ballot site.

NOTE: Your ballot must be received by the town or city clerk, ***no later than 5:00 p.m. on election day in order to be submitted for counting.***

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 5, 2021

Chief Robbie E. Dirsa
Hampton Falls Police Department
3 Drinkwater Road
Hampton Falls, NH 03844

Re: Hampton Falls, Alleged Illegal Campaign Activity (2020145635)

Dear Chief Dirsa:

On October 21, 2020, you forwarded this Office a report from your police department, regarding a vandalized campaign sign. Specifically, two swastika labels were affixed to a "Trump 2020" campaign sign at the intersection of Drinkwater Road and Hillcrest Drive in Hampton Falls.

This Office understands that Officer Justin Doty spoke with the complainants – Edward Beattie and David Allen – however neither individual had information on the identity of the perpetrator. Officer Doty also spoke with the owner of the property where the campaign sign was placed, Sylvie St. Jean, but she, too, did not have any information on the identity of the suspect. Ms. St. Jean explained that she cannot see the sign from her home and she does not have a household camera that covers the area where the sign was placed.

On July 29, 2021, Chief Investigator Richard Tracy contacted you about this matter. You indicated that your police department did not receive any other information that would identify the suspect. Investigator Tracy also spoke with Mr. Beattie that same day, however, he did not have any additional information.

Based on the forgoing, there is insufficient evidence for this Office to identify the suspect in this matter in order to continue its investigation. As such, this matter will be closed.

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

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

Sincerely,

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

cc: Edward Beattie

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 18, 2021

Bruce Hartford
[redacted]
Lebanon, NH 03766

Re: **WARNING LETTER REGARDING ELECTIONEERING**
(2020145856)
Violation of RSA 659:43

Dear Mr. Hartford:

On November 5, 2020, this Office received a report from the Lebanon City Clerk alleging unlawful electioneering inside the polling place during the November 2020 general election.

The moderator alleged that she asked you to remove your hat because it displayed a candidate's slogan, "Make America Great Again". She reported that at first you ignored her, then after her additional requests you removed your hat for a short period of time before donning it again while inside the polling place. Another witness reported that she believed a second voting official also asked you to remove your hat, but that you refused. You were not otherwise prohibited from entering the polling place, or prevented from voting during this election.

On July 29, 2021, Chief Investigator Richard Tracy spoke with you. After explaining the purpose of his call, you acknowledged that you did in fact wear a "Make America Great Again" hat inside the polling place and refused to take it off as directed. You stated that two individuals asked you to remove your hat. You stated that you gave an election official "some crap" but did take off your hat while casting your ballot before putting it on to walk out of the polling place. During that conversation with Investigator Tracy, he informed you of the prohibition against electioneering inside the polling place pursuant to RSA 659:43.

RSA 659:43 states in relevant part that "[e]lectioneering shall be prohibited within the polling place building." "Electioneering" means "visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." RSA 652:16-h. This

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includes, but is not limited to, wearing clothing that displays a candidate's name. RSA 652:16-h, I.

The law further contemplates penalties for violations, which include –

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

RSA 659:43, VIII & IX.

In this case, you wore a hat bearing the slogan of a candidate on the November 2020 general election ballot. As such, your hat would constitute "electioneering" within the meaning of RSA 652:16-h, and was prohibited from being displayed or worn inside the polling place.

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

This matter is closed.

Sincerely,

Myles Matteson
Assistant Attorney General
Election Law Unit
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: Lebanon City Clerk

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 18, 2021

Brandan Little
[redacted]
Farmington NH 03835

Re: CEASE AND DESIST ORDER (2020146006)
Violation of RSA 659:43

Dear Mr. Little:

On November 16, 2020, this Office received a report from the Farmington Police Department alleging unlawful electioneering inside the polling place during the November 2020 general election.

The Police Chief alleged that on election day you refused to remove a "Trump 45" jacket while inside the polling place. A Supervisor of the Checklist reported that when he approached you and asked you to remove or reverse your jacket because it displayed a candidate's name, you first ignored him, and then swore at him. The Farmington Town Moderator informed you of the law that prohibited the wearing of electioneering clothing inside the polling place. The Police Chief informed you that the matter would be referred to the Attorney General's Office. You were not otherwise prohibited from entering the polling place, or prevented from voting during this election.

On August 6, 2021, Chief Investigator Richard Tracy spoke with you. After explaining the purpose of his call, you acknowledged that you did, in fact, wear a "45" jacket inside the polling place and refused to take it off as directed. Chief Investigator Tracy also informed you that he had a photo of you at the polling place wearing a jacket with "Trump" and "45" on the back. During that conversation with Investigator Tracy, he informed you of the prohibition against electioneering inside the polling place, pursuant to RSA 659:43.

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

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The law further contemplates penalties for violations, which include –

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

RSA 659:43, VIII & IX.

In this case, you wore a jacket bearing the name of a candidate on the November 2020 general election ballot. As such, your jacket would constitute "electioneering" within the meaning of RSA 652:16-h, and was prohibited from being displayed or worn inside the polling place.

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

This matter is closed.

Sincerely,

Myles Matteson
Assistant Attorney General
Election Law Unit
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: Town of Farmington Supervisor of the Checklist
Town of Farmington Moderator
Town of Farmington Police Chief

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 23, 2021

Glenn Bostwick
[redacted]
Salisbury, MA 01952

Re: **CEASE AND DESIST ORDER** (2020145488)
Violation of RSA 664:17

Dear Mr. Bostwick:

On October 15, 2020, this Office received a report from the Newfields Police Department, detailing the removal of a political sign. Specifically, an unidentified individual had removed a "Trump" campaign sign from a grass island at the intersection of Bald Hill Road and Piscassic Road in Newfields.

Three images were captured from a game camera that was setup nearby. A male subject is seen exiting a blue van and taking one of the "Trump" campaign signs.

On October 16, 2020, Newfields Police Officer Drew Fessenden was in the area of Piscassic Road and Runaway Lane when he saw a van matching the description of the vehicle belonging to the unidentified male who was seen on the video removing the "Trump" campaign sign. Officer Fessenden stopped the van and determined that you were driving it.

You told Officer Fessenden that you saw the "Trump" campaign sign at that intersection and observed that it was tipped over on the ground. You admitted that you stopped, picked up the sign, and took it with you. You admitted that once you arrived home, you threw the sign away. You consented to a search of your vehicle by Officer Fessenden. He did not locate any other campaign signs.

On July 29, 2021, you spoke with Investigator Anna Brewer-Croteau from the Attorney General's Office. During the call, you admitted, again, that you took the "Trump" sign, and explained it was because it had fallen over. You stated that you only took the single campaign sign. You acknowledged that you knew at the time that you should not have removed the sign.

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On August 4, 2021, you agreed to an interview with Investigator Brewer-Croteau and Chief Investigator Richard Tracy. During the interview, you described how you approached the intersection of Bald Hill Road and Piscassic Road in Newfields, and saw the multiple campaign signs, including a number of "Trump" campaign signs. You explained that you had been attempting to get a "Trump" campaign sign, but were unsuccessful. After noticing all of the "Trump" campaign signs, and noticing one had fallen over, you admitted to taking it. You explained that the next morning when you got to your van, there was a strong urine odor in the vehicle. You said that you concluded that the sign had been urinated on, which is why you threw it away. You denied taking any other campaign signs.

RSA 664:17 states in relevant part that –

> "No 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."[1]

Based on the forgoing, there is sufficient evidence to conclude that you unlawfully removed a "Trump" campaign sign from the intersection of Bald Hill Road and Piscassic Road in Newfields.

Therefore, you are hereby ordered to Cease and Desist from removing political advertising or campaign signs contrary to RSA 664:17.

Failure to comply with this Cease and Desist Order will result in further enforcement action by this Office. This matter is closed.

Cease and Desist Order Issued

By Authority of:

John M. Formella
Attorney General

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

cc: Newfields Police Department

[1] "Political advertising" means 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.

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 24, 2021

[redacted]
Westwood, MA 02090

Re: [redacted] Alleged Wrongful Voting (2020145849)

Dear [redacted]

On November 2, 2020, this Office received a complaint from Richard Girard, which alleged that that you wrongfully voted. Specifically, the allegation is that during the 2020 election cycle, you were not actually domiciled in Manchester, New Hampshire, and that you were domiciled in Massachusetts. After carefully reviewing this matter, we conclude that you did not violate New Hampshire's election laws.

Factual Background

In reviewing this complaint, we examined information provided to us by Mr. Girard, spoke with the landlord of [redacted] Manchester, NH, reviewed information acquired from the Westwood Massachusetts Town Clerk's office, obtained and reviewed your New Hampshire election records, reviewed your motor vehicle information, and spoke with you.

We understand that on or about February 1, 2020, you moved into and rented the residence located at [redacted] in Manchester. You explained you lived there while working for State Senator Channon Chandley's re-election campaign for District 11.

On February 11, 2020, you registered to vote in Manchester on Election Day, during the February Presidential Primary. You indicated that you were domiciled at [redacted] You also identified [redacted] Westwood, Massachusetts as the last place you were registered to vote. You provided proof of your qualifications to vote in Manchester to the supervisors of the checklist. According to your Voter Registration form, your proof included a utility bill to prove your domicile and an out-of-state driver's (Massachusetts) license to prove your identity. This proof and your Voter Registration form were accepted by the supervisors of the checklist who added you to the checklist for Ward 1.

The vehicle you drove in New Hampshire, bearing a Massachusetts license plate, was not registered to you, but to [redacted]

On December 10, 2020, Chief Investigator Richard Tracy received information about your voting records from the Westwood Town Clerk's office. The Town Clerk's office confirmed that you did not vote in Westwood, Massachusetts during the period you were living in New Hampshire.

On December 17, 2020, you spoke with Investigator Tracy. During your conversation with Investigator Tracy, you stated that you voted during New Hampshire's 2020 Presidential Primary, State Primary, and General Elections, you did not vote in Massachusetts during those elections, and you resided at [redacted] in Manchester from February 1, 2020, until November 30, 2020.

Applicable Law

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.

RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.[2] See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement. Among those documents, election officials have recognized that a public utility bill, such as such as an electric, telephone, water, gas, or other utility bill, with the applicant's name and domicile address on it.[3]

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

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

[3] Notably, before it was struck down by the Court, the Legislature, through SB3, similarly recognized evidence of obtaining public utility service(s) to be satisfactory proof of domicile.

Analysis

In this case, your voter registration form indicates you showed proof of your domicile by presenting officials with your utility bill containing your name and domicile address for [redacted] This utility bill confirmed your domicile at this address during the time period of the 2020 State Primary and General Elections. This Office also acknowledges that during the 2020 election cycle, you did not vote in Massachusetts, where you were last registered to vote. Based on the forgoing and our interview with you confirming when you lived at [redacted] we conclude that [redacted] was in fact your domicile for voting purposes within the meaning of RSA 654:1.

Claiming domicile in New Hampshire for voting purposes also carries with it other obligations and responsibilities outside of election law.

A person who establishes a domicile/residence in New Hampshire and drives in New Hampshire must obtain a New Hampshire driver's license within 60 days of establishing his or her domicile/residence. See RSA 21:6; RSA 21:6-a; RSA 263:1; and RSA 263:35. A New Hampshire driver's license is not required to register to vote.

Additionally, a person who establishes domicile/residence in New Hampshire and owns a vehicle used in New Hampshire must register the vehicle in New Hampshire within 60 days of establishing his or her domicile/residence. RSA 261:45.

No one can be denied the right to register to vote or vote for being out of compliance with the requirements of the motor vehicle code.

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

In those instances, a utility bill or a lease alone may not be sufficient to establish the voter's domicile if intervening actions of the voter suggest they are domiciled outside the State of New Hampshire. Your actions in New Hampshire reveal your intent to make a place in New Hampshire your domicile/residence. Such actions include, but are not limited to, purchasing or leasing a principal (*i.e.* primary) house or apartment, obtaining a resident vehicle registration, placing dependent children in a publicly funded school, registering to vote, paying taxes applicable only to residents, etc. RSA 21:6; RSA 21:6-a; RSA 259:23; RSA 654:1. See also Establishing a Domicile/Residence in New Hampshire FAQ https://www.doj.nh.gov/election-law/domicile-residence-faq.htm

As you are no longer domiciled in New Hampshire, you cannot vote in this state until you re-establish domicile within the meaning of RSA Chapter 654.

Please also be advised that if you remained in New Hampshire and attempted to vote again in this State, your failure to obtain a New Hampshire driver's license after you registered to vote, the fact that the campaign that employed you in this State has since ended, and the fact you no longer have a lease showing a place of residence, are significant factors that would undermine your claim of domicile, and bring into questions your qualifications to vote. To claim domicile in this State in the future, you would need to show that you have taken steps to re-establish domicile in this State.

Your potential violations of motor vehicle laws has been forwarded to the New Hampshire State Police to determine what enforcement action, if any, is appropriate.

Please be advised if, in the future, you seek to make New Hampshire your domicile you would be required to comply with the motor vehicle requirements outlined above, the violation of which could result in enforcement actions against you.

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

Sincerely,

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

cc: Manchester City Clerk's Office
Manchester Police Department
William M. Gardner, Secretary of State
Richard Girard
Edward Naile

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 24, 2021

[redacted]
Boxborough, MA 01719

Re: [redacted] Alleged Wrongful Voting (2020145850)

Dear [redacted]

On November 2, 2020, this Office received a complaint from Richard Girard, which alleged that you wrongfully voted. Specifically, the allegation is that, during the 2020 election cycle, you were not actually domiciled in Manchester, New Hampshire, and that you were domiciled in Massachusetts. After carefully reviewing this matter, we conclude that you did not violate New Hampshire's election laws.

Factual Background

In reviewing this complaint, we examined information provided to us by Mr. Girard, spoke with the landlord of [redacted] Manchester, New Hampshire, spoke with a representative of the Boxborough, Massachusetts Town Clerk's office, obtained and reviewed your New Hampshire election records, reviewed your motor vehicle information, and spoke with you.

We understand that on or about February 1, 2020, you moved into and rented the residence located at [redacted] in Manchester. You explained that you lived at this address while you worked on Senator Jeanne Shaheen's re-election campaign.

On February 11, 2020, you registered to vote in Manchester on Election Day, during the February Presidential Primary. You indicated that you were domiciled at [redacted] You also identified [redacted] Boxborough, Massachusetts as the last place you were registered to vote. You provided proof of your qualifications to vote in Manchester to the supervisors of the checklist. According to your Voter Registration form, your proof included a lease to prove your domicile and an out-of-state driver's (Massachusetts) license to prove your identity. This proof and your Voter Registration form were accepted by the supervisors of the checklist who added you to the checklist for Ward 1.

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The vehicle you drove in New Hampshire, bearing a Massachusetts license plate, was not registered to you, but to [redacted].

On December 7, 2020, Chief Investigator Richard Tracy received confirmation from the Boxborough Town Clerk's office that you did not vote in Boxborough during the 2020 election cycle.

On December 17, 2020, you spoke with Investigator Tracy. During your conversation with Investigator Tracy, you stated that you voted during New Hampshire's 2020 Presidential Primary, State Primary, and General Elections, you did not vote in Massachusetts during those elections, and you resided at [redacted] in Manchester from February 1, 2020, until November 30, 2020.

Applicable Law

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.

RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.[2] See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement. Among those documents, election officials have recognized that a rental agreement, lease, or similar document that shows the applicant's name and the address of the applicant's domicile is satisfactory proof of domicile.[3]

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

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

[3] Notably, before it was struck down by the Court, the Legislature, through SB3, similarly recognized evidence of renting or leasing an abode for a period of more than 30 days to be satisfactory proof of domicile.

Analysis

In this case, your voter registration form indicates you showed proof of your domicile by presenting officials with your lease containing your name and domicile address for [redacted] This lease agreement confirmed your domicile at this address during the time period of the 2020 State Primary and General Elections. This Office also acknowledges that during the 2020 election cycle, you did not vote in Massachusetts. Based on the forgoing and our interview with you confirming when you lived at [redacted] we conclude that [redacted] was in fact your domicile for voting purposes within the meaning of RSA 654:1.

Claiming domicile in New Hampshire for voting purposes also carries with it other obligations and responsibilities outside of election law.

A person who establishes a domicile/residence in New Hampshire and drives in New Hampshire must obtain a New Hampshire driver's license within 60 days of establishing his or her domicile/residence. See RSA 21:6; RSA 21:6-a; RSA 263:1; and RSA 263:35. A New Hampshire driver's license is not required to register to vote.

Additionally, a person who establishes domicile/residence in New Hampshire and owns a vehicle used in New Hampshire must register the vehicle in New Hampshire within 60 days of establishing his or her domicile/residence. RSA 261:45.

No one can be denied the right to register to vote or vote for being out of compliance with the requirements of the motor vehicle code.

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

In those instances, a lease alone may not be sufficient to establish the voter's domicile if intervening actions of the voter suggest they are domiciled outside the State of New Hampshire. Your actions in New Hampshire reveal your intent to make a place in New Hampshire your domicile/residence. Such actions include, but are not limited to, purchasing or leasing a principal (*i.e.* primary) house or apartment, obtaining a resident vehicle registration, placing dependent children in a publicly funded school, registering to vote, paying taxes applicable only to residents, etc. RSA 21:6; RSA 21:6-a; RSA 259:23; RSA 654:1. See also Establishing a Domicile/Residence in New Hampshire FAQ https://www.doj.nh.gov/election-law/domicile-residence-faq.htm

As you are no longer domiciled in New Hampshire, you cannot vote in this state until you re-establish domicile within the meaning of RSA Chapter 654.

[redacted]

Please also be advised that if you remained in New Hampshire and attempted to vote again in this State, your failure to obtain a New Hampshire driver's license after you registered to vote, the fact that the campaign that employed you in this State has since ended, and the fact you no longer have a lease showing a place of residence, are significant factors that would undermine your claim of domicile, and bring into questions your qualifications to vote. To claim domicile in this State in the future, you would need to show that you have taken steps to re-establish domicile in this State.

Your potential violations of motor vehicle laws has been forwarded to the New Hampshire State Police to determine what enforcement action, if any, is appropriate.

Please be advised if, in the future, you seek to make New Hampshire your domicile you would be required to comply with the motor vehicle requirements outlined above, the violation of which could result in enforcement actions against you.

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

Sincerely,

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

cc: Manchester City Clerk's Office
Manchester Police Department
William M. Gardner, Secretary of State
Richard Girard
Edward Naile

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 24, 2021

Robert Rupnick
[redacted]
Antrim, NH

Re: Antrim Polling Place Disruption (2020145943)

Dear Mr. Rupnick:

During the November 3, 2020 general election, this Office was contacted by Town of Antrim election officials. The officials reported that while using the alternative voting area, you became disruptive and belligerent once an official indicated your ballot would be taken to the masked voting area to be fed through the ballot counting device. The Antrim moderator had imposed a mask requirement in order to enter the polling place. You demanded that you be allowed to submit your completed ballot into the ballot counting device yourself, arguing that it was your constitutional right to do so.

When the official indicated she would go and get the moderator to assist with the situation, you followed her into the polling place without wearing a mask, contrary to the requirement imposed by the moderator. Once the moderator was retrieved, and wanting to limit further disruption, the moderator permitted you to enter the masked voting area, and deposit your completed ballot into the ballot counting device.

Part II, Article 32 of the New Hampshire Constitution states that the moderator has the authority and responsibility to govern elections. The Secretary of State and Attorney General's Offices have recognized that this grant of authority permits a moderator to choose whether to require a face covering/mask in order to enter the polling place.

The Centers for Disease Control ("CDC") and the New Hampshire Division of Public Health ("DPH") recommend face coverings/masks as one component of the COVID-19 mitigation strategy, and emerging evidence suggests that face coverings/masks can significantly reduce transmission of the virus in some situations. For many moderators, requiring face coverings/masks inside the polling place was critical to Election Day operations, for the safety of Election Day volunteers and for voters casting in-person ballots.

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In this case, we understand that the alternative voting area was not equipped with its own ballot box. This Office published guidance on August 20, 2020 that provided, a separate ballot box could be used in the alternative voting area to collect completed ballots. This, however, was not a requirement.

The United States Supreme Court has recognized that the right to vote does not include the right to vote in any manner demanded by the voter. See Burdick v. Takushi, 504 U.S. 428, 433 (1992) ("It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute.") See also United States Constitution, Art. I § 4, cl. 1 ("The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof...").

Your actions on that day constitute a violation of polling place requirements imposed by the moderator. There is no reason to believe that Antrim's election officials, who routinely carry out the State's elections with integrity, would fail to ensure your completed ballot was properly cast. Antrim officials also provided a privacy screen to ensure the ballot remained private and secure during its short transfer to the masked voting area.

Given the unprecedented challenges presented by the public health crisis, and the protective health measures mandated by public health officials, it was appropriate, and the election officials were authorized to transport your ballot from the alternative voting area to be fed through the ballot counting device. Your behavior however, in response to this lawful exercise of power, required intervention by two election officials to prevent further disruption.

Disruptions at the polling place that interfere with the Election Day operations will not be tolerated. Temporary polling place modifications in response to the public health crisis are likely to end before the next election. However, compliance with the rules of the polling place imposed by the moderator will continue to be a requirement.

Failure to comply with the requirements imposed by the moderator at the polling place on election day may result in a cease and desist order, or further enforcement action by this Office. This matter is closed.

Sincerely,

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

cc: Antrim Town Clerk
Antrim Town Moderator

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 24, 2021

[redacted]
Yonkers, NY 10705

Re: [redacted] Alleged Wrongful Voting (2020145687)

Dear [redacted]:

On October 28, 2020, this Office was notified by the Manchester Police Department, that Ed Naile alleged you had wrongfully voted. On November 2, 2020, this Office received a complaint from Richard Girard, which similarly alleged that you wrongfully voted. Specifically, the allegations are that, during the 2020 election cycle, you were not actually domiciled in Manchester, New Hampshire, and that you were domiciled in New York. After carefully reviewing this matter, we conclude that you did not violate New Hampshire's election laws.

Factual Background

In reviewing these complaints, we examined information provided to us by Mr. Girard, spoke with the landlord of [redacted], Manchester, New Hampshire, spoke with a representative of the Westchester County New York Board of Elections, obtained and reviewed your New Hampshire election records, reviewed your motor vehicle information, and spoke with you.

We understand that on or about July 1, 2020, you moved into and rented the residence located at [redacted] in Manchester. You explained that you lived at this address while you worked on the re-election campaign for State Senator Jeanne Alford Teaster.

On August 19, 2020, you registered to vote in Manchester. On your New Hampshire Voter Registration Form, you wrote that you were domiciled at [redacted] You also identified [redacted] Yonkers, New York as the last place you were registered to vote. You provided proof of your qualifications to vote in Manchester to the supervisors of the checklist. According to your Voter Registration form, your proof included a lease to prove your domicile and an out-of-state driver's (New York) license to prove your identity. This proof and your Voter Registration form were accepted by the supervisors of the checklist who added you to the checklist for Ward 1.

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The vehicle you drove in New Hampshire, bearing a New York license plate, was not registered to you, but to [redacted]

On December 3, 2020, Chief Investigator Richard Tracy spoke with the Westchester County Board of Elections. The County Board of Elections confirmed that you did not vote in New York during the period you were living in New Hampshire.

On December 17, 2020, you spoke with Investigator Tracy. During your conversation with Investigator Tracy, you stated that you voted during New Hampshire's 2020 State Primary and 2020 General Election, you did not vote in New York during those elections, and you resided at [redacted] in Manchester from July 1, 2020, until November 30, 2020.

Applicable Law

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.

RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.[2] See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement. Among those documents, election officials have recognized that a rental agreement, lease, or similar document that shows the applicant's name and the address of the applicant's domicile is satisfactory proof of domicile.[3]

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

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

[3] Notably, before it was struck down by the Court, the Legislature, through SB3, similarly recognized evidence of renting or leasing an abode for a period of more than 30 days to be satisfactory proof of domicile.

Analysis

In this case, your voter registration form indicates you showed proof of your domicile by presenting officials with your lease containing your name and domicile address for [redacted] This lease agreement confirmed your domicile at this address during the time period of the 2020 State Primary and General Elections. This Office also acknowledges that during the 2020 election cycle, you did not vote in New York. Based on the forgoing and our interview with you confirming when you lived at [redacted] we conclude that [redacted] was in fact your domicile for voting purposes within the meaning of RSA 654:1.

Claiming domicile in New Hampshire for voting purposes also carries with it other obligations and responsibilities outside of election law.

A person who establishes a domicile/residence in New Hampshire and drives in New Hampshire must obtain a New Hampshire driver's license within 60 days of establishing his or her domicile/residence. See RSA 21:6; RSA 21:6-a; RSA 263:1; and RSA 263:35. A New Hampshire driver's license is not required to register to vote.

Additionally, a person who establishes domicile/residence in New Hampshire and owns a vehicle used in New Hampshire must register the vehicle in New Hampshire within 60 days of establishing his or her domicile/residence. RSA 261:45.

No one can be denied the right to register to vote or vote for being out of compliance with the requirements of the motor vehicle code.

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

In those instances, a lease alone may not be sufficient to establish the voter's domicile if intervening actions of the voter suggest they are domiciled outside the State of New Hampshire. Your actions in New Hampshire reveal your intent to make a place in New Hampshire your domicile/residence. Such actions include, but are not limited to, purchasing or leasing a principal (*i.e.* primary) house or apartment, obtaining a resident vehicle registration, placing dependent children in a publicly funded school, registering to vote, paying taxes applicable only to residents, etc. RSA 21:6; RSA 21:6-a; RSA 259:23; RSA 654:1. See also Establishing a Domicile/Residence in New Hampshire FAQ https://www.doj.nh.gov/election-law/domicile-residence-faq.htm

As you are no longer domiciled in New Hampshire, you cannot vote in this state until you re-establish domicile within the meaning of RSA Chapter 654.

Please also be advised that if you remained in New Hampshire and attempted to vote again in this State, your failure to obtain a New Hampshire driver's license after you registered

to vote, the fact that the campaign that employed you in this State has since ended, and the fact you no longer have a lease showing a place of residence, are significant factors that would undermine your claim of domicile, and bring into questions your qualifications to vote. To claim domicile in this State in the future, you would need to show that you have taken steps to re-establish domicile in this State.

Your potential violations of motor vehicle laws has been forwarded to the New Hampshire State Police to determine what enforcement action, if any, is appropriate.

Please be advised if, in the future, you seek to make New Hampshire your domicile you would be required to comply with the motor vehicle requirements outlined above, the violation of which could result in enforcement actions against you.

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

Sincerely,

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

cc: Manchester City Clerk's Office
Manchester Police Department
William M. Gardner, Secretary of State
Richard Girard
Edward Naile

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 2, 2021

SENT VIA CERTIFIED MAIL
Daniel Chang
[redacted]
San Francisco, CA 94114

Re: Violation of RSA 664:17 Defacing a Political Advertisement (2020145544)
AMOUNT DUE WITHIN 30 DAYS: $300.00

On October 6, 2020, the Keene, New Hampshire Police Department, received a report that a male and female who were driving a grey "Sprinter" travel van, vandalized a "Trump" campaign sign by spray painting over the sign's letters so it read: "HUMP PENIS." The reporting party also stated that the travel van had out-of-state license plates.

The reporting party alleged that the male and female had placed the cans of spray paint they used to vandalize this sign in a plastic bag behind a piece of PVC pipe on the back of their vehicle.

The reporting party followed this vehicle until Keene police officers were able to catch up and initiate a motor vehicle stop. During this motor vehicle stop, you were identified as the driver. You admitted to the Keene police officers that you did in fact deface the "Trump" campaign sign, and also volunteered to similarly deface a "Biden" campaign sign. You admitted to the officers that the reports were accurate, and the spray paint you used to deface the campaign sign was behind the PVC pipe on the back of your travel van.

The Keene police also spoke with the Cheshire County Republican Party. They informed the police that the double-sided campaign sign you defaced had a replacement value of $300.

This matter was referred to this Office on October 20, 2020.

On July 28 and 29, 2021, this Office attempted to contact you with respect to this allegation. As of the date of this letter, you have yet to return our calls.

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RSA 664:17 states in relevant part that "[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…"[1]

RSA 664:21, VI(a) states that "[w]hoever violates any of 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."

Based on the forgoing evidence, there is a sufficient basis to conclude that you violated RSA 664:17 by defacing a "Trump" campaign sign.

RSA 664:21, VI(c) 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.

Your payment of this penalty in the amount of $300.00 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 our office will initiate further enforcement action.

Your payment of $300.00 shall be made by check made 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 Nicholas A. Chong Yen.

This matter will also be referred back to the Keene Police Department to determine what criminal charges, if any, may be appropriate in this matter.

Sincerely,

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

cc: The Honorable William M. Gardner, Secretary of State
Keene Police Department

[1] "Political advertising" means 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. RSA 664:2, VI.

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 21, 2020

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

Re: Town of Nottingham, Absentee Ballots (2020146026)

Dear Clerk Anderson:

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

cc: William M. Gardner, Secretary of State

TOWN OF NOTTINGHAM
P.O. BOX 114
NOTTINGHAM, N.H. 03290

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

October 8, 2021

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

RE: Town of Nottingham Absentee Ballots (2020146026)

Dear Mr. Chong Yen:

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

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

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

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

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

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

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

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

Please let me know if you require anything further.

Sincerely,

Lorraine Anderson
Town Clerk

From: Lori Anderson
To: Matteson, Myles
Subject: Re: Remediation plan
Date: Thursday, April 28, 2022 12:48:31 PM
Attachments: Election Day AB requests received.pdf
Election Day AB Alpha totals.pdf

Good Morning,

Thank you for asking. I have set up a couple of forms that are used in capturing this information. One important piece of the puzzle is to print out the list of Absentee Ballot requests/returned from Electionet in sections by letter the day before the election. This format allows the Clerk to know how many requests and ballots received on election day, per letter, which is far easier to track than by the entire list.

- Print out the Absentee Ballot list, broken down by letter
- Using the printout, note which ballots previously requested are returned on Election Day
- Using an additional form, one or two pages per letter, of new requests made on the day of the election. This was helpful when we had used an outside accessible voting area set up, or if someone is unable to vote in person due to illness and someone is deputized to deliver/return a ballot to the voter.
- End of Day form used to compile totals received on Election Day by letter for grand total.

I did use this method for the Town election in 2021, but there was no need to do so this year since the requests were reduced dramatically. I have attached scans of the forms used, for reference.

Sincerely,
Lori Anderson

Lorraine Anderson
Town Clerk

Town of Nottingham
PO Box 114
139 Stage Road
Nottingham, NH 03290

603-679-9598

Monday 8:30 am - 12:30 pm
Tuesday 12:00 pm-4:00 pm
Wednesday 2:00 pm - 6:00 pm
Thursday 8:30 am - 12:30 pm
Friday 8:30 am - 12:30 pm

From: Matteson, Myles <Myles.B.Matteson@doj.nh.gov>
Sent: Thursday, April 28, 2022 9:22 AM
To: Lori Anderson <landerson@nottingham-nh.gov>
Cc: Tekin, Jill <Jill.Tekin@doj.nh.gov>
Subject: Remediation plan

Good morning, Ms. Anderson—

I'm following up on the remediation plan outline that you submitted to this office in October. Thank you for that material.

As you know, we asked for a remediation plan given the absentee ballots that were uncounted. In your response, you write, "A method of capturing all ballots received on Election Day has been developed." Can you please expand on what this method and process are? Did you utilize it during the town election this year?

Thank you,

Myles

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

Voter Name	Residence Address	Party	UND Bal/Ch	Date Requested	Date Mailed	Date Returned

000050

ELECTON DAY ABSENTEE BALLOTS RECEIVED

ALPHA SECTION	Number Received	LessNumber Rejected	TOTAL
A			
B			
C			
D			
E			
F			
G			
H			
I			
J			
K			
L			
M			
N			
O			
P			
Q			
R			
S			
T			
U			
V			
W			
X			
Y			
Z			
TOTALS			

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

April 28, 2022

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

Re: Town of Nottingham, Absentee Ballots

Dear Clerk Anderson:

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

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

Sincerely,

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

cc: David Scanlan, Secretary of State

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 21, 2021

Dianne Trippet, Town Clerk/Tax Collector
Town of Merrimack
6 Baboosic Lake Road
Merrimack, NH 03054

Re: Town of Merrimack, Absentee Ballots (2020146025)

Dear Clerk Trippet:

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

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

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

In reviewing this matter, we spoke with you and also obtained and reviewed information from ElectioNet.

You indicated that on Election Day – November 3, 2020 – all three of the absentee ballots in questions arrived at the Merrimack Town Clerk's Office. You explained that all of the mail for the town offices arrives at one location, where they are sorted by department, then delivered to each individual department.

In the case of these three absentee ballots, you explained that they were placed by an unknown employee into the Deputy Town Clerk's mailbox. As a result, you were not aware of

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their arrival, and the absentee ballots were not discovered until after the election on November 4, 2020.

On March 5, 2021, while speaking with Chief Investigator Richard Tracy, you stated that you questioned the Town Clerk employees who remained at the Clerk's Office on November 3, 2020. None of these employees recalled seeing these three absentee ballots. You explained that you were unable to identify the employee or staff member who placed the three absentee ballots into the Deputy Clerk's mailbox. You described the majority of those employees or staff members who were present at the Clerk's Office on Election Day as being new and would not have thought to check the Clerk on Deputy Clerk's mailboxes on Election Day. Moreover, you described how the three absentee ballots arrived in plain white envelopes, and so, the employees or staff members present would not have identified them as being absentee ballots.

Following their discovery, you indicated that the three absentee ballots were turned over to the Secretary of State's Office, because one of Merrimack's races was the subject of a recount. The three absentee ballots did not end up being outcome determinative, and as a result, the Secretary of State's Office did not open the envelopes containing the absentee ballots, nor count them.

There is insufficient evidence to identify whether a specific person or persons made an error in failing to place these three absentee ballots in the correct town official's mailbox. There is similarly no evidence that a specific person or persons intended to withhold these three absentee ballots on purpose.

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

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

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

Sincerely,

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

cc: William M. Gardner, Secretary of State

TOWN OF MERRIMACK, NEW HAMPSHIRE
TOWN CLERK/TAX COLLECTOR'S OFFICE

6 BABOOSIC LAKE ROAD · MERRIMACK, NH 03054 · (603) 424-3651 - MERRIMACKNH.GOV

October 1, 2021

Myles Matteson
Elections Division
Attorney General, Department of Justice
33 Capitol Street
Concord, NH 03301

Re: Remediation Plan, Town of Merrimack, Absentee Ballots

Attorney Matteson,

Please accept the enclosed Remediation Plan in response to a letter from your office dated September 21, 2021 (authored by Attorney Nicholas Chong Yen). Attorney Chong Yen's letter required the Town to contact the three (3) voters whose absentee ballots for the November 3, 2020 election were not processed or counted to explain what occurred, and also to provide the Attorney General with a written remediation plan to ensure that all properly submitted absentee ballots are processed and counted.

The enclosed is submitted to satisfy the remediation plan requirement. The Town intends to provide a letter to the three absentee voters to explain what occurred.

If you have any remaining questions or concerns, please let me know.

Sincerely,

Diane Trippett

Diane Trippett
Town Clerk

Encl.

TOWN OF MERRIMACK, NEW HAMPSHIRE
TOWN CLERK/TAX COLLECTOR'S OFFICE
6 BABOOSIC LAKE ROAD · MERRIMACK, NH 03054 · (603) 424-3651 - MERRIMACKNH.GOV

Remediation Plan in Response to Uncounted and Unprocessed Absentee Ballots at November 3, 2020 Election

The Remediation Plan of the Town of Merrimack ("Town") Town Clerk's Office entails the following:

1. The Town will contact the three (3) absentee voters to explain in writing what happened to their ballots.

2. The Town will conduct a training for Town employees/staff that typically handle the mail to alert them to be mindful of anything marked as an absentee ballot or simply directed to the Town Clerk, her Deputy, or the Town Clerk's Office. This training will seek to ensure that the Clerk, her Deputy, or other Town Clerk staff receive any mailed absentee ballots in a timely manner so that they may be processed as required by law.

3. Prior to elections, a reminder will be sent to these same Town employees/staff to watch out for mailed in absentee ballots and how they should be processed/sorted.

4. On election days, after the mail is received and processed, the Town Clerk, her Deputy or staff, will check the central mail processing location at Town Hall and the Town Clerk and Deputy's physical office locations for absentee ballots.

5. On election days, either the Clerk or her Deputy transport any absentee ballots received on Election Day to the polls. Either the Clerk or the Deputy will temporarily leave the polling place to go to Town Hall and collect these ballots and then return them to the appropriate polling location. This happens after the mail is delivered, sorted, and any ballots received are processed. Because the mail arrival time varies, and depending on how many ballots must be processed, there is no set time for this to occur and it is delivery and workload dependent. Any ballot received at Town Hall prior to 5pm on Election Day shall be considered timely and counted even if the ballot is not transported to the polling place prior to 5pm.

Sincerely,

Diane Trippett

Diane Trippett
Town Clerk

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

October 11, 2021

Dianne Trippet, Town Clerk/Tax Collector
Town of Merrimack
6 Baboosic Lake Road
Merrimack, NH 03054

Re: Town of Merrimack, Absentee Ballot Remediation Plan (3324073)

Dear Clerk Trippet:

On November 16, 2020, this Office was notified by the Secretary of State's Office that Merrimack election officials called to report the discovery of three absentee ballots after the November 3, 2020, general election, which had not been processed or counted. On September 21, 2021, this Office sent you correspondence that included a direction to produce a remediation plan.

Following discussions between this Office and Town counsel, you delivered a remediation plan on October 1, 2021. A summary of the plan is as follows:

1. The Town will contact the three absentee voters and explain in writing what happened with their ballots such that they were not counted.
2. The Town will conduct trainings for Town employees regarding the identification and handling of absentee ballots.
3. The Town will provide reminders to Town employees prior to elections regarding absentee ballots.
4. On election days, Town Clerk staff will check central mail processing and physical office locations in Town Hall to locate any absentee ballots received.
5. On election days the Town Clerk or Deputy are responsible for leaving the polling place, going to Town Hall, collecting any received absentee ballots, ensuring that any absentee ballots received at Town Hall are collected, and returning them to the polling location to be counted.
6. The Clerk or Deputy will conduct this retrieval of absentee ballots after the mail delivery, and any ballot received at Town Hall prior to 5pm on election day shall be considered timely and counted even if the ballot is not transported to the polling place prior to 5pm.

We appreciate the plan developed by Merrimack officials to ensure an error like this does not happen again. Not accurately counting votes has a serious effect on the integrity of our

election system and can impact voters' confidence in that system. Merrimack officials must continue to exercise diligence with the processing and casting of absentee ballots.

Please contact me if you have any questions.

Sincerely,

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

cc: William M. Gardner, Secretary of State

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

October 21, 2021

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

William Klein, Town Moderator
Town of Bedford
24 North Amherst Road
Bedford, NH 03110

Re: Town of Bedford, Absentee Ballots (3241882)

Dear Clerk Kellar and Moderator Klein:

On November 16, 2020, this Office was notified by the Secretary of State's Office that you called to report that Bedford election officials discovered 190 uncast absentee ballots. In reviewing this matter, this Office concludes that these 190 absentee ballots would not have impacted the outcome of any of the races on the ballot in Bedford during the 2020 general election.

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

However, this situation must still be addressed, and is an opportunity to refine Bedford's processes to ensure that this does not occur again. In reviewing this matter, we spoke with Moderator Klein, Clerk Kellar, Deputy Town Clerk Gloria MacVane, and Assistant Town Moderator Brian Shaughnessy. We are also in receipt of and have reviewed your remediation plan dated July 15, 2021. The Secretary of State is copied on this letter, and a copy of this remediation plan will be forwarded to his attention.

In speaking with Bedford election officials, we understand the situation as follows: Following the November 2020 general election, Deputy Clerk MacVane was reconciling the number of ballots distributed with the number of ballots cast. During this process, she discovered that there was a difference of approximately 190 fewer ballots cast than the number distributed.

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The amount of absentee ballots recorded received was 7,917. The total number of absentee ballots recorded cast was 7,727.

On November 8, 2020, Deputy Clerk MacVane attributed the cause of this discrepancy to a mistake made during the processing of absentee ballots on election day. That process was explained to this Office as follows:

Because of the challenges presented by the coronavirus pandemic, the Town utilized the partial processing (or preprocessing) session authorized by the Legislature. During the preprocessing session, the absentee ballots were arranged in alphabetical order. Once alphabetized, the outer envelope was opened, and the inner affidavit envelope was inspected to ensure that it had been properly signed. The absentee ballot remained sealed in the inner envelope. Next, the entire absentee ballot mailing (outer envelope, inner envelope, and absentee ballot) was matched with the corresponding absentee ballot request form. The mailing was then placed – again, alphabetically – into large plastic bins for storage and transport to the polling place on election day.

This Office was informed that on election day, Bedford election officials utilize two "areas" during absentee ballot processing. The absentee ballot mailing contained in the plastic bins were grouped together in batches of 150-200. These batches were then placed inside a paper box lid/tray, which was transported to the "final processing location." In this first area, election officials took the first absentee envelope at front of the lid/tray, removed and opened the inner envelope, removed the absentee ballot contained inside, and placed the absentee ballot to the side of one of the processing election officials. The empty envelope and any other contents, aside from the absentee ballot, were returned to the lid/tray at the back of the batch. This process continued until the first, now empty, set of envelopes returned to the front of the lid/tray.

The absentee ballots removed during this process were taken to be cast in the dedicated absentee ballot counting device. The empty envelopes inside the lid/tray were taken to the second area or the "completed location," where they awaited storage inside a storage box.

Deputy Clerk MacVane informed Chief Investigator Richard Tracy that likely, in the "final processing location," an official inadvertently took a lid/tray of envelopes to the "completed location" without the absentee ballots inside having been removed and cast. She surmised that given the number of absentee ballots contained in each batch, it was possible the missing/uncast 190 absentee ballots may be found inside one of the storage boxes holding the empty absentee ballot envelopes. On November 8, 2020, she contacted Assistant Town Moderator Shaughnessy to inform him of the discrepancy, as well as her theory. She told Investigator Tracy that together, they contacted Clerk Kellar, and arranged to inspect the storage boxes containing the empty absentee ballot envelopes in an attempt to locate the 190 uncast absentee ballots.

On November 9, 2020, Clerk Kellar, Deputy Clerk MacVane, and Assistant Moderator Shaugnessy, went inside the Town's vault where the absentee ballot envelope storage boxes were secured. The three officials found all 190 uncast absentee ballots, with the absentee ballots still sealed inside the inner envelope.

There is insufficient evidence to identify the specific election official who inadvertently took a lid/tray of unprocessed absentee ballots before they could be cast. There is similarly no evidence that a specific person or persons intended to withhold these absentee ballots on purpose. Furthermore, after reviewing the results of the 2020 November election in Bedford, no election was won by a margin of 190 or fewer votes. Consequently, this error was not outcome determinative.

Based on the forgoing, the Bedford election officials must:

1. Contact the 190 voters whose absentee ballots were not counted and explain what happened to their ballot on election day; and
2. Provide this Office with a written remediation plan on tracking cast versus uncast absentee ballots on Election Day, and include any other measures to ensure all properly submitted absentee ballots are counted.

With respect to the second item, and as mentioned above, this Office is in receipt of the Town's remediation plan dated July 15, 2021. The plan is acceptable to this Office and will be forwarded to the Secretary of State's Office.

This matter will be closed upon confirmation from the Town of Bedford that all 190 voters whose absentee ballots were not cast, have been contacted and informed of the situation.

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

Sincerely,

Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-3650

cc: William M. Gardner, Secretary of State

TOWN OF BEDFORD New Hampshire

October 28, 2021

BEDFORD, NH 03110

Dear

After each election, we conduct a post-election reconciliation process to verify the number of votes cast with the number of ballots issued at the polls and through the absentee ballot process. After the 2020 General Election, we determined that a group of absentee ballots had inadvertently been moved into the "completed" area at the polls without being cast. As detailed in the enclosed letter, just received from the NH Attorney General, we contacting you to inform you to that your absentee ballot for the November 2020 General Election was one of the ballots mistakenly not cast.

When we discovered this, we immediately reported it to the NH Secretary of State. It was determined that these ballots would not have impacted the outcome of any of the races. We were advised to keep these ballots secure, and to wait further instructions before taking any further action. The following week, we were informed that the matter had been referred to the NH Attorney General's office for investigation. The AG requested some information from us and we submitted it on November 19, 2020. We were told not to discuss this with anyone, not even the Town Council, because it was a pending investigation. As time passed, we made numerous attempts to get resolution from the AG's team. Finally, in July their investigation began which resulted in the findings spelled out in the enclosed letter.

Proactively we created a new comprehensive procedure to help control the ballot processing. This plan was implemented at the September 7th 2021 Special Election, and subsequently accepted by the AG (see enclosure). Our overall accuracy and poll management procedures were validated by a recount conducted by our Secretary of State for the Special Election.

Bedford handled more absentee ballots at the November 2020 General Election than any other town in New Hampshire, and more than the totals in two counties. Huge voter turnout, impacts of Covid-19, and the need to recruit many new poll workers created an unprecedented challenge for us. We sincerely apologize to you for what happened, and assure you that the changes we have implemented, and our vigilance moving forward will afford our voters reliable and accurate elections.

If you have any questions, please direct them to our Senior Assistant Moderator Brian Shaughnessey via email at: brian@srlaw-nh.com.

Regards,

Sally Kellar, Town Clerk

William Klein, Town Moderator

enclosure

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 1, 2021

William Klein, Town Moderator
Sally Kellar, Town Clerk
Bedford Town Offices
24 North Amherst Road,
Bedford, NH 03110

Re: Response to October 28, 2021 Letter to Voters

Dear Moderator Klein and Clerk Kellar:

Our Office learned of your October 28 letter concerning uncounted absentee ballots through a media post on Saturday, October 30. We are concerned, in particular, by three statements in your letter: 1) that the Attorney General's Office instructed you not to tell anyone, including the Bedford Town Council, about the 190 uncounted absentee ballots; 2) that you made numerous attempts to obtain resolution from our Office; and 3) that our October 21 closure letter was essentially the first explanation from us as to the necessary remediation plan. These statements are inaccurate.

Our Office never instructed you not to tell anyone of the incident involving the 190 uncounted absentee ballots. We would not have issued such an instruction as it is at odds with our standard instruction to individuals involved in elections investigations. Instead, we informed you that our Office would not be making any public statements regarding Bedford and the two other towns with uncounted absentee ballots until we had investigated the matters and knew what had occurred. Additionally, while this investigation took longer than we would have preferred, every time Moderator Klein called our Office to discuss the status, he spoke with an attorney or investigator to receive a status update. And, a personal contact was made with Moderator Klein in mid-May by our Chief Investigator apologizing for the delay in the investigation, due in large part to the strain on Election Unit's resources. Finally, since early June, our Office has been in contact with Bedford election officials regarding possible remediation plans and investigative interviews. During those conversations, Bedford election officials raised concerns that they did not want to notify voters of the fact that their ballots were not counted. Our Office directed that such a notification was a requirement of any remediation plan.

A copy of our October 21, 2021 letter to Bedford election officials is attached. By way of a summary of our letter, on November 16, 2020, the Attorney General's Office was informed by the Secretary of State's Office that Bedford election officials reported that Bedford had located 190 absentee ballots that were not counted during the 2020 General Election. The Secretary of State's staff told Bedford election officials that they were going to inform the Attorney General's Office and asked Bedford election officials to secure the ballots and wait until they heard from the Attorney General's Office. Immediately, the Secretary of State's staff did an analysis of all races involving Bedford and determined that even if the 190 absentee ballots had been counted, they would not have changed the results in any race. Further, by the time that the Attorney General's Office was notified of this issue on November 16, under New Hampshire law the 190 absentee ballots could not have been cast and counted in the election totals.

On November 18, 2020, the Attorney General's staff spoke with Moderator Klein, on a preliminary basis, to determine what Bedford officials believed occurred. Moderator Klein explained that, while Bedford election officials did not know how it had happened, they believed that the 190 absentee ballot envelopes were set aside during the absentee ballot pre-processing and were boxed with the empty absentee ballot envelopes. The Bedford election officials had been alphabetizing absentee ballots to more easily process them through the checklist. During this process, they had been using tops of cardboard boxes to manage the ballots. The box tops held approximately 190 envelopes. The election officials believed that a box top of ballots was incorrectly put into a box for completed pre-processed absentee ballots. However, they could not confirm this, and they had so many new election workers during the 2020 General Election that they did not have any idea which election worker could have done this. The Attorney General's staff told Moderator Klein that the Attorney General's Office was opening an investigation into the matter and that the Office would not be making any public statements while it was investigating. However, the Attorney General's staff did not instruct Moderator Klein that he could not tell anyone about the issue. The Attorney General's staff also asked Moderator Klein to provide a list of individuals with their contact information who were involved in the processing of the absentee ballots. He provided that information on November 19, 2020.

During the winter and spring of 2021, the Attorney General's Election Unit was occupied with post-election issues, including following up on immediate allegations raised about election irregularities, including in Windham, which consumed a substantial amount of the Election Unit's resources. However, each time Moderator Klein contacted our Office regarding the Bedford matter, he spoke with either an attorney or an investigator who explained the status of the investigation. Additional discussions occurred with Moderator Klein in May during the Windham Audit. On June 4, Moderator Klein called the Attorney General's staff to talk about "an after action plan" to prevent this from happening again. Moderator Klein submitted his report with a proposed "after action plan," dated June 18, 2021.

The Attorney General's staff interviewed Bedford election officials in July 2021, and had follow-up conversations with Bedford election officials, during August and September, about the

need to provide notification to the 190 voters that their absentee ballots had not been counted during the 2020 General Election. Bedford election officials raised concerns with this notification and asked not to notify voters. When these discussions continued into August of 2021, the Attorney General's Office became concerned about the potential for voter confusion in the upcoming Special Election in Bedford on September 8, 2021. To avoid confusion, the Attorney's General's Office indicated it would send its investigation closure letter after the Special Election. However, the Attorney General's Office clearly directed that the voters must still be notified, and Bedford election officials were aware that such a directive would be issued in a closure letter after the Special Election. On October 21, 2021, the Attorney General issued its investigation closure letter which included the directive to notify voters. The letter was issued at that point in time as the Bedford Special Election, with its recount, was final and there would be little risk of confusion regarding which absentee ballots were not counted.

At no time did the Attorney General's Office direct the Bedford Election officials not to explain the situation with the 190 absentee ballots to the Town Council or any other person. Additionally, the Attorney General's Office managed this review, along with that of two other towns that did not count some absentee ballots, as resources allowed. Finally, as explained above, the timing of the closure letter was known by Bedford election officials in advance, was purposeful in order to avoid confusion with the September Special Election in Bedford, and was the culmination of multiple contacts with Bedford election officials during the summer of 2021.

Sincerely,

Anne M. Edwards
General Counsel

Enclosure
cc: William Gardner, Secretary of State

3355608

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 8, 2022

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

William Klein, Town Moderator (former)
Town of Bedford
24 North Amherst Road
Bedford, NH 03110

Re: Town of Bedford, Absentee Ballots

Dear Clerk Kellar and Moderator Klein:

We have concluded our review of the circumstances surrounding the 188 uncast absentee ballots Bedford election officials discovered following the November 2020 General Election and November 2020 General Election ballots that were discovered prior to opening of the polling place for the Special Election on September 7, 2021. This Office conducted an initial review, then conducted additional investigation including holding a public session at which ballots and voting materials were inventoried. We anticipate closing this matter after (1) receiving confirmation that Bedford election officials have contacted the two additional voters whose uncounted absentee ballots were discovered during the April 6, 2022, public session; and (2) appointment of an election monitor for the September 13, 2022, primary election and receipt of that monitor's subsequent report.

As noted in our initial letter to you, there is insufficient evidence to identify the specific election official who inadvertently moved a lid/tray of unprocessed absentee ballots such that they were not cast and counted in the November 2020 General Election. There is similarly no evidence that a specific person or persons intended to withhold those absentee ballots on purpose. Furthermore, after reviewing the results of the November 2020 General Election in Bedford, no candidate won by a margin of 190 or fewer votes. Consequently, this error was not outcome determinative. Our conclusion on this point has not changed—the failure to count the 190 absentee ballots was an inadvertent mistake by election officials.

To complete our investigation and review we conducted additional interviews or re-interviewed the following individuals: Gloria MacVane (Deputy Clerk), Brian Shaughnessy (then Assistant Moderator), Bill Klein (then Moderator), Sally Kellar (Town Clerk), and Paul Brock (Assistant Moderator). Additionally, on November 29, 2021, the Attorney General's Office and Secretary of State's Office also took into custody 25 boxes and two envelopes of material from Bedford relating to the 2020 General Election and the ballots from that election

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that were discovered in the bottom of a ballot collection box during the set-up of the polling place on the morning of the September 7, 2021, Special Election.

Interviews

On December 9, 2021, this Office interviewed Deputy Town Clerk Gloria MacVane. Deputy Clerk MacVane worked to reconcile Bedford's election results, including accounting for the approximately 7,800 absentee ballots received for the 2020 General Election. While Deputy Clerk MacVane's original recollection was that she discovered a 190-ballot gap in her reconciliation tables in the week *immediately after the election* on November 3, 2020, she recalled specific work hours on the days of her work and directed this Office to her town timecards. A review of those timecards indicated that her identification of a 190-ballot gap occurred in the days *after the recount* on November 10, 2020. On Friday, November 13, 2020, she realized that an entire box top of absentee ballots may not have been counted, as each lid contained between 180 and 200 ballots. On Sunday, November 15, 2020, believing that she had identified the source of the reconciliation discrepancy, she contacted Assistant Moderator Brian Shaughnessy, asking to inspect election materials in the town vault.

While the specific ballot gap was identified by Deputy Clerk MacVane after the November 10, 2020, recount, Bedford election officials were aware that they had not reconciled their election results prior to the recount. The Moderator's Worksheet, first signed by Moderator Klein on November 6, 2020, was subsequently amended on November 9th and November 23rd. The November 9th amendment resulted in a discrepancy of 14 more ballots cast in the election than the total number of voters counted according to the ballot counting device tapes and tally of ballots not counted by a ballot counting device. The November 23rd amendment appears to have finally incorporated the Supervisors of the Checklist's tallies of voters marked off as voting on the official checklist. That resulted in a difference of 89 more voters having been checked off as voting on the checklist than the total of ballots cast. None of the Moderator's Worksheet totals—from November 6th, 9th, or 23rd—accurately reflect the fact that 190 absentee ballots were not cast and counted.

Additionally, the Moderator's Worksheet field asking for the number of voters tallied as participating at check-in was left blank in all three worksheet iterations. It does not appear that an official checklist-based count was made until November 23rd. A prompt count, either on election day or within a few days afterwards, of voters checked off as having voted on the official checklist, even if an official count was conducted later, would likely have highlighted to Bedford election officials that there was a significant block of ballots that were not counted. This should then have prompted additional reconciliation efforts before a requested recount. Bedford officials did not report to this Office or the Secretary of State's Office before the November 10, 2020, recount that town officials were unable to reconcile their vote and checklist totals.

On the morning of November 16, 2020, Deputy Clerk MacVane, Assistant Moderator Shaughnessy, and Town Clerk Kellar met at the Town Offices. They searched the town vault, found the uncounted absentee ballots in the stored election records, and immediately contacted the Secretary of State's Office by phone.

On December 14, 2021, this Office interviewed Assistant Moderator Shaughnessy. He indicated that he was not present or involved in the pre-processing of absentee ballots that took place on the Saturday before the November 3, 2020, General Election. He also stated that, on the day of the election, his primary responsibilities were as a safety officer, managing crowds of voters, swearing in election officials, checking on volunteers, and making sure that the ballot counting devices were working properly. Assistant Moderator Shaughnessy—like all other election officials from whom this Office received a statement—had no recollection of any issues with or reconciliation shortcoming related to absentee ballots on Election Day. He stated that he learned about the uncounted ballots when Deputy MacVane called him on Sunday, November 15, 2020. He participated in the search of the town vault the following morning and the call to the Secretary of State's Office. He confirmed that this happened on November 16, 2020, after reviewing his electronic calendar.

Assistant Moderator Shaughnessy was present on the day of the Special Election on September 7, 2021. He stated that Moderator Klein told him that some ballots had been found during the morning setup of the ballot counting devices and that Clerk Kellar had the ballots in her possession. He recalled no further discussion of the ballots until receiving a press inquiry in November 2021.

On December 14, 2021, this Office interviewed Moderator Klein. He was present and involved with the pre-processing of absentee ballots on the Saturday before the election on November 3, 2020. He indicated that he was also checking on the processing of absentee ballots on Election Day itself, though the work was organized and run by Clerk Kellar, Deputy Clerk MacVane, and a number of election official volunteers. Moderator Klein noted that election officials maintained a publicly-visible "white board" of election numbers—such as the total number of absentee ballots received, the number of voters registered in Bedford, and number of votes cast at the polling place by hour—but officials did not update any absentee ballot numbers over the course of the day, instead leaving only the total number received. It does not appear that the white board was used for any reconciliation purposes, but was instead supplied to provide information to voters in the name of transparency.

Moderator Klein indicated that on the night of November 3, 2020, officials did not reconcile the number of ballots cast with the number of voters checked off as voting on the official checklist. He stated that that process usually occurs in the days following the election. He completed the moderator's worksheet based on information received from the Town Clerk and Assistant Moderator Paul Brock. Moderator Klein originally signed the moderator's worksheet on November 6, 2020, and then signed it again on November 23, 2020, after it had been amended with updated numbers.

Due to illness, Moderator Klein was not present at the town offices on November 16, 2020, when officials found the 188 absentee ballots, but learned about the discovery soon thereafter. He recalled that he, Assistant Moderator Shaughnessy, Clerk Kellar, Deputy Clerk MacVane, and likely Town Manager Rick Sawyer met in late November 2020 to discuss the found absentee ballots and to begin crafting a remediation plan. Bedford officials submitted a remediation plan to this Office on June 18, 2021.

Moderator Klein stated that Assistant Moderator Brock found the 2020 General Election ballots in the collection box on the morning of the September 7, 2021, Special Election. Assistant Moderator Brock was setting up ballot counting devices and, during a routine search of the collection boxes, he discovered the ballots. He gave the ballots to Clerk Kellar and then told Moderator Klein about his discovery. Moderator Klein recalled no further discussion of the found ballots until a Bedford town council meeting in November 2021.

On December 29, 2021, this Office interviewed Assistant Moderator Brock. He indicated that he had been a volunteer Bedford assistant moderator for seven years, often set up ballot counting devices for elections, and ran tapes from the machines at the conclusion of election night. He also created an Excel spreadsheet to compile and compute vote totals on election day. Assistant Moderator Brock indicated that he and Assistant Moderator Shaughnessy publicly read off out loud the ballot counting device tapes and input the totals into the spreadsheet. Assistant Moderator Brock stated that while the spreadsheet could tabulate the vote totals, it was not designed to track the total number of voters checked off on the official checklist for the day, or the number of absentee ballots sent or received. He indicated that he does not participate in election reconciliation, which he understands takes place in the days after the election as the Supervisors of the Checklist counted the number of voters having voters from the official checklist.

Assistant Moderator Brock stated that he found the 2020 General Election ballots in the ballot collection box on the morning of the September 7, 2021, Special Election during a routine machine setup. He stated that he found approximately 15 or 20 ballots in the bottom of the main compartment of the collection box—the area where ballots are collected that have gone through the ballot counting device. As such, he believed that they had been cast and counted, but not emptied out of the machine at the end of the day on November 3, 2020. Assistant Moderator Brock indicated that he did not inspect any collection boxes at the end of the November General Election night as he was working on printing tapes and tabulating vote totals. He said that on the morning of September 7, 2021, he handed the ballots to Clerk Kellar and had heard nothing more about the ballots until they were discussed in press accounts.

On December 14, 2021, this Office interviewed Town Clerk Kellar. She stated that with Deputy Clerk MacVane she ran the pre-processing of absentee ballots on Saturday, October 31, 2020, and that she was present on Election Day checking in on the absentee ballot processing but that Deputy Clerk MacVane was managing the endeavor with a number of election volunteers. Clerk Kellar was aware that Deputy Clerk MacVane was unable to reconcile the ballot numbers following the election, and she then participated in the search of the town vault on November 16, 2020.

Clerk Kellar kept the 188 found absentee ballots secured in the town vault until October 2021. Following receipt of this Office's letter requiring that voters with uncounted absentee ballots be contacted, Clerk Kellar inventoried the names on the ballot envelopes and cross-checked those names in the State's voter database. She then sent letters to 184 of the 188 voters as four voters had died following the election. Five of the 184 letters were returned as undeliverable.

On September 7, 2021, at the polling place for the Special Election, Clerk Kellar received a stack of ballots found in a ballot collection box. She assumed that they had been cast given their location in the collection box, and believed they were from the November 2020 General Election. She notified Moderator Klein of the ballots, then put them in an envelope. Clerk Kellar stated that she did not think to contact this Office or the Secretary of State's Office because the 2020 General Election was over.

April 6, 2022, Public Session

This Office petitioned the Superior Court to open Bedford's ballots boxes associated with the 2020 General Election and inventory found ballots as well as the November 2020 General Election ballots that were discovered prior to opening of the polling place for the Special Election on September 7, 2021. Pursuant to the subsequent court order, this Office conducted a public session on April 6, 2022, at the State Archives Building jointly with the Secretary of State's Office.

Staff from this Office and the Secretary of State's Office opened every one of the nearly 8,000 absentee ballot envelopes to verify that all ballots received, except the 188 found on November 16, 2020, had been counted. Staff found two additional absentee ballots that had not been removed from the affidavit envelopes and were not counted on Election Day on November 3, 2020. The names of those two voters were recorded. Of note, these two found ballots brought the total number of uncounted absentee ballots to 190—the exact ballot gap identified by Deputy Clerk MacVane in the days preceding November 16, 2020, during her reconciliation efforts.

State staff next inventoried the 188 uncast absentee ballots to compare the names against the names on the list compiled by Bedford election officials. That process confirmed that the names on the town list matched each of the names on the 188 absentee ballot envelopes containing a ballot.

Ballots found during the September 7, 2021 Special Election

During the April 6, 2022, public session, State staff inventoried the ballots found in the collection box on the morning of the September 7, 2021 Special Election. There were 25 ballots found in the collection box, all from the November 3, 2020, General Election.

Our conclusion regarding these 2020 General Election ballots found in a ballot collection box during the September 7, 2021, Special Election is that, while these ballots appear to have been cast and counted, Bedford election officials should have immediately notified the Secretary of State's Office and/or the Attorney General's Office when they were found. Instead, this Office learned about the found ballots through press accounts months later, apparently from information leaked by a Bedford election official or person aware of the found ballots.

This is inexcusable. Bedford election officials knew our Office had an ongoing review concerning the 2020 General Election regarding the misplacement of ballots, yet did not alert us that they had found more ballots, even if they were cast and counted. Additionally, these ballots should have been collected and given to the Secretary of State's Office as part of a requested (but

not completed as the recount request was withdrawn) recount following the 2020 General Election. While ultimately the number of ballots was not outcome determinative, failure to collect and deliver those ballots is another instance of insufficient care in ballot handling by Bedford officials, and could have impacted the accuracy of the Secretary of State's recount had it been completed.

Conclusion

We confirm that Bedford election officials found 188 uncounted absentee ballots on the morning of November 16, 2020. This is made clear following reviews of participants' calendars, records of communications, and Town timecards. Two additional uncounted ballots were not discovered at that time. It is apparent that Town election officials did not know of the 190 uncounted absentee ballots prior to the recount conducted by the Secretary of State's Office on November 10, 2020. It was through subsequent reconciliation attempts that the disparity of 190 was revealed, and then investigation by Bedford election officials found 188 of the 190 uncounted absentee ballots in the town vault.

The 2020 election year presented unprecedented challenges for election officials. We understand that you and your colleagues were under immense pressure to carry out Bedford's elections in a manner that closely resembled the election experience before the public health crisis, while also balancing compliance with protective public health measures. We appreciate your service and commitment to the Bedford voters. However, 190 voters' ballots were not counted during that election.

Our October 1, 2021, letter required Bedford election officials to contact the voters whose absentee ballots were not counted and provide a remediation plan to this Office. As noted in prior correspondence, this Office received and approved the Town's remediation plan dated June 18, 2021. Through the April 2022 public session inventory process, this Office confirmed that Bedford election officials did list and contact 188 of the voters whose absentee ballots were not counted in the November 2020 General Election.

As with the original 188 voters whose ballots were not counted, Bedford election officials are required to send letters to the two additional voters whose ballots were found as part of the State investigation at the April 6, 2022, public session.

Based on our review and findings related to where the ballots were found on the morning of the September 2021 Special Election, we have no further investigation or action to take regarding those ballots as they had been counted. However, Bedford election officials are directed that whenever ballots are located after an election in a location where they are not secured correctly in ballot boxes, they must contact the Secretary of State's Office and the Attorney General's Office to alert them to the situation.

In closing, we note that failing to count the 190 absentee ballots would probably have been avoided on Election Day had Bedford election officials followed best practices and done a preliminary reconciliation by: (1) tallying the total number of voters checked off on the checklist as having voted and (2) comparing it to the total number of ballots received and cast. Such a

preliminary reconciliation can identify blocks of ballots that were not counted, or otherwise alert election officials to shortcomings in their initial vote results. While Assistant Moderator Brock's spreadsheet compiled *vote totals* from Election Day, it did not account for absentee ballots sent and received, or the total number of voters checked off on the checklist as having voted. We encourage Bedford election officials to extend their preliminary reconciliation on Election Day to cover these categories in future elections.

As a result of the concerns and shortcomings described in this and our prior correspondences, the Attorney General makes a finding that the November 2020 General Election returns from Bedford had significant deficiencies. The Secretary of State, in consultation with the Attorney General, will be appointing an election monitor for the next election, the September 13, 2022, primary election.

This Office anticipates closing this matter upon receipt of confirmation that the Town has sent correspondences to both additional voters whose uncounted ballots were discovered at the public session, and receipt of the election monitor's report subsequent to the primary election.

Sincerely,

Myles Matteson
Deputy General Counsel
Election Law Unit

cc: Dave Scanlan, Secretary of State
Brian Shaughnessy, Town Moderator

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

October 28, 2021

Michael Flores
[redacted]
Deerfield, NH 03037

Re: Facebook Post Complaints (3008000)
Warning Letter

Dear Mr. Flores:

During the September 8, 2020 State Primary, this Office received two complaints regarding a Facebook post you published that day. The post was to "The REAL Deerfield NH Community group," published at approximately 9:30AM, and stated:

> "Due to Covid-19 concerns, the primaries are being split up in this strange and unique voting year. The Republican party is holding its primary vote today, Tues Sep 8th. The Democrat primary will be held tomorrow, Sept 9th. Democrat voters are asked to stay in place until tomorrow in order to "flatten the curve.""

The complaints alleged that your post constituted voter suppression and/or voter interference contrary to RSA 659:40. After review, we conclude that the facts do not support a finding that your conduct violated this statute. However, your conduct came close to constituting a violation of RSA 659:40, which is a class B felony offense.

This Office understands that the Facebook group where your post was published is a private group. The Town of Deerfield has multiple Facebook community pages that have been created and are moderated by private citizens. The two prominent groups – the "REAL" and the "regular" – tends to have memberships based on individual users' political views. The "REAL" has a base that is more conservative/Republican, while the "regular" has a base that is more liberal/Democrat.

We understand that at one point, you were a member of the "regular" group, but were ultimately removed on or around June of 2018. This Office was also informed that the "REAL" group attempts to remove anyone who posts any content that expresses a Democratic view or who challenges a Republican view.

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RSA 659:40, III states in relevant part –

> "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. […] 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."

This Office also has not received any evidence to establish that any voters attempted to vote on September 9, 2020, based on the information in your post. We also consider it unlikely that individuals on the "REAL" Facebook group would have been influenced by your post. Therefore, we do not find that this post, under these circumstances, constituted a violation of RSA 659:40.

However, while the immediate members of the "REAL" Facebook group may not have been misled by your post, the social media platform you used has both a range and scope that could exceed this audience. Indeed, given the two complaints received by this Office, it is clear your post was seen by other Deerfield residents beyond the group's members. The words of your post, on their face, discourage a group of voters from voting on election day and you could not control how and to whom your post was disseminated.

This Office is responsible for taking appropriate enforcement action where false or misleading information is used to deceive voters. Recklessly posting on social media messages that could be seen as efforts at voter suppression will be taken very seriously by this Office and, under certain facts and circumstances, will be investigated and prosecuted.

This matter is closed.

Sincerely,

Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-3650

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DEPARTMENT OF JUSTICE

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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 4, 2021

Chief Mark Lewandoski
Belmont Police Department
PO Box 320
Belmont, NH 03220

Re: **CEASE AND DESIST ORDER** (3311650)

Dear Chief Lewandoski:

This cease and desist order is issued in response to a complaint received from Charles Gravenhorst regarding allegations that you violated RSA 659:44-a, which prohibits public employees from engaging in electioneering. This order focuses on your February 29, 2020 email to other members of the Belmont Police Department. We briefly address the other components of Mr. Gravenhorst's complaint below concluding that the below-described brochure and postcard do not constitute "electioneering," and thus do not trigger the prohibition under RSA 659:44-a.

Although we conclude that you do not constitute a "public employee" within the meaning of RSA 659:44-a, and therefore did not violate the electioneering law, your February 29, 2020 email raises significant concerns regarding the propriety of certain actions.

I. FACTUAL BACKGROUND

a. Complaint

On May 13, 2020, Mr. Gravenhorst emailed Chief Investigator Richard Tracy alleging that the Belmont Police Department and the Belmont Board of Selectmen violated RSA 659:44-a, which prohibits electioneering by public employees. He listed three facts which he believed were sufficient evidence of this violation. Mr. Gravenhorst alleged:

1. Belmont Board of Selectmen, January 9, 2020 Work Session Minutes in which the Board, with Police Chief Mark Lewandoski in attendance, explicitly stated their plan to use taxpayer funds to produce and distribute a glossy full-color "brochure," as well as a similar glossy full-color "post card" to be mailed to over 5,000 Belmont voters for the

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purpose of "marketing the proposed Police Department Building project [Warrant Article #2]." See Attachment 1 *(Selectmen's Minutes).*[1]

2. E-mail from Belmont Town Administrator Jeanne Beaudin to Police Chief Lewandoski, prior to the January 9, 2020 meeting, in which Beaudin referred to the police personnel involved as "the marketing team for the new PD." See Attachment 2 *(e-mail from Jeanne Beaudin).*[2]

3. E-mail from Police Chief Lewandoski, sent through official police channels, to officers instructing them, ostensibly during work hours, to assist in the placement of signs provided by his wife, Belmont Town General Assistance Director Donna Cilley, to promote the March 10, 2020 Article #2 Police Building project. See Attachment 3 *(e-mail from Chief Lewandoski).*[3]

b. Belmont Selectboard's January 9, 2020, Minutes

These minutes appear on Belmont's Office of the Board of Selectmen letterhead. It is signed by Selectboard Chair Mooney, Selectboard Vice-Chair Patten, and Selectman Pike. The following individuals were present at that meeting: Administrator Beaudin, Assistant Town Administrator Alicia Jipson, Lieutenant Steve Akerstrom, Sergeant Evan Boulanger, and you.

The attendees of this meeting discussed a draft brochure and postcard "for marketing the proposed Police Department Building project." They also discussed the cost: $359.99 to print 1,000 copies of the brochure, and $2,207.41 to print and mail the postcards.

Notably, the attendees discussed how the information in these publications "should be worded to highlight the project, but not ask someone to vote in a specific way." (Emphasis added.)

c. Brochure

On March 3, 2021, Investigator Tracy reached out to Mr. Gravenhorst to obtain the copy of the brochure he referenced in his May 13, 2020 email. Mr. Gravenhorst provided a copy of the brochure that day.[4]

The face of the brochure is titled "Belmont Police Station Construction Project" and it bears the Town's seal. The interior of the brochure contains two images with proposed floor plans of the new police station. Additionally, there is a list of thirteen items under the heading "Why is a New Building Necessary?" Generally, all of the thirteen items outline spatial concerns of the existing department building, which would be resolved by the new construction.

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[1] Attachment A
[2] Attachment B
[3] Attachment C
[4] Attachment D.

On the back of the brochure is a picture of the Belmont Police Department's dog with the message "Vito says, 'Please take time to vote.' Every vote counts!"

d. Postcard

The postcard in question was among those attachments forwarded to Investigator Tracy by Mr. Gravenhorst in his May 13, 2020 email.

The postcard is titled "Belmont Police Department Project." Two images appear on the face of the card: 1) a mock image of the new department; and 2) the same picture of the Department's dog, Vito, that appeared in the brochure. The postcard requests the support of voters on Tuesday, March, 10, 2020. It tells the reader what time and where the election will be held, and asks them to "[p]lease take the time to vote."

On the back of the card, in the return address block, is the mailing address for the Belmont Town Offices. Notably, the Town Offices are located at 143 Main Street in Belmont. The Police Department, on the other hand, is located at 16 Fuller Street in Belmont.

e. Email Exchange between Administrator Beaudin and Chief Lewandoski

In the email exchange that occurred on January 6, 2020, Administrator Beaudin asked for the Chief and "the marketing team" to meet at Town Hall to discuss the new police department.

f. Chief Lewandoski's Email with Supervising Officers

On February 29, 2020, you emailed your supervising officers directing them to "get all the signs stood back up and visible." The signs you referenced in this email direct the reader to "Support Our Police Vote Yes On Article #2." You further wrote that you had a drill and concrete bit to help secure the signs to the ground to ensure they remained standing.

Additionally, you directed your supervising officers to encourage their respective patrol officers to speak with everyone they know who would support Article 2, and to get those supporters to the polling place on March 10, 2020. You remarked how they need all the "Yes" votes they can muster to get over "the 3/5ths margin."

Sgt. Evan Boulanger responded that morning, and said: "I am going to get in touch with Rick today for the last 2 [signs], one at Agway one on 140?"

II. ANALYSIS

a. Brochure and Postcard

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.)

Neither the brochure nor the postcard constitute explicit advocacy. The contents of both documents do not direct the reader to vote a particular way on a specific warrant article. The appearance of a police dog in uniform, information on why the new police department is needed, and language asking for support are not the "express advocacy" contemplated under RSA 652:16-h. Rather, these elements are more likely evidence of "implicit advocacy," the regulation of which has been recognized by courts as being unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976). See also Stenson v. McLaughlin, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

Therefore, the brochure and the postcard do not constitute electioneering and thus do not trigger the prohibition under RSA 659:44-a.

b. Public Employee

RSA 659:44-a prohibits "public employees," as defined under RSA 273-A:1, IX, from engaging in electioneering. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute "public employees." Relevant here are the following two exceptions:

- Persons appointed to office by the chief executive or legislative body of the public employer; and

- Persons whose duties imply a confidential relationship to the public employer

RSA 273-A:1, IX(b) and (c).

RSA 105:1 states that a chief of police is appointed by the selectboard. The selectboard members are the executive officers in their respective town. See RSA 47:13 (Stating that "[t]he executive powers of the city and the administration of police, except where vested in the mayor, shall be exercised by the mayor and aldermen; and they shall have the powers, and do and perform all the duties, which the selectmen of towns have.") (Emphases added.)

The New Hampshire Supreme Court holds that:

> The term "chief executive" is not defined in RSA chapter 273–A and again, we look to the plain meaning of the term. In Appeal of Westwick, 130 N.H. 618, 621, 546 A.2d 1051 (1988), when deciding whether the plaintiff was the chief executive officer of an administrative agency, we noted that "chief" means "being accorded highest rank, office or rating ... or one who is put above the rest." Furthermore, we have interpreted this term to include high level positions such as city manager, university president, and mayor.

In re Town of Litchfield, 147 N.H. 415, 418 (N.H. 2002) (Internal citations omitted.) (Emphases added.)

Therefore, because you were appointed as the Police Chief of Belmont by the Selectboard, you qualify for the exception under RSA 273-A:1, IX(b).

In addition, the confidential relationship exception also applies under RSA 273-A:1, IX(c). The factor that determines whether an individual is a confidential employee is whether he/she has access to confidential information including, but not limited to:

1. Labor relations;
2. Negotiations; and/or
3. Significant personnel decisions.

In Appeal of City of Laconia, the New Hampshire Supreme Court held that City personnel director's administrative secretary was a confidential employee under RSA 273-A:1, IX. See, Appeal of Town of Moultonborough, 164 N.H. 257, 262 (2012) (""Confidential employees" are those employees who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.") (Internal quotations omitted.). The Court noted that a city's personnel director's administrative secretary was a "confidential employee" and could not be included in a bargaining unit of other city employees where the administrative secretary was privy to the personnel director's personal thoughts about the collective bargaining process. It would be unjust and unreasonable to require the city's personnel director to keep secrets from his secretary about a significant part of his work. Appeal of City of Laconia, 135 N.H. 421 (N.H. 1992).

The chief of a police department also would have access to such information given his/her administration of subordinate officers. "[E]ach chief of police […] who is appointed rather than elected, shall have authority to direct and control all employees of his or her department in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment." RSA 105:2-a. See RSA 105:4 – Employment; and RSA 105:9-a – Employing Police. Given the supervisory and administrative responsibilities of a chief of police, the chief necessarily has access to confidential information such as personnel files, employment records, salary information, negotiations with police unions, as well as significant personnel decisions. There are circumstances where such information may need to be shared with the selectboard, requiring some form of confidential relationship (*i.e.* Since the selectboard hires police officers, the police chief would require a level of confidentiality with selectboard members in order to relay personnel records, etc.).

Additionally, considering that the Court has determined that an administrative secretary qualifies under this exception, a chief of police must have the same, if not a higher level of confidential relationship with the selectboard. Therefore, you do not constitute a "public employee," within the meaning of RSA 273-A:1, IX(c), because you were appointed by the Belmont Selectboard and/or your duties as police chief imply a confidential relationship with the Selectboard.

c. February 29, 2020 Email

While you do not constitute a public employee sufficient to trigger the electioneering prohibition under RSA 659:44-a, your directives to your supervising officers in your February 29, 2020 email raise significant concerns of propriety. Particularly troubling is the use of police

resources—public resources—to advocate for Article #2. Additionally, while you may be exempt from the electioneering prohibition, that exemption likely does not apply to your subordinates.

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, law enforcement agencies have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Your email suggests that police officers, department cruisers, and duty hours were used in order to support Article #2. This conduct could be – and has been – perceived as the Belmont Police Department functioning as a political entity engaged in inappropriate electioneering.

When a police department is seen engaging in such conduct, which appears supportive of a candidate or measure, it is troubling, and draws significant questions about the agency's ability to enforce laws dispassionately. As the Chief of the Belmont Police Department, you must exercise a higher degree of care and diligence to ensure that you and your officers do not engage in conduct that gives rise to these questions of integrity.

III. CONCLUSION

Pursuant to RSA 659:44-a, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from engaging in actions that raise concerns about the propriety of those actions in your role as Chief of the Belmont Police Department**.

Your statements promoted subordinate officers to possibly engage in electioneering. Further, in certain circumstances, actions by an exempt public employee can be improper if there is an appearance of impropriety that may erode the public's trust in the impartiality of your public institution.

In addition to the cease and desist order, you shall submit to this Office a remediation plan outlining the steps you and the Belmont Police Department will take to educate current and future personnel on the prohibition of RSA 659:44-a as well as appropriate protocols to prohibit electioneering by Department employees. Your remediation plan and the social media policy shall be sent to us within 30 days of the date of this letter.

This matter will be closed contingent upon receipt, within 30 days, of an acceptable remediation plan. Please contact me if you have any questions.

Sincerely,

Anne M. Edwards
Associate Attorney General

Enclosure
cc: Charles A. Gravenhorst

Attachment 1 Attachment A

Office of Board of Selectmen

143 Main Street, P.O. Box 310, Belmont, New Hampshire 03220-0310
Telephone: (603) 267-8300 Fax: (603) 267-8327

Selectmen's Work Session Minutes

Thursday, January 9, 2020, 10:00 a.m.

Corner Meeting House

Chairman Mooney called the meeting to order at 10:00 a.m. Also present were Selectman Claude Patten, Selectman Jon Pike, Town Administrator Jeanne Beaudin, Asst. Town Administrator Alicia Jipson, Police Chief Mark Lewandoski, Lieutenant Steve Akerstrom, and Sergeant Evan Boulanger.

Those present discussed the draft brochure and post card for marketing the proposed Police Department Building project. TA Beaudin noted that the cost to print the brochures through Staples is about $359.99 for 1,000 copies; to print and mail the post cards to those on the Voter's Checklist, the cost will be about $2,207.41. TA Beaudin reminded those present that any print information or information prepared by the Town should be worded to highlight the project but not to ask someone to vote in a specific way. Private citizens can certainly promote a positive vote or negative depending upon their choice. Several locations were discussed for placement of the posters as well as locations with changeable message boards. TA Beaudin will reach out to LRPA to see if the video of the PD can be edited with a voice over or would they be willing to create an infomercial for us.

Chairman Mooney asked that the Town's changeable message sign be updated weekly on Monday mornings now through Town Meeting with one-line reminders about meetings projects, etc. Also discussed were letters to the local newspapers and who might be willing to do one.

The meeting adjourned at 11:15 a.m.

Ruth P. Mooney, Chairman

Claude B. Patten, Jr., Vice Chairman

Jon Pike, Selectman

Attachment 2

Attachment B

Jeanne Beaudin

From: Jeanne Beaudin
Sent: Monday, January 6, 2020 1:09 PM
To: Chief Mark Lewandoski
Subject: RE: Meeting

perfect

From: Chief Mark Lewandoski <policechief@belmontnh.org>
Sent: Monday, January 6, 2020 1:08 PM
To: Jeanne Beaudin <townadministrator@belmontnh.org>
Subject: RE: Meeting

We can shoot for 10?

From: Jeanne Beaudin
Sent: Monday, January 6, 2020 12:37 PM
To: Chief Mark Lewandoski
Subject: Meeting

Chief – can you and the marketing team for the new PD meet on Thursday at Town Hall? – What time if you are good with it?

K. Jeanne Beaudin, ICMA-CM *Candidate*
Town Administrator
Town of Belmont
143 Main Street
Belmont, NH 03220
603-267-8300 Ext. 124

Attachment 3

Attachment C

Jeanne Beaudin

From: Chief Mark Lewandoski
Sent: Thursday, April 30, 2020 12:49 PM
To: Jeanne Beaudin
Subject: FW: Signs

This is it. We did not do much.

From: Sgt Evan Boulanger
Sent: Saturday, February 29, 2020 8:07 AM
To: Chief Mark Lewandoski
Subject: RE: Signs

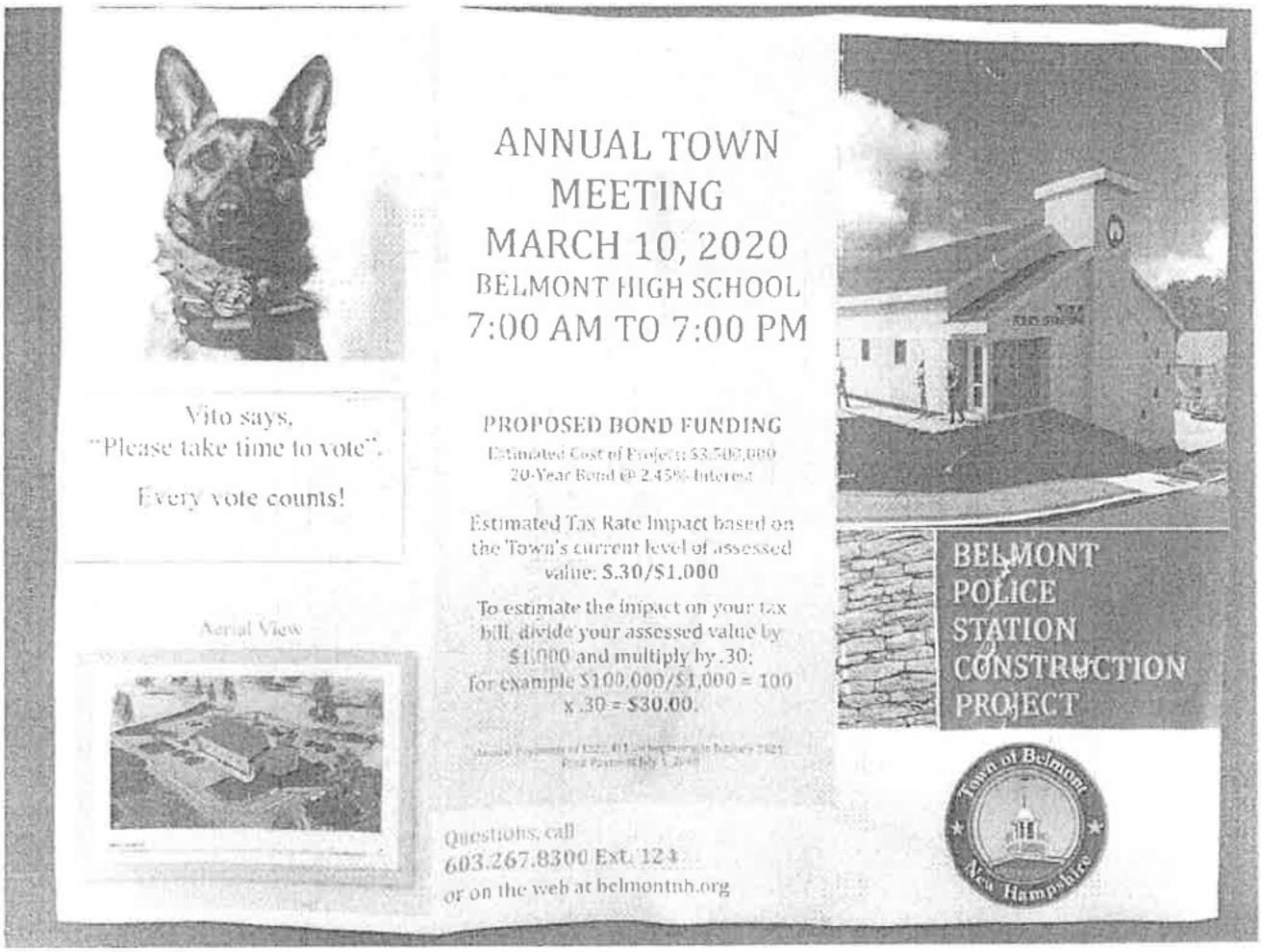
I am going to get in touch with Rick today for the last 2, one at Agway one on 140? Mrs. Mooney said you knew someone on 140 before the elementary school where we could put it?

Sgt. Evan R. Boulanger
Belmont Police Department
16 Fuller Street- PO Box 320
Belmont, NH 03220
Phone 603-267-8351
Fax 603-267-8359

From: Chief Mark Lewandoski <policechief@belmontnh.org>
Sent: Saturday, February 29, 2020 7:59 AM
To: CPL Matthew Terry <mterry@belmontnh.org>; Sgt Evan Boulanger <eboulanger@belmontnh.org>; Lt Stephen Akerstrom <sakerstrom@belmontnh.org>
Cc: Capt Rich Mann <policecapt@belmontnh.org>
Subject: Signs

Hey guys the big push is on right now. We need to get all the signs stood back up and visible. If they will not go in the ground because the snow is gone we can move them to another snow bank or we can drill two holes to put them in. I have a drill and concrete bit in me cruiser. Just text or call me and I will tell you where it is. A week from Tuesday and it goes one way or the other. Also, you have to encourage the gang to talk with everyone they know that will support this and get them to the poles on the 10th. We need all the yes votes we can muster to get over the 3/5ths margin. Thanks

Attachment D



Why is a New Building Necessary?

1. New building adequately provides room for officers to work productively
2. Many safety concerns are addressed (booking, access panel)
3. Sight and Sound separation addressed for juveniles in accordance with State law
4. Temp. holding room (Male, Female, and juvenile) multiple arrests
5. Evidence storage increases along with long term storage
6. Armory relocated from current location in the Booking room (safety concerns) Allows for firearms cleaning with ventilation
7. Locker rooms are large enough for multiple officers to change at one time
8. Addition of a conference room that we do not have
9. Lobby suitable for visitors with adjoining interview room for visitors No access to building
10. Proper ventilation and heating / cooling
11. Sufficient garage space for booking, vehicle examination and vehicle seizures
12. Booking room of sufficient size accessible through enclosed garage with no access to interior of building
13. Dispatch can accommodate two in case of emergency, ergonomically designed, equipped with restroom facility while still maintaining access to radio and phones

Looking for a Place to Call Home

Based on our analysis of the information provided from various prior reports, interviews, community feedback and meeting the BESC recommends the following strategy to meet the needs of the Town well into the future.

Level 2

Level 1

Construction of a New Police Department
>>> First Priority

Use the Corner Meeting House site for a new Police Station. This approach allows the police to remain in place until completion of a new building on this site that allows space for future expansion.

Total projected cost is estimated at $3.5 million including razing the existing Police Station when project is completed.

Belmont Police Department

16 Fuller Street - P.O. Box 320
Belmont, NH 03220-0320

Mark B. Lewandoski
Chief of Police

Capt. Stephen M. Akerstrom
Executive Officer

Police Services: (603) 267-8350
Administration: (603) 267-8351
Fax: (603) 267-8359

November 18, 2021

Attorney General
Department of Justice
33 Capitol Street
Concord, NH 03301-6397

Attention: Anne M. Edwards
Associate Attorney General

Dear Associate Attorney General Edwards:

The Belmont Police Department has conducted remedial training with its members of the Department relative to the prohibitions of RSA 659:44-a and the specific reference to the RSA has been added to the Town's Personnel Policy by the Board of Selectmen so that it will be clearly stated for all Town Personnel. We trust that our assurance that the training has occurred and the amended Personnel Policy language will be acceptable to your office. The amendment will be on the Selectmen's Meeting agenda for Monday, December 6, 2021.

Should you have any questions, please do not hesitate to contact my office or the office of the Town Administrator, Jeanne Beaudin.

Sincerely,

Mark B. Lewandoski
Chief of Police

including termination.

POLITICAL ACTIVITY

Nothing in these rules is to be construed to prevent any employee from seeking out or continuing to be a member of a political organization or from attendance at a political meeting, or interference in voting. Participation in political activities while working is prohibited. All actions, which would even give the impression that a member is using his/her official position to influence the electoral process, are to be avoided. Specific reference is given below:

659:44-a Electioneering by Public Employees. –
I. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties.
II. No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.
III. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office.
IV. Any person who violates this section shall be guilty of a misdemeanor.

OUTSIDE EMPLOYMENT

The Town expects that your position here is your primary employment. Any outside activity must not interfere with your ability to properly perform your job duties.

Any employee contemplating outside employment shall discuss this with **their Department Head** prior to the commencement of the employment, whether it be self-employment, employment with a private employer or with another public employer.

An employee on an approved leave of absence, other than annual or military leave, who works for another employer during that leave, will be considered to have voluntarily resigned from Town employment.

STANDARDS OF CONDUCT

Any group of people who have come together for a common purpose must have rules that promote consistency, harmony, and support the objectives and missions of the Town.

There are certain standards of behavior that all employees are expected to follow. We believe that the following rules, which are not set out in any particular order, are necessary and reasonable for the proper conduct of the Town's business.

We all know that no list of rules can be all inclusive. The following areas, however, are expressly described to guide you in the recognition of certain behaviors which are clearly prohibited and which can result in disciplinary action, up to an including discharge.

1. Absence and Lateness

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

December 21, 2021

Chief Mark Lewandoski
Belmont Police Department
PO Box 320
Belmont, NH 03220

Re: **REMEDIATION PLAN**

Dear Chief Lewandoski:

This Office is in receipt of the Belmont Police Department's remediation plan dated November 18, 2021, relative to this matter.

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

Sincerely,

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

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 4, 2021

Chief Paul Poirier
Barnstead Police Department
24 Shackford Corner Road
Barnstead, NH 03225

Re: Barnstead Police Department, Alleged Illegal Campaign Activity (3203310)

Dear Chief Poirier:

On July 31, 2020, this Office received a report alleging that the Barnstead Police Department (the "Department") was engaging in impermissible electioneering using the police department building. On August 4, 2020, this Office was notified that the Barnstead Police Department's Facebook page had published a post, which the complainant described as a depiction of a "Women for Trump" rally. The complainant stated that the Women for Trump representatives toured the Police Department, but the Department's lobby otherwise remained closed to the public. Two Select Board members were reportedly in attendance at this rally. This complainant also alleged that the Department's Facebook page published photos of individuals holding Republican campaign signs, in addition to signs supporting Donald Trump. The complainant did not indicate whether the depicted individuals were Department personnel. This investigation followed.

I. FACTUAL BACKGROUND

On May 26, 2021, you spoke with Investigator John Lannon. You stated that the Women for Trump (or "the organization") representatives visited the Police Department on July 23, 2020. In the weeks leading up to the July 23 visit, you described how you had been corresponding through email with several mid-level type staffers associated with the organization.

When asked about why the organization staffers reached out to you and the Department, you shared that, in your private capacity while off-duty, you had requested to be part of the organization's contact mailing list in an attempt to obtain tickets for the Trump rally scheduled to take place in Portsmouth in June, 2020. You explained that when you submitted your request for the tickets, you provided your contact information. On June 9, 2021, when Investigator Lannon reached out to you for clarification about this, you stated that, in the spring of 2020, once you

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became aware of the Portsmouth Trump rally, you emailed the campaign inviting President Trump to the Department to swear-in three new officers. You had learned President Trump had done this in the past, and thought you would take an opportunity to invite him to the Department while he was in the area. In the email, you indicated that you identified yourself as the Chief of the Department. You stated that you received a reply from the campaign declining the invitation because President Trump's schedule could not accommodate the visit. However, as a consolation, you told Investigator Lannon that the campaign offered you ten tickets for the Portsmouth rally, which you accepted.

While the Trump rally was ultimately canceled, you stated that Women for Trump later reached out to you asking for permission to coordinate their trip to New Hampshire with a visit to the Barnstead Police Department. You explained that the organization staff wanted to show you and the Department's officers their appreciation and support for law enforcement.

Additionally, you stated that the staffers were aware that the Department employed two female police officers, and, as part of their visit, they wanted an opportunity to express their appreciation for women in law enforcement by individually recognizing both of these officers.

You told Investigator Lannon that you were immediately receptive to the organization's requests, once it was explained that their purpose would be to highlight the organization's appreciation for law enforcement. You stated that you did not interpret their request as a campaign event, but as a gesture of thanks for the Department's police officers, and you believed such an event would be a morale boost for them. You added that part of your duties as Chief of Police is building community relations, and you believed that you had an obligation to welcome groups of people who express an interest in visiting and touring the Police Department.

You granted the organization staffers' requests to visit the Department and recognize the two female officers. An additional request was made by the organization for the "BIO" information of the two female officers. You identified the officers as Officer Valentina Gigli and Officer Samantha Savini. You told Investigator Lannon that you sent the organization background information on both Officer Gigli and Officer Savini.

As part of the event's security measures, you described how the U.S. Secret Service conducted a routine "forward inspection" of the Police Department prior to the organization's visit. You told Investigator Lannon that you notified the Barnstead Select Board that the organization would be conducting a bus tour visit.

When the event date was finalized, you indicated that you did not publicize it because you were being cautious in an effort to limit the possibility of protestors, rioters, or other potential security issues. You decided to close the event to the public.

Prior to the event, you said that you emailed the Department's officers to be prepared and to "look sharp," by ensuring their uniforms and appearance were in order. You admitted that you made a decision to move some of the officers' work schedules to limit a large overtime cost. You reported that by doing so, the total cost of overtime incurred for the event was approximately $153.00.

On the day of the event, you stated that the organization arrived in a bus with large lettering on both sides displaying the message "Women for Trump 2020." The organization toured the Police Department, thanked the officers for their service, and gave a special recognition to Officer Gigli and Officer Savini. You said that some of the organization's members had spoken from behind the Department's podium during the event. These members expressed gratitude toward the officers present as well as thanking the law enforcement profession nationwide for its service and dedication. You described how some of the speakers spoke of the topic of defunding the police, and the negative consequences that would result if these policies occurred. Finally, you indicated that some of the speakers spoke of President Trump's "Operation Legend" initiative, which was aimed at reducing violent crime in the country. You stated that during the event, neither you nor the Department's officers engaged in any political or partisan activity.

You indicated that at some point during the event, you and the organization had stepped outside to take a group photo. Upon exiting, you stated you observed an individual place a campaign sign into the grounds of the Police Department. You stated that you approached and instructed this individual to remove the sign, and you explained that political campaign signs were not allowed on town property. The sign was in support of a candidate running for a New Hampshire state office. You stated that this individual complied.

With respect to the Department's Facebook page, you admitted that you are its administrator and were responsible for posting the photos from the organization's visit. In reviewing the Department's Facebook page, this Office did not observe any posts by the Department, as described by the complainant, containing images of the event. However, on July 23, 2020, the Women for Trump Facebook group posted a message to the Department's page, with the following message: "Thank you Barnstead Police Department for standing UP for Law & Order! #KAG #MAGA." The organization's post also included two photos: one taken from inside the Police Department, depicting you and members of the organization, including Lara Trump; and a second photo taken outside the Department's front entrance, where you and members of the organization are depicted standing behind a podium. These photos do not depict any electioneering materials or political advertisements.

On June 1, 2021, Investigator Lannon spoke with Officer Gigli. She stated that three or four days prior to the event, you had approached her and Officer Savini to notify them that the organization was planning a bus tour visit to the Department as part of a law enforcement appreciation effort. She stated that you wanted both her and Officer Savini present during the event because the organization wanted to individually recognize them both for being women in law enforcement. She also confirmed that you sent an email to all officers prior to the event, requiring them to be present on July 23. Officer Gigli stated that your email informed the Department that overtime would be paid to officers not on regular work time hours.

Officer Gigli told Investigator Lannon that the event started around 11:00 a.m. and lasted two to three hours. One officer was tasked with directing traffic during the event. She also confirmed that one of the speakers did, in fact, recognize her and Officer Savini. During each

speech, Officer Gigli reported the focus was on law enforcement appreciation and recognizing women in law enforcement.

On June 2, 2021, Barnstead Selectwoman Diane Beijer contacted Investigator Lannon, after she became aware that this Office was investigating allegations that the Department engaged in impermissible electioneering. Selectwoman Beijer stated, on or around the time of the event, she was the Vice Chair of the Barnstead Select Board. She stated she was present at the Police Department on the day of the event.

During the event, Selectwoman Beijer reported that, when the organization's bus arrived, it parked at the end of the Police Department's driveway. She believes the organization arrived at the Department between 1:15 p.m. and 1:30 p.m. She greeted the organization's members as they exited the bus. She said that another Select Board member, Ed Tasker, was also present at the event. Selectwoman Beijer said that the visit by the organization was not planned as a political event. She added the goal of the visit by the organization was to honor law enforcement in general as well as to honor women in law enforcement by recognizing Barnstead's two female police officers.

Selectwoman Beijer reported that the organization's members toured the Police Department and highlighted the Trump Administration's support for law enforcement. She stressed that there was no campaigning or electioneering during the event. Selectwoman Beijer stated you spoke briefly during the event and never once said who people should vote for nor did you endorse a candidate. She estimated, based on a time stamped photo of hers, that the organization left the Department just after 2:08 p.m.

On June 10, 2021, Investigator Lannon again spoke with Selectwoman Beijer, who clarified that once the members of the organization were dropped off at the Department, the bus was directed to leave the parking lot and park out of view of the Police Department on Shackford Corner Road. Selectwoman Beijer also stated that the organization did bring "Women for Trump 2020" and "Trump/Pence 2020" signs, which they placed on a table for anyone who wanted them. She said that the organization was not handing out these signs. She said that none of the members of the Department took or held these signs. She observed some private citizens, who showed up at the event, take and hold onto these signs.

On June 11, 2021, this Office again spoke with Selectwoman Beijer. She shared that she did not become aware of the event until the night before it occurred. She estimated that there were no more than thirty people at the event, ten of whom were private citizens. She added that of these ten citizens, she believed she invited seven of them. Selectwoman Beijer assumed the other citizens were family members of Officer Gigli and Officer Savini. She also remembers New Hampshire Department of Public Safety Deputy Commissioner Eddie Edwards, former Merrimack Police Chief Mike Mulligan, and the owner of the White Buffalo restaurant being present. There were one or two town employees who were no longer on duty, who also attended. Otherwise, Selectwoman Beijer confirmed that this event was not open to the public.

With respect to the signs brought by the organization, Selectwoman Beijer recalled that one of the signs displayed the message "Defend Police 2020." She stated shortly after the arrival

of the bus, some of the organization's "advance staff workers," took the box containing the signs and left the Department, what she assumed was the next stop on their bus tour. Ms. Beijer said she saw no one "sign holding" during any of the speeches. She stated some of the private citizens held up the signs during photo opportunities and some private citizens asked members of the organization to autograph their signs. Ms. Beijer emphasized that the majority of the signs displayed messages in support of law enforcement.

II. APPLICABLE LAW

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." The statute also defines electioneering as "to act in any way specifically designed to influence the vote of a voter on any question or office." A public employee is defined as "any person employed by a public employer" with some limited exceptions. RSA 273-A:1, IX. Those exceptions are:

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

III. ANALYSIS

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, to construe 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 written with broad language, interpreting it in a way that conflicts 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

[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.").

they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general." EnergyNorth Nat. Gas, Inc. v. City of Concord, 164 N.H. 14, 16 (2012).

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

In this case, we conclude that this event was not a rally as alleged by the complainant, but rather a gesture of law enforcement appreciation by the organization. There is no evidence to suggest that, during the event, you or the Department's officers engaged in explicit advocacy as contemplated by RSA 652:16-h. You, Officer Gigli, and Selectwoman Beijer all confirmed that the speakers focused on thanking the Department's officers for their service and specifically recognizing Officers Gigli and Savini. Additionally, as both you and the complainant described, the event was closed to the public, with Select Board members such as Selectwoman Beijer not becoming aware of it until the night before. This information further confirms that the objective of the event was law enforcement appreciation and establishes that neither you nor the Department engaged in electioneering.

However, while the event does not qualify as "explicit advocacy" and therefore does not trigger the prohibitions under RSA 659:44-a, there are several aspects of this event that raise concerns. These include that:

- The attendance of the Department's officers was mandatory;
- As a result of this mandatory attendance, the Department had to pay overtime to officers not regularly scheduled to work; and
- The organization made electioneering signs available to attendees.

The fact that Department resources were reallocated in preparation for a visit by a group with clear motivations to promote the success of the Trump campaign gives the appearance of impropriety and partisanship.

Similarly, in any other context, if a sign bearing the message "Women for Trump 2020" or "Trump/Pence 2020," which appeared on the signs provided by the organization, had been posted on town property, it 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 Department personnel took or otherwise displayed these signs, several private citizens were reportedly observed with these signs during the event on Department property. To an uninformed observer, what happened at the event could give the appearance that the Department was engaging in electioneering by hosting a rally in support of a presidential candidate.

The Barnstead Police Department is a law enforcement agency, responsible for protecting and serving the Barnstead community without bias or partisan leanings. When a police department actively seeks the endorsement of a presidential campaign, as in this case, it is troubling because it creates questions about the agency's ability to enforce laws dispassionately.

The Department must exercise a higher degree of care and diligence to ensure its conduct does not give rise to these questions of propriety.

This matter is closed.

Sincerely,

Anne M. Edwards
Associate Attorney General

cc: Claire Jendrin
Barnstead Select Board

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 8, 2021

Christine Callaghan
Supervisor of the Checklist
City of Laconia, Ward 5
169 Winter Street
Laconia, NH 03246

Re: City of Laconia, Voter Checklist Clerical Error (3279431)

Dear Supervisor Callaghan:

On November 10, 2020, you spoke with Election Law Unit Paralegal Jill Tekin about voter [redacted] who appeared to have voted in both Gilford and Laconia in the November 3, 2020, general election. You stated that you were not able to enter [redacted] information into ElectioNet because it had already been entered by the Town of Gilford. You contacted the Help America Vote Act Help Desk, where you spoke with an individual who informed you that it is possible that [redacted] voted in both Laconia and Gilford on November 3, 2020.

Our investigation into this allegation led to the discovery that [redacted] had been mistakenly checked-off as having voted in Laconia when it was instead a family member, his father [redacted], that voted. We determined that [redacted] did not double vote during the November 3, 2020, general election.

As part of our investigation, Investigator Richard Tracy noted that the name [redacted] of [redacted] was not checked-off as voting on the Laconia checklist. [redacted] and [redacted], both with an address of [redacted] were checked off as voting. Investigator Tracy conducted research in ElectioNet where he discovered that [redacted] and [redacted] both of [redacted], are regular voters in Laconia.

On August 11, 2021, Investigator Tracy contacted [redacted]. He informed [redacted] that his name was crossed off as voting in Laconia. [redacted] emphatically denied voting in Laconia. He stated that [redacted] is his father. [redacted] stated that his father would have voted in the November 3, 2020, election. Investigator Tracy explained to [redacted] that his father's name was not crossed off on the checklist and that it was possible the ballot clerk made a mistake and crossed [redacted]'s name off when they should have crossed off [redacted]

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Also on August 11, 2021, Investigator Tracy spoke with [redacted] who stated that he voted in the November 3, 2020, election and that he has been voting regularly in Laconia for 20 years. [redacted] stated that he recalled seeing his last name being checked-off by the ballot clerk on the day of the election, but did not pay attention to what first name was crossed off. [redacted] mentioned that his name was on the first page of the checklist.

It likely appears that the Ward 5 ballot clerk mistakenly checked off [redacted] on the day of the November 3, 2020, election when the clerk should have checked off [redacted] instead.

We appreciate what all election officials do for the voters in their respective communities, the amount of time they put in, and the stress they deal with especially on election day. We ask that you share the information from this investigation with the Ward 5 moderator and to use it as an opportunity for the moderator to ask the ballot clerks to be more careful.

This matter is closed. Please do not hesitate to contact us should you have any question or concerns. Thank you for all that you and your team of election officials do for the citizens of Laconia.

Sincerely,

Myles Matteson
Assistant Attorney General
Election Law Unit
(603) 271-0445
myles.b.matteson@doj.nh.gov

cc: City of Laconia Clerk
Gilford Town Clerk
[redacted]

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 8, 2021

Cheryl Critchet
[redacted]
Northwood, NH

Re: [redacted] Alleged Wrongful Voting (3277613)

Dear Ms. Critchet:

During the November 3, 2020, general election, you contacted this Office to report that a [redacted] was registered to vote at your current domicile, but did not live at that address. After investigation and careful consideration, we conclude that [redacted] has not violated New Hampshire's election laws. In short, [redacted] registered to vote in Northwood when he lived at [redacted]—your current address—but then moved to a different address in town and neglected to update his address after moving.

In reaching this determination, we reviewed Northwood assessments and property information, searched law enforcement databases, reviewed the State's centralized voter database, and also spoke with Northwood Town Clerk Marissa Russo.

According to the records we reviewed, [redacted] lived at [redacted] in 2009 and 2010. Election records show that [redacted] first registered to vote, and voted, using the [redacted] address in Northwood on November 2, 2010. Our investigation indicates that [redacted] moved in August, 2011, to his new address at [redacted] also in Northwood. Property records indicate that he purchased the home located at this new address in Northwood in 2016.

This Office spoke with Clerk Russo, who confirmed that during the November 3, 2020, general election, [redacted] updated his voter registration to reflect his new domicile address at [redacted] in Northwood.

RSA 654:1, I[1] states in relevant part –

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

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> 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.

Based on our investigation, this matter appears to be an issue of a voter failing to update his domicile address in the same town, and is not a matter of wrongful voting. Therefore, we conclude [redacted] has remained domiciled in Northwood, New Hampshire, since 2009 and has properly voted during that time as a Northwood resident.

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

Sincerely,

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

cc: Marissa Russo, Northwood Town Clerk

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 12, 2021

Mark Greenstein
[redacted]
Manchester, NH 03103

Re: **CEASE AND DESIST ORDER**
Warning for Violation of RSA 659:34-a

Dear Mr. Greenstein:

Factual Background

On February 11, 2020, this Office was notified by the Secretary of State's Office of a potential matter that required additional review following the February 11, 2020, Presidential Primary. Specifically, on your declaration of candidacy, received by the Secretary of State on October 30, 2019, you listed that you were domiciled not in New Hampshire, but at [redacted] in West Hartford, Connecticut.

On March 31, 2020, the Secretary of State's Office reported that the City of Manchester had not yet completed its data entry of its 2020 Presidential Primary voter checklist into the State's centralized voter database. After the City had updated the voter database, on April 8, 2020, Chief Investigator Richard Tracy contacted Deputy City Clerk JoAnn Ferruolo to request a copy of Manchester's 2020 Presidential Primary voter checklist. Deputy City Clerk Ferruolo provided a copy of the checklist, which confirmed that you voted in-person during the 2020 Presidential Primary.

According to your voter records, you registered to vote in Manchester on December 15, 2015. You represented that your domicile for voting purposes was 600 Beach Street in Manchester, New Hampshire. The only other election you had voted in in New Hampshire was the February 11, 2016, Presidential Primary.

On April 14, 2020, Investigator Tracy used Connecticut's public portal for voter information, and discovered that you were also a registered vote in West Hartford, Connecticut. This was also confirmed by the State of Connecticut's Elections Enforcement Commission. A record of your voting history from Connecticut shows that between the February 2016 and February 2020 Presidential Primary elections, you voted nine times in West Hartford,

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Connecticut, including Connecticut's 2016 Presidential Primary election in April 2016. However, the records did not show that you voted in the Hartford, Connecticut in 2020.

On December 7, 2020, Investigator Tracy spoke with [redacted], the owner of [redacted] in Manchester. [redacted] indicated that she had known you since approximately 1999, when you first rented a room from her. She explained that since 1999, you have visited New Hampshire and rented a room from her every four years, usually at the time of a Presidential Primary election. [redacted] estimated that you typically stay three to six months during each of these visits, before returning to Connecticut after the Presidential Primary. While [redacted] did not have a signed lease with you from your 2020 visit, she indicated that she had executed leases from your past visits.

[redacted] stated that during your visits to New Hampshire, you would stay at either [redacted] or [redacted] in Manchester both owned by [redacted] – depending on which building was available.

In searching for your driver's license, Investigator Tracy learned that you had a valid Connecticut driver's license issued on March 10, 2016. The license information indicated that you had a mailing address in Newington, Connecticut and a physical address in Farmington, Connecticut.

On December 8, 2020, you spoke with Investigator Tracy. You told Investigator Tracy that since 1999, you have stayed in New Hampshire three times: 1999/2000, 2015/2016, and 2019/2020. During each of these three periods, you were a candidate for the Office of President.

You admitted to voting in New Hampshire during both the 2016 and 2020 Presidential Primary elections. You denied voting in the 2020 Presidential Primary in Connecticut, but admitted to voting in Hartford, Connecticut during the 2020 General Election.

You described that during the 2016 Presidential Primary, you had also visited Colorado in March to prepare for "Super Tuesday," after which you travelled to Utah to campaign during its Presidential Primary. You claimed not to have established domicile in either Colorado or Utah during your visits.

You explained to Investigator Tracy that following unsatisfactory election results in Utah, you ceased your campaign for President and moved back to Connecticut. You admitted to voting in Connecticut's 2016 Presidential Primary on April 26, 2016.

With respect to your ties to Connecticut, you said you own a business in that state – "Ivy Bound Test prep and Academic Tutoring" – in Newington. You shared that you own four homes in Connecticut. You referenced that in the future, you have narrowed the areas you wish to retire to Tennessee, Utah, and New Hampshire.

When Investigator Tracy asked you about voting in two different states during the 2016 Presidential Primary, you answered that you did not see it as a problem because it was not the same election. You argued that you were in fact properly domiciled in New Hampshire during

the 2016 Presidential Primary since you had leased and rented a room at the address you provided on your voter registration paperwork.

Applicable Law

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]

RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.[2] See New Hampshire Election Procedure Manual: 2020-2021, Pg. 170.

The supervisors must consider the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. There are many types of documents that satisfy this requirement. Among those documents, election officials have recognized that a rental agreement, lease, or similar document that shows the applicant's name and the address of the applicant's domicile is satisfactory proof of domicile.[3]

Analysis

In this case, [redacted] confirmed that, at the time you registered to vote in New Hampshire in 2015, you had executed a lease agreement with her for [redacted]n Manchester, New Hampshire.

As stated above, election officials have routinely recognized a rental or lease agreement to be satisfactory proof of domicile. There is no durational requirement under New Hampshire election law for how long an individual must stay before registering to vote, nor a requirement that an individual must remain in New Hampshire for a certain period of time following registration. Regardless, here, you established your domicile in New Hampshire at least by December 15, 2015, and did not leave the State until on or around March 1, 2016 ("Super

---

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

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

[3] Notably, before it was struck down by the Court, the Legislature, through SB3, similarly recognized evidence of renting or leasing an abode for a period of more than 30 days to be satisfactory proof of domicile.

Tuesday"). Moreover, you explained that you did not establish domicile in another state – Connecticut – until after March 22, 2016, the date of Utah's Presidential Primary election.

Based on the forgoing, we conclude that at the time of your registration in 2015, you were in fact domiciled for voting purposes in Manchester, New Hampshire. We further conclude that you properly voted in New Hampshire during the 2016 Presidential Primary election.

With respect to voting in the Presidential Primary elections of both New Hampshire and Connecticut, there is a significant question as to the applicability of RSA 659:34-a.

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

RSA 659:34-a, I. (emphases added).[4]

Notably, RSA 652:6 defines a Presidential Primary election as "an election to choose delegates to a national party convention." RSA 652:1 goes onto distinguish between the choosing of a "public officer" and choosing of a "delegate to a party convention." As a result, while you may have voted in both states during the same election year, the statute does not appear to apply to Presidential Primary elections, where the voters are nominating a party representative, and not voting upon a federal or statewide "office."

Nonetheless, there are significant facts uncovered by this investigation which are concerning in light of New Hampshire's laws regarding domicile. These facts bring into question the legitimacy of your claim that Manchester is "that one place where [you], more than any other place, [have] 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.

In the last twenty-one years, you admitted to staying in New Hampshire only three times and only for the purpose of campaigning for your election. Each time you only stay for three to six months. Furthermore, unlike lawfully domiciled voters of New Hampshire who may travel to and from an out-of-state property during certain periods of the year, at least three to five years passed between any one of your three visits before you returned to New Hampshire.

[4] RSA 659:34 that prohibits wrongful voting of an unqualified voter also uses the term "office."

While it is true that "a domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence," in your case, the timing issues outlined above combined with evidence of your ties to Connecticut establish more than merely a "temporary absence." See RSA 654:2. Your Connecticut driver's license was issued on March 10, 2016, less than three months after you registered to vote in New Hampshire, which you claimed was your domicile, and prior to your claimed return to Connecticut following your loss in Utah. Your business is established in and based out of Newington, Connecticut. All of the properties you claim to own are in Connecticut. Even in your own declaration of candidacy, filed as recently as October of 2019, you declare [redacted] in West Hartford, Connecticut, not Manchester, as your domicile.

This pattern of infrequent visits to this State combined with significant evidence of your ties to Connecticut lead us to conclude that you are not now domiciled in New Hampshire, but in Connecticut. At the same time, this Office is accepting your claim of domicile for the purposes of the 2020 New Hampshire Presidential Primary.

Based upon the investigation conducted by our Office, **you are hereby ordered to cease and desist from voting in New Hampshire unless and until you establish domicile in this State within the meaning of RSA 654:1, I.** A copy of this cease and desist order will be sent to Manchester officials, directing them, based on our determination, to remove you from the City's voter checklist. Failure to comply with this order could result in further enforcement action.

Cease and Desist Order Issued

By Authority of:

John M. Formella
Attorney General

Myles Matteson
Deputy General Counsel
Attorney General's Office
(603) 271-3650

cc: Matthew Normand, Manchester City Clerk
Orville Fitch, Assistant Secretary of State
Patricia Piecuch, Direction of Elections Division
Kevin Ahern, Esquire, State of Connecticut Law Enforcement Unit

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 19, 2021

Neil Wetherbee
[redacted]
Derry, NH 03038

Re: Neil Wetherbee and Derry Conservative Taxpayers, Alleged Campaign Finance Violation

Dear Mr. Wetherbee:

On October 7, 2021, this Office received a complaint from Peter Torosian regarding an alleged campaign finance violation in the form of coordinated activity between your campaign and the Derry Conservative Taxpayers (DCT), an independent expenditures-registered political committee. After careful consideration, we find that no campaign finance violation has occurred. At the same time, we write to clarify that future activity by the DCT as currently structured in support of your candidacy could constitute a violation given the proximity of interest amongst the individuals involved in the group and your campaign.

RSA 664:2 defines independent expenditures as:

> [E]xpenditures that pay for the development and distribution of a communication that expressly advocates the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures, which are made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which are not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

RSA 664:2, XI. Groups making independent expenditures in New Hampshire are obligated to register with the Secretary of State.

As you know, as a candidate for a seat in the New Hampshire General Court you are bound by certain campaign finance obligations. For example, RSA 664:5-a Limitations on Political Expenditures, references a candidate filing an affidavit stating that the candidate "does not condone and shall not solicit any independent expenditures made on behalf of his candidacy." In keeping with RSA 664:2, XI, an expenditure is not independent if it is made in coordination with a candidate.

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The fiscal agent of your campaign is married to the fiscal agent of the DCT. The DCT fiscal agent has also made an in-kind contribution to your campaign and made social media posts indicating that he was distributing and also put up political advertising in support of your campaign. At the same time, even though the DCT registered as an independent expenditure political committee in support of your candidacy, it has conducted no activities, including opening a bank account or collecting contributions.

While a complete analysis of potential coordination is premature given the DCT's lack of activity—meaning there has been no possibility of coordinated activity—we do want to stress that the fact that your campaign's fiscal agent is married to the DCT fiscal agent (who has been active in support of your campaign) creates an appearance of shared interest or coordination. Were the DCT to engage in any activity related to your candidacy, this Office would conduct an assessment to determine if that activity constitutes a campaign finance violation. Such an assessment would likely focus on interaction between DCT agents and your campaign, whether there had been material involvement in crafting communications, substantial discussion relating to communications, employment of a common vendor in the production or distribution of a communication, and the degree to which DCT personnel were connected or associated with your campaign.

This matter is closed. Please contact us should you have any question or concerns.

Sincerely,

Myles B. Matteson
Deputy General Counsel
Election Law Unit
(603) 271-1119
myles.b.matteson@doj.nh.gov

CC: James Morgan
Peter Torosian

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

November 19, 2021

Mark Brighton
[redacted]
Portsmouth, NH 03081

RE: Alleged Illegal Campaign Activity in violation of RSAs 664:14 & 664:17

Dear Mr. Brighton,

On September 27, 2021, this Office received a complaint regarding political advertisements posted on numerous utility poles in Portsmouth with your name and that of an organization, the "Association of Portsmouth Taxpayers." The complaint alleged that the advertisements failed to contain the identification information required under RSA 664:14, as well as being posted on utility poles in violation of RSA 664:17.

As part of this Office's investigation, we spoke with the Secretary of State's Office, the Portsmouth City Clerk's Office, William St. Laurent, and yourself. The complaint attached photos of two political advertisements bearing the name of "Mark BRIGHTON" printed at the bottom followed by "Association of Portsmouth Taxpayers." One sign reads: "What Me Worry? Progress Portsmouth Will Bring Back Damn Bike Lanes." The second sign reads: "COMPLACENCY NOT AN OPTION NOV 2nd VOTE BECKSTED, HUDA, KENNEDY, MAHANNA, TRACE, WHELAN." These advertisements concern Portsmouth city elections.

On October 25, 2021, Chief Investigator Richard Tracy spoke with you. You acknowledged failing to return prior calls. You admitted to posting the signs on utility poles in support of certain Portsmouth city candidates. After discussing the information requirements in RSA 664:14, you agreed to add additional contact information to your political advertisements. You objected to the prohibition in RSA 664:17 regarding posting advertisements on utility poles.

"THE ASSOCIATION OF PORTSMOUTH TAXPAYERS, INC." was registered as a Domestic Nonprofit Corporation on January 9, 1985. The address associated with the organization is PO Box 223, Portsmouth, NH 03802. The principals in the organization are listed as yourself, David Kish, and William St. Laurent. On October 25, 2021, Investigator Tracy spoke with Mr. St. Laurent. He indicated at Mr. Kish was no longer a member as he had moved out of Portsmouth. Mr. St. Laurent explained that the Association of Portsmouth Taxpayers meets primarily to discuss politics and who the group would support during city elections. He indicated that you were responsible for the signs bearing the group's name.

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Earlier on October 25, 2021, Investigator Tracy spoke with Valerie French, the Portsmouth Deputy City Clerk. She stated that the Association of Portsmouth Taxpayers had not registered with the City Clerk's Office as a political action committee in the 2021 city election cycle. You may be aware that the political committee registration requirements found in RSA 664:3 do not apply to city elections. However, Portsmouth has an ordinance regarding registration of political action committees involved in city elections. See Portsmouth City Ordinances, Section 1.902.

We would like to take this opportunity to review the applicable statute governing the identification requirements for political advertisements and prohibited placements, specifically RSAs 664:14 and 664:17.

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

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. Based on the forgoing, the signs in question would constitute political advertisements as they expressly advocate for the success of a measure, in this case, the election of certain city council candidates. As such, the signs trigger the identification requirements under RSA 664:14. Additionally, RSA 664:17 states, "Signs shall not be placed on or affixed to utility poles or highway signs."

Given your statements to Investigator Tracy, we anticipate that you and the Association of Portsmouth Taxpayers 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. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

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

Copied to: Doug Roberts
William St. Laurent
Valerie French, Deputy City Clerk, City of Portsmouth

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

December 10, 2021

Edward and Kathleen Tarlowski
[redacted]
Manchester, NH 03103

Re: Alleged Illegal Campaign Activity

Dear Mr. and Mrs. Tarlowski:

On November 5, 2020, our Office received information from the Manchester Police Department regarding the theft of campaign signs from your residence on October 18, 2020. After pursuing this matter, we are closing our investigation for lack of actionable information.

Our Office received a police report from the Manchester Police Department, which included interviews and materials you gave investigators. Additionally, on September 29, 2021, Attorney General's Office Investigator Stephen Johnson spoke with Ms. Tarlowski at your residence. She showed Investigator Johnson where the stolen signs had been, and also the former location of Ring solar lights that was also stolen. Investigator Johnson reviewed the surveillance footage with Ms. Tarlowski. She agreed that the video did not contain identifiable information and that the perpetrators appeared to be teenagers, with what sounds to be the voices of younger females. While the video may show an individual recording the sign theft with a phone, you and the police have not yet been able to identify any social media showing the thefts.

Investigator Johnson discussed the case with you and the difficulty in proceeding given the limitations in the available evidence. Ms. Tarlowski indicated that it may be appropriate to close the case due to the lack of actionable information to identify the thieves.

Our Office has not developed any additional information to advance this investigation. As such we are unable to proceed with the investigation or an enforcement action.

This matter is closed. Please contact us should you have any question or concerns.

Sincerely,

Myles Matteson
Assistant Attorney General
Election Law Unit
(603) 271-0445
myles.b.matteson@doj.nh.gov

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

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JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

December 10, 2021

Sara Persechino, Moderator
Town of Hopkinton
330 Main Street
Hopkinton, NH 03229

Re: [redacted] Alleged Assault of an Election Officer

Dear Moderator Persechino:

During the November 3, 2020, general election, you called this Office to report a voter who refused to comply with the mask requirement to enter the polling place. You also reported that this voter, who you identified as [redacted] refused the alternative voting option and allegedly "put his hands on the greeter." After carefully reviewing the matter, we conclude that no election law violation occurred.

In reviewing this matter, we reviewed a police report produced by the Hopkinton Police Department for this matter. In addition, this Office also spoke with you, election volunteer Katherine Kaynak, and [redacted].

From the Hopkinton Police Department's report, we understand that you contacted Chief Stephen Pecora to come to the polling place in response to an individual who was not wearing a mask. The polling place is located at the Hopkinton Middle-High School with the voting area inside its gymnasium.

When Chief Pecora arrived at the polling place, he observed that the individual in question – [redacted] was sitting with an assistant to the supervisors of the checklist, completing his voter registration. Chief Pecora described [redacted]s "calm and cooperative" as [redacted] spoke with the assistant and completed his registration paperwork.

Chief Pecora spoke with election officials and learned that [redacted] had initially refused to put on a mask. Election officials shared that [redacted] did however enter the polling place wearing a face shield. According to the election officials who observed the incident, [redacted] was involved in an incident with an election volunteer when you (Moderator Persechino) got involved.

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

When you spoke with Chief Pecora, you described how after some debate with [redacted] about wearing a mask, you escorted him to the alternative, outdoor voting area. As the two of you exited the building, you discovered [redacted] had to register to vote, and in order to do so, would be required to re-enter the polling place building. You stated that Selectboard member Jeffrey Donohoe, also spoke with [redacted] successfully encouraged him to put on a mask beneath his face shield before re-entering the polling place building.

Chief Pecora also spoke with the election volunteer, Ms. Kaynak who alleged she was contacted when trying to get [redacted] to wear a mask. Ms. Kaynak said that [redacted] touched her forearm with his hand. She further illustrated the physical contact, showing Chief Pecora that both of her arms were in front of her, she was in front of [redacted] as he tried to enter the gymnasium where the voting area was located, and how he wrapped his hand around her forearm. Ms. Kaynak confirmed that she was not injured, and there were no marks on her arm.

In addition to speaking with election officials, Chief Pecora reviewed the available security footage. The footage confirmed that when [redacted] approached the gymnasium entryway, he was wearing a face shield. [redacted] appeared to exchange a comment with Ms. Kaynak, before walking past her and pointing at his face shield as he entered through the entryway. The footage shows that Ms. Kaynak was standing next to a table several feet away from the entryway. After [redacted] entered into the gymnasium, Ms. Kaynak is shown leaving her spot by the table, and following [redacted] inside. The available footage did not capture the alleged contact between [redacted] and Ms. Kaynak.

Chief Peccora's report indicates that the cameras were not working in the location where [redacted] and Ms. Kayak continued their interaction.

In a written statement provided by Ms. Kaynak to Chief Peccora, after [redacted] refused to put on a mask, Ms. Kaynak described how she "moved to get ahead of him," with Ms. Kaynak walking backwards. As the two of them reached the entrance of the gymnasium, Ms. Kaynak wrote that [redacted] put his hands on her raised forearm, and she was pushed backward, but did not fall over. Following this contact, Ms. Kaynak wrote that she was inside the gymnasium.

On August 2, 2021, this Office reached out to Ms. Kaynak for clarification of the circumstances surrounding the altercation. During this conversation, Ms. Kaynak reiterated much of what was in her written statement. When asked specifically about the altercation, she explained that after [redacted] walked by her and refused to take a mask, she got ahead of him in the corridor and confronted him at the doorway to the polling area/gymnasium. It was there where she described how she held a mask up in her left hand, approximately 12 to 14 inches away from her face, at which point [redacted] took at least one open palmed hand and pushed her backward, which caused her to stumble backwards into the polling area. Ms. Kaynak asserted that she was not impeding his ability to get into the polling area, but after reviewing the way the gymnasium entryway was setup, and how she detailed that she was pushed into the polling area and not a wall, it would be reasonable to assume that she was in fact standing in front of the entryway door.

On August 16, 2021, this Office again spoke with you about this matter. You confirmed that you had not witnessed the alleged contact between Ms. Kaynak and [redacted] Additionally, you explained your understanding of the situation, that Ms. Kaynak stepped in front of [redacted], at which point he grabbed her arm.

You recalled how you specifically told poll workers and election volunteers not to confront someone who refused to wear a mask and to notify you instead. You also shared that you were not aware of any other witnesses who may have observed the alleged assault. You reiterated that once a selectboard member asked [redacted] to put on a mask, he complied.

On November 1, 2021, Chief Investigator Richard Tracy spoke with [redacted] stated that he went to vote in Hopkinton, that he was wearing a face shield to protect himself, and noted that others were wearing a facemask to protect themselves. [redacted] stated he walked past a woman who offered him a facemask. He then stated as he was about to enter the polling room a woman jumped in front of him making contact with him in the area of his chest. [redacted] did not see anything in her hands and did not understand why she jumped in front of him. He stated that he walked around the woman after the contact and continued into the polling place.

RSA 659:41 states in relevant part that "[a]ny person who shall assault a town, city, or ward officer as provided in RSA 631 in the discharge of any duty of his office at any election shall be guilty of a class A felony or a class B felony."

RSA 631:2 identifies simple assault as:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or
(b) Recklessly causes bodily injury to another; or
(c) Negligently causes bodily injury to another by means of a deadly weapon.

This Office understands that election officials and election volunteers faced unprecedented challenges during the 2020 election cycle. Facilitating an election to the high degree of integrity New Hampshire elections are known for, while also observing protective health measures, required significant diligence and ingenuity.

This Office published guidance on August 20, 2020, in which we stated –

> We understand that in some instances, it may be difficult for individuals to wear face coverings/masks. As stated above, no otherwise eligible voter should be denied the right to vote if he or she is unwilling or unable to wear a face covering/mask. For that reason, we have indicated that moderators provide appropriate, alternative means to vote.

> If a voter declines to avail himself or herself themselves of an appropriate, alternative means to vote, we strongly encourage moderators to do all they can to engage constructively with these voters to encourage them to either wear a face covering/mask while in the polling place or vote by the alternative means.

In this case, based on our investigation, this appears to be an unfortunate, accidental contact between a voter and election volunteer. The evidence would not support a conclusion beyond a reasonable doubt that [redacted] committed an election crime.

The evidence instead suggests that while [redacted] continued to move forward, Ms. Kaynak was between him and the entryway to the gymnasium with an arm outstretched toward him, holding a mask. However, the evidence does not support a finding that [redacted] knowingly made unprivileged physical contact with Ms. Kaynak. As noted above, Ms. Kaynak said she did not suffer any bodily injury or harm. This Office concludes that no election law violation has occurred.

Ultimately, the election officials and election volunteers were able to work with [redacted] to ensure protective health measures were followed, and he successfully voted. We commend the election officials and volunteers for their tremendous efforts during this 2020 election cycle.

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

Sincerely,

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

cc: [redacted]

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
December 10, 2021

In re City of Nashua Absentee Ballots

FINAL REPORT

On August 24, 2020, this Office began receiving complaints from City of Nashua voters who reported that they were unable to contact the Nashua City Clerk's Office to request the status of their absentee ballot requests for the 2020 September State Primary election to be held on September 8, 2020. Both the Secretary of State's and Attorney General's Offices followed up on these complaints. On September 8, 2020, the Nashua City Clerk's Office requested assistance from the State in responding to requests for absentee ballots. This report sets forth the factual findings, the actions undertaken by this Office and the Secretary of State's Office, and the results.

I. FACTURAL BACKGROUND

On August 24, 2020, this Office was contacted by a Nashua voter who indicated that the voter was unable to contact the Clerk's office. The voter reported that the Clerk's voicemail box was full and could not accept more messages. This Office was informed by the Help America Vote Act ("HAVA") Help Desk that they had spoken to Nashua City Clerk, Susan Lovering, regarding similar complaints received by the Help Desk. HAVA reported that they had been contacted by Nashua voters, and that HAVA had sent out several absentee voter registration packages and absentee ballot request forms to Nashua voters. RSA 654:16 and 657:6 authorizes the Secretary of State to send both absentee voter registration packages and absentee ballot request forms. Since voters were apparently frustrated with waiting for responses from the Nashua City Clerk's Office, the Secretary of State, through HAVA, answered those requests. HAVA was informed by the City Clerk's Office that to address the increased volume of voter registration and absentee ballot requests, two additional staff members were hired to help with the increased demand.

On August 24, Chief Investigator Richard Tracy attempted to call the City Clerk's Office, but received a notice that the voicemail box was full. Investigator Tracy also reached out to Mayor Donchess' office about this matter. On August 25, Mayor Donchess' assistant contacted Investigator Tracy and informed him that they were aware of the issue and were addressing it. This assistant described how Clerk Lovering would address all pending voicemail messages, only to have the voicemail box reach capacity again.

Investigator Tracy also spoke with Corporation Counsel Steven Bolton on August 25. Attorney Bolton stated that the Clerk's Office had hired extra help. He reiterated that the Clerk would answer the voicemail messages, only to have the voicemail box fill up overnight. Investigator Tracy informed Attorney Bolton that he (Tracy) tried calling the Clerk's Office and was notified the voicemail box was full. He also notified Attorney Bolton that he spoke with a

Nashua voter who tried calling three times during business hours, and was notified each time that the voter could not leave a message.

Investigator Tracy attempted working with Attorney Bolton on identifying any outstanding voter registration and absentee ballot requests. Attorney Bolton pointed out that the City was already working full-time and hired additional help. Investigator Tracy suggested that additional help may be required or existing staff may need to be temporarily reassigned. Attorney Bolton stated he would speak with Clerk Lovering.

Attorney Bolton called back, on August 25, to report that the Clerk's Office had hired 7 new employees and interviewed another 5 who would start by the end the week (the week of August 24) and also reassigned two employees. Attorney Bolton stated that 700 absentee ballots went out on August 24, but they received another 100 requests quickly thereafter. Attorney Bolton indicated that the oldest absentee ballot request the Clerk's Office presently had was from August 21, 2020.

Investigator Tracy also spoke with Elections Director Patricia Piecuch. Director Piecuch had spoken with Clerk Lovering on August 22, 2020, and was informed the Clerk's Office had absentee ballot applications not yet processed dating back to June.

On August 27, 2020, Investigator Richard Tracy followed-up with the Nashua voter who initially contacted this Office. The voter notified Investigator Tracy that the voter successfully contacted the Clerk's Office. Investigator Tracy confirmed later this day that the Clerk's voicemail box was accepting voicemail messages. He left a message for Clerk Lovering to return his call.

On August 28, Clerk Lovering returned Investigator Tracy's call and indicated the Clerk's Office had only 30 more absentee voter registration packages to process that day. The Clerk also explained that her office would be increasing the capacity of the voicemail box, and had obtained additional, temporary help. Clerk Lovering expressed her belief that her office was sufficiently caught-up.

On September 8, 2020 – the State Primary Election Day – this Office was notified that Clerk Lovering would not be available for Election Day due to a health issue. We also had been informed that the City of Nashua did not have a Deputy City Clerk. A customer service representative from the Clerk's Office was appointed by Clerk Lovering as an Assistant Clerk to oversee Election Day clerk duties. The Secretary of State, being very concerned about this proposed plan on what was expected to be an historically attended election, sent Director Piecuch to Nashua in order to help train the newly-appointed Assistant Clerk in carrying out a clerk's Election Day duties. Director Piecuch is a former Nashua City Clerk and was familiar with Nashua's election process.

On Election Day, the Attorney General's Office received two calls through its Elections Hotline related to Nashua: (1) A caller was upset with the effort it took to get an absentee ballot; and (2) another caller did not receive an absentee ballot before Election Day.

On September 15, a voter complained to this Office that the voter had issues obtaining an absentee ballot from the Nashua City Clerk's Office for the State Primary. On September 21, another voter emailed this Office regarding issues the voter faced registering to vote in Nashua. The voter reportedly attempted to email and call the Nashua City Clerk for the status of the processing of the voter's voter registration. The voter described how the City Clerk's voicemail box had been full for weeks at the beginning of August. While this voter had received confirmation that the voter's registration paperwork had been received, ElectioNet still does not show the voter as being registered. The voter was frustrated that nearly three weeks after submitting the voter registration paperwork, the voter was still not registered to vote. Additionally, due to the registration issue, this voter did not receive a State Primary Absentee Election ballot.

On September 21, the Nashua City Clerk's website stated that it would be closed from September 21, 2020, to October 2, 2020, and would also be suspending all in-person appointments to register to vote.[1] While the website indicated that the Clerk's Office would continue to accept online and mail-in requests, it indicated there would be delays with processing. Id. This closing of the Clerk's Office was due to a COVID-19 outbreak among staff at the City Hall. City Hall was closed until October 5, 2020, allowing for a quarantine of City officials.

II. APPLICABLE LAW

RSA 654:8 states that –

> The provisions of this section shall apply in all cities and in all towns. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk, or to the supervisors of the checklist as provided in RSA 654:11, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall be required to accept applications from such persons under the following conditions:
> I. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.
> II. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.
> III. Such application shall be made during the regular office hours of the town or city clerk.

RSA 654:19 requires the absentee voter registration applicant to "forward the absentee registration affidavit and the applicant's voter registration form to the clerk of the town or city named for submission to the supervisors of the checklist."

[1] As of the date of this final report, the website formerly used to access this notice has been updated, and no longer contains this information: https://www.nashuanh.gov/193/City-Clerks-Office

RSA 657:6 states that once a voter fills out an absentee ballot request application, the voter must send it to the clerk of the town or city in which he or she desires to vote.

III. REMEDIATION

On Monday, September 28, 2020, in response to a request for assistance by the Nashua City Clerk's Office, this Office and the Secretary of State's Office were designated by the Nashua City Clerk's Office to take custody of absentee ballot mailing materials, including absentee ballots, in order to respond to more than 7,700 absentee ballot requests made to the City of Nashua by Nashua voters as the City could not respond in a timely manner.

The receipt of these materials and the scope of the Secretary of State's and Attorney General's Offices' requested assistance is governed by an agreement signed on September 28.[2] The Offices took physical possession of the materials on the morning of September 28 and immediately began processing the absentee ballots requests.

According to Exhibit A of the September 28 agreement, Clerk Lovering provided a total of 13,000 absentee ballots, broken down for each Ward as follows:

- Ward 1: 2,000 absentee ballots;
- Ward 2: 1,000 absentee ballots;
- Ward 3: 1,000 absentee ballots;
- Ward 4: 1,000 absentee ballots;
- Ward 5: 2,000 absentee ballots;
- Ward 6: 1,000 absentee ballots;
- Ward 7: 1,000 absentee ballots;
- Ward 8: 2,000 absentee ballots; and
- Ward 9: 2,000 absentee ballots.

On September 28 and September 29, a team of approximately 50 State employees, from the Attorney General's Office, the Secretary of State's Office, New Hampshire Employment Security, and the Department of Safety's Homeland Security and Emergency Management, with permission from Governor Sununu, were pulled from their jobs to process and mail approximately 7,763 absentee ballot packets to Nashua voters. Many State employees stayed well into the evening of September 28 in order to complete as many packets as possible for mailing early in the day on September 29. Many returned early in the morning on September 29 to repeat the process.

Upon receipt of the materials from the City Clerk's Office, while the outside mailing envelopes had been prepared, the inner affidavit envelopes were not prepared. As a result, the State employees were required to spend significant time: folding the instruction sheets, applying the yellow sticky notes to each affidavit envelope, attaching the City Clerk's mailing address label to every return envelope, and attaching the City Clerk's return address label to every

[2] See Attachment A.

outside mailing envelope. Usually, the City would have completed all of this work early in the summer to be prepared for the mailing of ballots in the fall. However, this work was not done and added significant preparation time to the State employees' tasks.

The State employees expected to label every outgoing envelope with the appropriate recipient's address label, return label, and barcode (if applicable), fold the ballots, assemble and package all the materials, and finally, seal the envelopes. This work was done, in addition to completing the preparation work the City had not done. The expectation was that all of the ballots would be able to be mailed in one day. However, given the additional preparation work that needed to be done, the work required part of a second day.

As a result of the efforts of the State employees, the approximately 7,763 absentee ballot requests obtained from the City Clerk's Office were processed and mailed out by mid-afternoon on September 29.[3] There were some duplicate labels printed, but those duplicates were pulled from the processing.

On October 2, 2020, the Secretary of State's and Attorney General's Offices returned all unused absentee ballot mailing materials, including unused envelopes, instruction sheets, and 5,433 unused absentee ballots to the Nashua City Clerk's Office. The returned absentee ballots were reviewed and each box was labeled with the number of ballots returned.

IV. CONCLUSION

The Secretary of State's and Attorney General's Offices, through the cooperative efforts of many State employees, successfully processed and responded to approximately 7,763 absentee ballot requests from Nashua voters. During the course of both Offices' review of this matter, Nashua City officials presented a variety of improvements to infrastructure and staffing to quickly address the high demand for absentee ballots in the midst of unprecedented challenges caused by the public health crisis. Following the State employees' efforts and the improvements made by the City Clerk's Office, this Office did not receive any additional complaints from Nashua voters related to delays in obtaining absentee ballots for the 2020 November General Election. This matter is closed.

Sincerely,

Anne M. Edwards
Associate Attorney General

[3] See Attachment B, Pgs. 4-6.

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 25, 2020

Steven A. Bolton, Esquire
Corporation Counsel
Nashua, City of
PO Box 2019
Nashua, NH 03060

Re: Agreement Letter – Request for Assistance

Dear Attorney Bolton:

On September 22, 2020, after a discussion with the Attorney General's Office, assistance was requested for the City of Nashua Clerk's Office (the "NCCO") with responding to requests for absentee ballots for the 2020 November General Election.

On September 24, 2020, you again spoke with Associate Attorney General Anne Edwards and Assistant Attorney General Nicholas Chong Yen, and together, constructed a process through which the NCCO would be provided assistance. That process was included in an email of that date.

This letter confirms the process to be used to transfer the absentee ballots, applicable mailing envelopes, and address labels and provides for a delegation of authority from Susan Lovering, the Nashua City Clerk, to the Secretary of State and Department of Justice to transfer custody and control of the absentee ballots to them for processing and mailing.

a. Delegation of Authority

Pursuant to this agreement, Nashua City Clerk Susan Lovering delegates to employees of the Secretary of State and Attorney General's Offices (collectively "the State") to take possession of a supply of Nashua's absentee ballots for the 2020 November General Election, absentee ballot mailing and return envelopes with appropriate postage added to the mailing envelopes, voter instructions, and mailing labels ("absentee ballot materials").

These employees will take possession of these absentee ballot materials, on September 28, 2020, to process and mail to Nashua voters, subject to the process outlined below.

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

b. Receipt of Absentee Ballot Materials

The absentee ballots are sent to clerks in batches of 1000 ballots per box by the Secretary of State. If possible, the NCCO will provide State employees with unopened boxes containing a complete count of 1000 ballots. If a box is opened because the NCCO staff has counted those ballots, the NCCO shall write on the box the total number of counted ballots contained in the box before providing them to State employees.

The Clerk's Office shall provide State employees with sufficient quantities of absentee ballots for each of the City's Wards based on the absentee ballot mailing list and labels being provided to the State. The absentee ballot mailing labels will be organized and segregated by Ward.

The return mail ballots sent to voters shall have the NCCO's mailing address on them. If this is not possible, then labels must be provided to the State.

The NCCO must provide the "2020 Absentee Ballot Instructions – Mailed Primary or General" documents to the State. If NCCO has any other inserts that it wants mailed to absentee voters, those shall be provided to the State on September 28, 2020.

Before taking possession of the absentee ballots, Clerk Lovering and one of the State employees must complete and sign the "Receipt of Absentee Ballots Reconciliation Form" enclosed as Exhibit A. Clerk Lovering shall complete this form for each of the City's wards she is providing absentee ballots for. Clerk Lovering shall identify the ward number and the total count of absentee ballots provided to State employees.

In addition to the provision of absentee ballots, Clerk Lovering shall prepare in advance and provide State employees the absentee ballot materials, including the following:

- Mailing labels printed from ElectioNet organized and segregated by Ward;
- All mailing and inside envelopes, with the appropriate postage added to each mailing envelope. Return mail envelopes should be marked with the NCCO address or applicable labels must be provided;
- 2020 Absentee Ballot Instructions must be provided. Any other voter information insert that the NCCO wants voters to receive must be provided upon receipt of the absentee ballot materials.

c. Fulfilling Absentee Ballot Requests

Once State employees are in receipt of the absentee ballot materials, the materials will be transported to the State Archive Building located at 9 Ratification Way, Concord, NH 03301.

State employees and officials will process the individual absentee ballot materials and deliver them to the United States Post Office to be mailed to requesting Nashua voters.

d. Return of Unused Absentee Ballots

If, in the course of fulfilling absentee ballot requests, State employees do not completely use a batch of 1000 ballots, they will make a notation on the Receipt of Absentee Ballots Reconciliation Form of how many ballots will be returned to the NCCO. For example, if only 500 of the 1000 ballots are used to fulfill requests for a specific ward, the State employee will note on the form that 500 ballots are being returned to the NCCO. The box containing an amount of ballots of less than 1,000 will also be similarly marked by State employees.

This agreement may be subject to modification as needed to expeditiously process and respond to absentee ballot requests.

Sincerely,

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

Enclosure

cc: William M. Gardner, Secretary of State
Gordon J. MacDonald, Attorney General

NASHUA CITY CLERK'S OFFICE

I, Susan Lovering, City Clerk of Nashua, hereby provide a limited designation of my authority over the absentee ballots, as noted on Exhibit A to this agreement, for Wards 1 – 9, to the Secretary of State's Office and the Attorney General's Office for them to assist my Office with processing and mailing the absentee ballot requests received prior to September 28, 2020, for the 2020 General Election.

I understand that the absentee ballots and accompanying absentee ballot materials will remain in the custody of staff from the two State agencies and that any unused ballots and absentee ballot materials will be returned to my Office.

I agree to the terms of this agreement.

September 28, 2020

Susan Lovering, Nashua City Clerk

ATTORNEY GENERAL'S OFFICE

I, Stephen P. Johnson, Investigator with the Attorney General's Office, take custody of the ballots, as noted on Exhibit A to this agreement, and will accompany the ballots and absentee ballot materials for delivery to the New Hampshire Archive Building at 9 Ratification Way, Concord, New Hampshire.

September 28, 2020

Stephen P. Johnson, Investigator

EXHIBIT A

Receipt of Absentee Ballot Reconciliation Form

I. Received Ballots

Ward Number 1

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 2

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 3

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 4

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 5

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 6

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 7

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 8

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

Ward Number 9

Number of Absentee Ballots Provided:

- Boxes: ___
- Total Number of Ballots: ___

*If box has been opened and counted, write the number of ballots on that box.

NASHUA CITY CLERK'S OFFICE

I certify that the above listed number of Nashua absentee ballots, by Ward, were delivered into the custody of the Attorney General's Office and the Secretary of State's Office.

September 28, 2020

Susan Lovering, Nashua City Clerk

ATTORNEY GENERAL'S OFFICE

I certify that the above listed number of Nashua absentee ballots, by Ward, were delivered into the custody of the Attorney General's Office and the Secretary of State's Office.

September 28, 2020

Stephen P. Johnson, Investigator

II. Returned Ballots

Name of Returning State Employee: _____

Date of Return: _____

Number of Returned Absentee Ballots:

*[Total Returned Absentee Ballots] + [Total Used Absentee Ballots] = [Total Number of Ballots from Section I]

Ward 1: _____

Ward 2: _____

Ward 3: _____

Ward 4: _____

Ward 5: _____

Ward 6: _____

Ward 7: _____

Ward 8: _____

Ward 9: _____

NEW HAMPSHIRE ATTORNEY GENERAL'S OFFICE

I certify that the above listed number of Nashua absentee ballots, by Ward, were delivered into the custody of Susan Lovering, Nashua City Clerk.

Dated: _____ _____

NASHUA CITY CLERK'S OFFICE

I certify that I received the return of the above listed number of Nashua absentee ballots, by Ward, from the State on the date written below.

Dated: _____

_____
Susan Lovering, Nashua City Clerk

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 2, 2020

Susan Lovering, City Clerk
City of Nashua
P.O. Box 2019
Nashua, NH 03061

Re: City of Nashua, Request for Assistance, Final Report (2020144988)

Dear Clerk Lovering:

On Monday, September 8, 2020, in response to a request for assistance by the Nashua City Clerk's Office, this Office and the Secretary of State's Office were designated by your Office to take custody of absentee ballot mailing materials, including absentee ballots, in order to respond to more than 7,700 absentee ballot requests made to the City of Nashua by Nashua voters.

The receipt of these materials and the scope of the State agencies' requested assistance is governed by an agreement signed on September 28. The State agencies took physical possession of the materials on the morning of September 28 and immediately began processing the absentee ballots requests.

According to Exhibit A of the September 28 agreement, you provided a total of 13,000 absentee ballots, broken down for each Ward as follows:

- Ward 1: 2,000 absentee ballots;
- Ward 2: 1,000 absentee ballots;
- Ward 3: 1,000 absentee ballots;
- Ward 4: 1,000 absentee ballots;
- Ward 5: 2,000 absentee ballots;
- Ward 6: 1,000 absentee ballots;
- Ward 7: 1,000 absentee ballots;
- Ward 8: 2,000 absentee ballots; and
- Ward 9: 2,000 absentee ballots.

On September 28 and September 29, a team of approximately 50 State employees, from the Attorney General's Office, the Secretary of State's Office, New Hampshire Employment

Security, and the Department of Safety's Homeland Security and Emergency Management, processed and mailed approximately 7,763 absentee ballot packets to requesting Nashua voters. Many State employees stayed well into the evening of September 28 in order to complete as many packets as possible for mailing early in the day on September 29.

Upon receipt of the materials from the City Clerk's Office, while the mailing labels were printed and the postage was added to all of the outside mailing envelopes, the other materials were not prepared for mailing. As a result, the State employees were required to spend significant time: folding the instruction sheets, applying the yellow sticky notes to each affidavit envelope, attaching the City Clerk's mailing address label to every return envelope, and attaching the City Clerk's return address label to every outside mailing envelope.

Prior to beginning the process, the State employees expected to label every outgoing envelope with the appropriate recipient's address label, return label, and barcode (if applicable), fold the ballots, assemble and package all the materials, and finally, seal the envelopes. And, the expectation was for the work to be completed in one day.

As a result of the efforts of the State employees, the approximately 7,763 absentee ballot requests obtained from the City Clerk's Office were processed and mailed out by mid-afternoon on September 29. There were some duplicate labels printed, but those duplicates were pulled from the processing.

This cover letter, with its attached Exhibit A, memorializes the return of all unused absentee ballot mailing materials, including unused envelopes and instruction sheets, as well as the return of custody of the unused absentee ballots to the Nashua City Clerk's office.

The Attorney General and Secretary of State's Offices are returning into the custody of the Nashua City Clerk's Office 5,433 absentee ballots. The returned absentee ballots have been reviewed and each box is labeled with the number of ballots returned. *See* Exhibit A for a breakdown by Ward of the returned ballots.

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

Sincerely,

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

Enclosure

cc: William M. Gardner, Secretary of State

Gordon J. MacDonald, Attorney General
Steven Bolton, Corporation Counsel for City of Nashua

EXHIBIT A TO ATTORNEY GENERAL'S FINAL REPORT ON NASHUA ABSENTEE BALLOT RESPONSE

Returned Ballots

Name of Returning State Employee: Chief Investigator Richard Tracy

Date of Return: October 2, 2020

Total Number of Returned Absentee Ballots: 5,433

Ward 1:	**Total Ballots Returned**	**838**
	7 Stacks of 100 Ballots	700
	102 Loose Ballots	102
	36 Absentee Ballot Packets	36
Ward 2:	**Total Ballots Returned**	**164**
	1 Stacks of 100 Ballots	100
	36 Loose Ballots	36
	28 Absentee Ballot Packets	28
Ward 3:	**Total Ballots Returned**	**210**
	1 Stacks of 100 Ballots	100
	93 Loose Ballots	93
	17 Absentee Ballot Packets	17

Ward 4:	**Total Ballots Returned**	**678**
	6 Stacks of 100 Ballots	600
	60 Loose Ballots	60
	18 Absentee Ballot Packets	18
Ward 5:	**Total Ballots Returned**	**863**
	7 Stacks of 100 Ballots	700
	142 Loose Ballots	142
	21 Absentee Ballot Packets	21
Ward 6:	**Total Ballots Returned**	**503**
	4 Stacks of 100 Ballots	400
	91 Loose Ballots	91
	12 Absentee Ballot Packets	12
Ward 7:	**Total Ballots Returned**	**432**
	3 Stacks of 100 Ballots	300
	102 Loose Ballots	102
	30 Absentee Ballot Packets	30
Ward 8:	**Total Ballots Returned**	**948**
	8 Stacks of 100 Ballots	800
	102 Loose Ballots	102

	46 Absentee Ballot Packets	46
Ward 9:	**Total Ballots Returned**	**797**
	7 Stacks of 100 Ballots	700
	62 Loose Ballots	62
	35 Absentee Ballot Packets	35

NEW HAMPSHIRE ATTORNEY GENERAL'S OFFICE

I certify that the above listed number of Nashua absentee ballots, by Ward, were delivered into the custody of Susan Lovering, Nashua City Clerk.

Dated: 10-2-2020

Richard Tracy, Chief Investigator

NASHUA CITY CLERK'S OFFICE

I certify that I received the return of the above listed number of Nashua absentee ballots, by Ward, from the State on the date written below.

Dated: 10/2/2020

Susan Lovering, Nashua City Clerk

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
December 10, 2021

In re Town of Swanzey

FINAL REPORT

On or around October 19, 2020, the Attorney General's Office received a report from the Secretary of State's Office that the Swanzey Town Clerk was utilizing an unsupervised dropbox to receive absentee ballots for the 2020 November General Election. Following an investigation, the Swanzey Town Clerk's Office was ordered to undertake remediation. This report sets forth the factual findings, the actions ordered by this Office, and the results.

I. FACTUAL BACKGROUND

On or around October 19, 2020, this Office was notified by the Secretary of State's Office that the Swanzey Town Clerk was utilizing an unsupervised dropbox to receive absentee ballots for the 2020 November General Election.

The Secretary of State's Office was contacted by the Swanzey Town Clerk – Ron Fontaine – who became aware that the dropbox must be staffed at all times during its use, after a report in a *Keene Sentinel* news article. Clerk Fontaine stated that he received in excess of 500 absentee ballots, and estimated 100-200 of those absentee ballots were from the dropbox.

On October 19, 2020, Chief Investigator Richard Tracy and Assistant Attorney General Nicholas Chong Yen spoke with Clerk Fontaine. He described that the dropbox was locked, and located immediately outside the front doors of the Swanzey Town Hall. The dropbox was cemented to the ground and was also used to deposit tax payments and motor vehicle paperwork. Clerk Fontaine explained that he or another staff member would check the dropbox every hour and could view the dropbox from their office windows. Following this phone call, Clerk Fontaine posted a sign on this dropbox notifying voters it could not be used to deposit absentee ballots.

II. APPLICABLE LAW

RSA 657:17 states in relevant part that upon completing his/her absentee ballot, the voter shall execute the affidavit on the inner/affidavit envelope. Next, the inner/affidavit envelope shall be sealed inside the outer envelope. The law then requires that the voter deliver his/her absentee ballot to the town or city clerk. Under RSA 657:17, this can be done in two ways:

1. The voter or the voter's delivery agent may personally deliver the envelope; or
2. The voter or the person assisting the blind voter or voter with a disability may mail the envelope to the city or town clerk, with postage affixed.

Both the Secretary of State's and Attorney General's Office's reviewed this statute to determine how to safely apply it during the public health crisis caused by COVID-19. Specifically, the State was trying to provide local officials with options to limit in-person interactions within an enclosed space to reduce the likelihood of transmission of the virus. To that end, the State published guidance stating that a dropbox supervised and deployed outdoors, could be used to receive absentee ballots.[1] The dropbox would largely mirror the routine receipt of absentee ballots process that regularly took place inside the town clerk's office, while providing better ventilation and reducing the number of direct contacts between voters and officials.

The Swanzey Town Clerk's office's dropbox was not supervised or staffed by a trained election official while it was in use.

The Attorney General's Office was concerned that if a voter deposited his/her completed absentee ballot into the dropbox during the time period when the Swanzey Town Clerk's office was closed, those absentee ballots might be challenged for not being delivered in accordance with the two methods prescribed by law and the guidance.

III. REMEDIATION

On Thursday, October 22, 2020, the Attorney General's Office sent Paralegal Jill Tekin and Investigator Stephen Johnson to the Swanzey Town Clerk's office to review absentee ballots envelopes that arrived on or before October 19, 2020.

After working with Clerk Fontaine and his staff to segregate any absentee ballot envelopes with postmarks and ones that Clerk Fontaine or his staff remembered receiving in hand, there were 103 of the original 517 absentee ballots remaining. The names of the voters on the remaining absentee ballot envelopes were marked on a document from the Secretary of State's Office that showed all Swanzey voters who had requested absentee ballots for the 2020 General Election. That list of 103 voters was brought back to the Attorney General's Office so the Office staff could contact the voters to determine how and when their absentee ballots were delivered to the Swanzey Town Clerk.

Additionally, due to the possibility that the Attorney General's Office might need to send ballots to voters who put their absentee ballots in the drop box during time periods when it was not supervised, the Attorney General's Office took custody of 64 Swanzey General Election absentee ballots and accompanying instruction sheets and envelopes.

The Attorney General's Office contacted all 103 voters, via phone calls, emails, and a visit by the Swanzey Police Department to one set of voters who did not receive the Attorney General's Office's voicemails. Based on this outreach, the Office determined that six voters should vote on new ballots to ensure that their ballots could not be challenged. During these

[1] In joint guidance released by the Secretary of State's and Attorney General's offices, if election officials chose to use a dropbox prior to Election Day for receiving absentee ballots, "it must be staffed by a properly trained election official throughout the course of its use." https://www.doj.nh.gov/documents/20200819-faq-guidance-election-operations.pdf

conversations, the Attorney General's Office was notified of 20 additional voters who used the dropbox, and confirmed they did so during normal business hours.

Of the six voters this Office identified as needing to vote on new ballots, five had contacted Clerk Fontaine's office for new ballots. The sixth voter asked the Attorney General's Office to send a new ballot, which this Office did.

On October 30, 2020, the Attorney General's Office, through Assistant Attorney General Amanda Palmeira, returned 63 Swanzey General Election ballots and accompanying instruction sheets and envelopes, to Clerk Fontaine. As noted above, one ballot was mailed by the Attorney General's Office to a voter.

IV. CONCLUSION

As discussed above, this Office successfully worked with Clerk Fontaine and his staff to swiftly address a reported issue. As a result, it was determined that 117 absentee ballots were appropriately deposited into the dropbox while it was being supervised by Clerk Fontaine. For those six voters who deposited absentee ballots into the dropbox outside of the Swanzey Town Clerk's office hours, all six voters were contacted and successfully completed and re-submitted new absentee ballots directly to Clerk Fontaine. The matter is closed.

Sincerely,

Anne M. Edwards
Associate Attorney General

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE
December 10, 2021

In re Town of Salem Absentee Ballots

FINAL REPORT

In the week of October 26, 2020, this Office began receiving reports from Salem voters, concerned about the status of their absentee ballot envelopes. Salem officials experienced challenges in completing the required data entry for these returned absentee ballots due to a cyberattack, which rendered their computers inoperative. There is no evidence to suggest voter information was compromised. Salem officials reached out to the State for assistance with completing the data entry of the returned absentee ballots. This report sets forth the factual findings, the actions undertaken by this Office and the Secretary of State's Office, and the results.

I. FACTUAL BACKGROUND

During the week of October 26, 2020, this Office received reports from Salem voters, concerned about the status of their absentee ballot envelopes. The Secretary of State's website was not showing their absentee ballots as "Received" by the Salem Town Clerk's Office.

Following these reports, this Office reached out to the Help America Vote Act ("HAVA") Help Desk to determine what assistance could be provided to Salem officials. HAVA suggested that this Office could take possession of approximately 500 submitted absentee ballots and bring those to the HAVA office located in Concord to allow HAVA staff to begin input of the absentee ballots into the ElectioNet system.

On October 29, 2020, Chief Investigator Richard Tracy contacted Salem Town Clerk Susan Wall. Clerk Wall informed Investigator Tracy that her office had more than 500 completed absentee ballots to process through the ElectioNet system. Investigator Tracy offered Clerk Wall assistance with the processing of those absentee ballots. Clerk Wall declined the offer and told Investigator Tracy she was confident she and her staff would be able to complete the task before their preprocessing session on October 31, 2020.

On October 29, 2020, following his conversation with Clerk Wall, Investigator Tracy was contacted by Salem Town Moderator Christopher Goodnow. Moderator Goodnow informed Investigator Tracy that the Town of Salem's computer system was subject to a cyberattack, rendering the Town's computers inoperative. There is no evidence to suggest voter information was compromised. As a result, Moderator Goodnow requested assistance from the State to complete the required data entry of Salem's returned absentee ballots.

II. REMEDIATION

On October 30, 2020 Moderator Goodnow arrived at the Attorney General's Office in Concord with 645 absentee ballots. Investigator Tracy and Moderator Goodnow went to the HAVA office with 645 absentee ballots. Elections Director Patricia Piecuch, HAVA staff members, as well as a member of the Attorney General's Election Law Unit entered the data for all 645 absentee ballots into ElectioNet.

This process was finished on the afternoon of October 30, 2020. Once this data was successfully entered, Investigator Tracy took possession of the 645 absentee ballots and delivered them to the Salem Town Clerk's Office this same day. Clerk Wall accepted the 645 absentee ballots and signed a letter confirming receipt of the same.[1]

III. CONCLUSION

Despite the challenges presented by the cyberattack on the Town of Salem's computer systems, Salem officials in cooperation with the State, successfully entered the data of 645 absentee ballots into the ElectioNet system. There is no evidence to suggest voter information was compromised. This matter is closed.

Sincerely,

Anne M. Edwards
Associate Attorney General

[1] See Attachment A.

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 30, 2020

IN HAND
Susan Wall
Town Clerk
Town of Salem

Re: Town of Salem, Absentee Ballots

Dear Clerk Wall:

On Friday, October 30, 2020, Salem Moderator, Chris Goodnow, delivered 645 returned absentee ballot envelopes to the Attorney General's Office. These absentee ballot envelopes were subsequently escorted by Chief Investigator Richard Tracy to the State Archives Building located at 9 Ratification Way Concord, New Hampshire.

The Attorney General's Office took possession of these returned absentee ballot envelopes because the Town of Salem's computer system was the victim of a cyberattack, rendering the computers inoperative. There is no evidence to suggest voter information was compromised. To complete the required data entry of Salem's returned absentee ballot envelopes into ElectioNet, the State's assistance was requested.

Director Patricia Piecuch from the Secretary of State's Election Division and Paralegal Jill Tekin from the Attorney General's Office volunteered to lead the State's efforts to complete this data entry for the 645 returned absentee ballot envelopes from Salem.

They successfully completed entering the information for 595 returned absentee ballot envelopes from Salem. The remaining 50 absentee ballot envelopes were not able to be completed as they lacked necessary documentation required for processing. These have been noted with their respective issues, and marked for completion by Salem officials.

At this time, the Attorney General's Office is returning 645 returned absentee ballot envelopes for the Salem General Election to you. Please sign below to acknowledge receipt of the 645 Salem General Election returned absentee ballot envelopes.

Sincerely,

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

Enclosure

On October 30, 2020, 645 Salem General Election absentee ballot envelopes were returned by Chief Investigator Richard Tracy to Susan M Wall.

Delivery Acknowledged

Richard Tracy

Receipt Acknowledged

Susan M Wall

Print Name:
Position:

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

January 28, 2022

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

Re: Dover Teachers' Union, Alleged Illegal Campaign Activity

Dear Ms. Dillingham:

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

I. FACTUAL BACKGROUND

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

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

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

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

SUPPORT
DOVER PUBLIC
SCHOOLS

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

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

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

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

II. APPLICABLE LAW

a. Electioneering

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

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

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

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

b. Electioneering by Public Employees

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

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

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

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

III. ANALYSIS

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

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

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

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

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

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

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

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

This matter is closed.

Sincerely,

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

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

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

February 7, 2022

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

Re: City of Rochester rejection of valid absentee ballots

Dear Clerk Walters:

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

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

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

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

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

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

Sincerely,

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

cc: [redacted]
David Scanlan, Deputy Secretary of State

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

February 7, 2022

Douglas Wilson
[redacted]
Greenland, NH 03840

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

Mr. Wilson:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Myles Matteson
Deputy General Counsel
Attorney General's Office

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

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

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

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

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

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

Charging document: Indictment

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

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.
Conviction: Felony

Sentence: see attached

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

MITTIMUS

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

Attest: _____
Clerk of Court

SHERIFF'S RETURN

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

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

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

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

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

Court Name: Belknap Superior Court

Case Name: State v. Edward D. Amirault

Case Number: 211-2021-CR-00652 Charge ID Number: 1933811C
(if known)

HOUSE OF CORRECTIONS SENTENCE

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

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a **Felony**

☐ A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

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

_____

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

OR A person similarly situated to _____

CONFINEMENT

☑ A. The defendant is sentenced to the House of Corrections for a period of **180 days**.
Pretrial confinement credit is ____ days.

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

☐ Stand committed ☐ Commencing _____

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

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

☐ _____ of the sentence is deferred for a period of _____.
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.
Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

☐ Other: _____

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

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

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

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

PROBATION

☐ A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: ☐ Forthwith ☐ Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

☐ B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

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

FINANCIAL OBLIGATIONS

☑ A. **Fines and Fees:**
Fine of $ 4,000.00, plus a statutory penalty assessment of $ 960.00 to be paid:
☑ Today
☐ By _____
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
☐ $ _____ of the fine and $ _____ of the penalty assessment is suspended for _____ year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

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

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

_____

_____

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

OTHER CONDITIONS

☑ A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☐ B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____

☑ D. The defendant shall perform 100 hours of community service and provide proof to State within 12 months of today's date.

☐ E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.

☑ F. Law enforcement agencies may ☑ destroy the evidence ☑ return evidence to its rightful owner.

☑ G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☑ I. Other:

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

For Court Use Only

So ordered.

Steven M. Houran

Honorable Steven M. Houran
April 6, 2022

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

THE STATE OF NEW HAMPSHIRE
INDICTMENT

BELKNAP, SS. DECEMBER TERM, 2021

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

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

EDWARD D. AMIRAULT, SR.
[redacted]

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

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

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

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

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

This is a true bill.

Foreperson

Plea of Guilty
Entered April 6, 2022
Honorable Steven M. Houran

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

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

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

RETURN FROM SUPERIOR COURT

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

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

DOB: [redacted]

Charging document: Indictment

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

Disposition: Nolle Pros

Date: April 06, 2022

Action taken: By Prosecutor

Pursuant to plea agreement

Matthew G. Conley, ESQ.

J-ONE: ☒ State Police ☐ DMV

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

NHJB-2574-Se (08/06/2019)

Filed
File Date: 4/6/2022 8:42 AM
Belknap Superior Court
E-Filed Document

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

Court Name: **Belknap Superior Court**

Case Name: **State v. Edward D. Amirault**

Case Number: **211-2021-CR-00652**

Charge ID Number(s): **1933810C**

NOTICE OF NOLLE PROSEQUI

Reason for Nolle Prosequi: **Pursuant to plea agreement**

Other:

/s/ Matthew G. Conley
Prosecuting Attorney

04/06/2022
Date

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

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

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

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: **State v. Todd Krysiak**
Case Number: **211-2019-CR-00350**

Name: **Todd Krysiak**, [redacted] Alton NH 03809
DOB: [redacted]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Vote in More than 1 State		1630698C	659:34-a	November 08, 2016

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.
Conviction: Felony

Sentence: see attached

April 22, 2022 — Date
Hon. Amy L. Ignatius — Presiding Justice
Abigail Albee — Clerk of Court

MITTIMUS

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

Attest: _____
Clerk of Court

SHERIFF'S RETURN

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

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

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

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

Filed
File Date: 4/18/2022 9:09 PM
Belknap Superior Court
E-Filed Document

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

Court Name: Belknap Superior Court

Case Name: State v. Todd Krysiak

Case Number: 211-2019-CR-00350 (if known) Charge ID Number: 1630698C

HOUSE OF CORRECTIONS SENTENCE

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

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a **Felony**

☐ A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

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

_____

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

OR A person similarly situated to _____

CONFINEMENT

☑ A. The defendant is sentenced to the House of Corrections for a period of **90 days**.

Pretrial confinement credit is _____ days.

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

☐ Stand committed ☐ Commencing _____

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

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

☐ _____ of the sentence is deferred for a period of _____.

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

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

☐ Other: _____

☐ C. The sentence is ☐ consecutive to case number and charge ID _____

☐ concurrent with case number and charge ID _____

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

☐ Work release consistent with administrative regulations.

☐ Drug and alcohol treatment and counseling.

☐ Sexual offender program.

☐ _____

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

PROBATION

☐ A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: ☐ Forthwith ☐ Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

☐ B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

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

FINANCIAL OBLIGATIONS

☑ A. **Fines and Fees:**
Fine of $ 4,000.00, plus a statutory penalty assessment of $ 960.00 to be paid:
☐ Today
☒ By October 21, 2022
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
☐ $ _____ of the fine and $ _____ of the penalty assessment is suspended for _____ year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

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

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

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

OTHER CONDITIONS

☐ A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☐ B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____

☐ D. The defendant shall perform _____ hours of community service and provide proof to _____ within ____ _____ of today's date.

☐ E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.

☑ F. Law enforcement agencies may ☑ destroy the evidence ☑ return evidence to its rightful owner.

☑ G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☑ I. Other:

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

For Court Use Only

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

Amy Ignatius

Honorable Amy L. Ignatius
April 22, 2022

211-2019-CR-350 Charge ID# 1630698C

THE STATE OF NEW HAMPSHIRE
INDICTMENT

BELKNAP, SS. AUGUST TERM, 2019

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

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

TODD KRYSIAK
[redacted]

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

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

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

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

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

This is a true bill.

Foreperson

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

Plea of Guilty
Entered April 22, 2022
Honorable Amy L. Ignatius
April 22, 2022

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

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

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

Case Name: **State v. Todd Krysiak**
Case Number: **211-2019-CR-00350**

Name: **Todd Krysiak**, [redacted] Alton NH 03809
DOB: [redacted]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Vote in More than 1 State		1630698C	659:34-a	November 08, 2016

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.
Conviction: Felony

Sentence: see attached

April 22, 2022 — Date
Hon. Amy L. Ignatius — Presiding Justice
Abigail Albee — Clerk of Court

MITTIMUS

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

Attest: _____
Clerk of Court

SHERIFF'S RETURN

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

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

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

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

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Belknap Superior Court
64 Court St.
Laconia NH 03246

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

RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS

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

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

Charging document: Indictment

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

Disposition: Guilty/Chargeable By: Plea

A finding of GUILTY/CHARGEABLE is entered.
Conviction: Felony

Sentence: see attached

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

MITTIMUS

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

Attest: _____
Clerk of Court

SHERIFF'S RETURN

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

_____ Date
_____ Sheriff

J-ONE: ☒ State Police ☐ DMV

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

Filed
File Date: 5/2/2022 2:50 PM
Belknap Superior Court
E-Filed Document

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

Court Name: Belknap Superior Court

Case Name: State of New Hampshire v. Sigmund Boganski

Case Number: 211-2020-CR-00509 Charge ID Number: _____
(if known)

HOUSE OF CORRECTIONS SENTENCE

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

A finding of GUILTY/TRUE is entered.

CONVICTION

This conviction is for a Felony

☐ A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.

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

_____

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

OR A person similarly situated to _____

CONFINEMENT

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

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

☐ Stand committed ☐ Commencing _____

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

☑ All of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 2 years from ☐ today or ☐ release on charge ID number MAY 4, 2024

☐ _____ of the sentence is deferred for a period of _____.
The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of _____.
Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.

☐ Other: _____

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

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

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

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

PROBATION

☐ A. The defendant is placed on probation for a period of _____ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.
Effective: ☐ Forthwith ☐ Upon release from _____
The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

☐ B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

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

FINANCIAL OBLIGATIONS

☑ A. **Fines and Fees:**
Fine of $ 1000, plus a statutory penalty assessment of $ 240 to be paid:
☒ Today
☐ By _____
☐ Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.
☐ $ _____ of the fine and $ _____ of the penalty assessment is suspended for _____ year(s).
A $25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.

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

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

_____

_____

Case Name: State of New Hampshire v. Sigmund Boganski
Case Number: 21-1-2020-CR-00509
HOUSE OF CORRECTIONS SENTENCE

OTHER CONDITIONS

☐ A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.

☐ B. The defendant's _____ in New Hampshire is revoked for a period of _____ effective _____

☐ C. Under the direction of the Probation/Parole Officer, the defendant shall tour the _____

☐ D. The defendant shall perform _____ hours of community service and provide proof to _____ within ____ _____ of today's date.

☐ E. The defendant is ordered to have no contact with _____ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.

☒ F. Law enforcement agencies may ☒ destroy the evidence ☒ return evidence to its rightful owner.

☐ G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.

☐ I. Other:
Pursuant to Part I, Article 11 of the New Hampshire Constitution the defendant shall no longer have the right to vote in New Hampshire under the Constitution of this State.

For Court Use Only

Honorable Elizabeth M. Leonard

May 4, 2022

211-2020-CR-00509
Charge ID #1805799C

THE STATE OF NEW HAMPSHIRE
INDICTMENT

BELKNAP, SS. OCTOBER TERM, 2020
STATEWIDE GRAND JURY
HOLDEN AT CONCORD

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

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

SIGMUND J. BOGANSKI
[redacted]

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

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

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

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

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

This is a true bill.

Foreperson

Plea of Guilty
Entered May 4, 2022

Honorable Elizabeth M. Leonard

Name:	Sigmund J. Boganski
DOB:	4/10/1945
Address:	22 Mansfield Wood Way, New Hampton, NH 03256
RSA:	RSA 659:34-a
Offense level:	Class B Felony
Dist/Mun Ct:	N/A

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
5 Court Street
Concord NH 03301

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

RETURN FROM SUPERIOR COURT

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

Name: **Michael Lewis,** [redacted]
DOB: [redacted]
Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Voter Fraud - RSA 659:34, I(b)		1572142C	659:34,II	November 06, 2018

Disposition: Dismissed/Quashed
Date: August 12, 2022
Action taken: By Judge

Andrew R. Schulman

J-ONE: ☒ State Police ☐ DMV

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

THE STATE OF NEW HAMPSHIRE
INDICTMENT

MERRIMACK, SS. DECEMBER TERM, 2018

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

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

MICHAEL L. LEWIS
[redacted]

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

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

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

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

Matthew T. Broadhead, NH Bar #19808
Assistant Attorney General

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

Honorable Andrew R. Schulman
August 12, 2022

This is a true bill.

Jamie Grunwald

Foreperson

Dated - 12/13/18

2018 DEC 13 PM 2 12
SUPERIOR COURT

029189

MCSC #217 2018 CR 1164
CHG ID# 1572142C

Plea of Not Guilty
Entered November 3, 2020

Clerk of Court

Name:	Michael L. Lewis
DOB:	
Address:	[redacted] FL, 33142
RSA:	RSA 659:34, I (b) & RSA 659:34, II
Offense level:	Class B Felony
Dist/Mun Ct:	N/A

MCSC #217 2018 CR 1164
CHG ID# 1572142C

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

July 25, 2022

BY EMAIL ONLY

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

Mr. Hart:

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

I. BACKGROUND

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

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

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

Telephone 603-271-3658 • FAX 603-271-2110 • TDD Access: Relay NH 1-800-735-2964

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

II. ANALYSIS

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

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

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

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

---

[1] 654:7-c Observation to Voter Registration. – Any person shall have a right, as safety, welfare, and rights of voters permit, to observe in-person voter registration, wherever it is conducted, provided however, that the person may not be positioned within 5 feet of the voter registration table where the exchange of nonpublic information between the applicant for registration and the election official receiving the application may be heard or seen. When a person registers to vote on election day, the ballot clerk, upon adding the person's name to the checklist at the check-in table, shall publicly announce the person's name 2 times and shall publicly announce the address the person has registered as his or her domicile one time. These announcements shall be made in a manner that allows any person appointed as a challenger to hear the announcement. Where the physical layout of a polling place makes it impractical to position challengers or interested voters who are registered at that polling place where they can hear the announcement at the check-in table, the moderator shall arrange an alternative means for challengers or interested voters who are registered to vote at that polling place to be informed of the new voter's name and domicile address and be afforded an opportunity to challenge the voter at the check-in table.
659:13-a Observing Voter Check-In. – No person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator.

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

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

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

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

III. CONCLUSION

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

This matter is closed.

Sincerely,

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

CC: Emma Mintz
Patty McKerley, Manchester Ward 3 Moderator

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

Note to File

Carolyn Carr, Alleged Illegal Campaign Activity	2021152090	7/29/2022 8:42:00 AM	Case Notes

Closing this matter - note to file

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

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

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

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

Dear Deputy Clerk Stewart:

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

I. FACTUAL BACKGROUND

a. Initial Complaint and Interview with Susan Longley

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

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

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

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

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

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

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

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

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

b. Interview with Town Clerk Pat Tucker

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

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

c. Interview with Town Moderator Roberta "Bobbi" Hoerter

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

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

d. Interview with Assistant Town Moderator Sandra Coleman

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

e. Follow up with Ms. Longley

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

f. Interview with John Longley

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

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

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

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

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

h. Interview with Supervisor of the Checklist Beverly Ober

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

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

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

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

i. Attempts to contact you

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

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

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

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

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

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

II. APPLICABLE LAW

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

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

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

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

RSA 659:40, III(a) provides that

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

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

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

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

III. ANALYSIS

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

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

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

IV. CONCLUSION

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

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

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

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

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

Cease and Desist Order Issued

By Authority of:

John M. Formella
Attorney General

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

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

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

June 23, 2022

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

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

Dear Supervisor Roy:

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

I. FACTUAL BACKGROUND

a. Initial Complaint

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

b. Contact with Moderator Holden

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

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

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

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

c. Contact with Town Manager Codling

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

d. Contact with Office Administrator Aldrich

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

e. Contact with Assistant Town Manager Boucher

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

f. Contact with Darwin Clogston

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

g. Contact with Don and Kathleen Vaillancourt

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

h. Contact with Paul Forcier

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

i. Contact with Selectman Bjelobrk

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

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

j. Contact with you

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

k. Contact with Assistant Town Moderator Ballam

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

l. Contact with Mary Patridge-Jones

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

m. Contact with Marilyn Blaisdell

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

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

II. APPLICABLE LAW

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

The law further contemplates penalties for violations, which include –

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

RSA 659:43, VIII & IX.

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

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

III. ANALYSIS

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

IV. CONCLUSION

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

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

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

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

Sincerely,

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

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

ATTORNEY GENERAL
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JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Fred Garofalo, Chair of the Haverhill Selectboard
Town of Haverhill
[redacted]
Woodsville, NH

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

Dear Selectman Garofalo:

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

I. FACTUAL BACKGROUND

a. Initial Complaint

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

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

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

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

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

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

b. Contact with Moderator Holden

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

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

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

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

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

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

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

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

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

c. Contact with Town Manager Codling

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

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

d. Contact with Office Administrator Aldrich

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

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

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

e. Contact with Assistant Town Manager Boucher

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

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

f. Contact with Darwin Clogston

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

g. Contact with Don and Kathleen Vaillancourt

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

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

h. Further Contact with Selectman Bjelobrk

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

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

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

i. Contact with Assistant Town Moderator Ballam

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

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

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

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

j. Contact with Vickie Wyman

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

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

k. Contact with Bookkeeper and Administrative Assistant Diane Thompson

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

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

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

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

II. APPLICABLE LAW AND PROCEDURE

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

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

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

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

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

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

> The moderator may select volunteers to assist election officers in counting ballots. These volunteers must be voters in the town or ward or 17-year-olds who would be qualified as a voter were they 18 years old. RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. Swear in these volunteers as election officers pro tem. As election officers, the volunteer ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 6663. Written oaths must be completed and filed with the clerk. RSA 42:1; RSA 42:7, RSA 42:8; RSA 658:4.

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

III. ANALYSIS

a. Posting Political Signs

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

b. Swearing in Ed Ballam

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

c. Cheering of volunteers and the intermingling of volunteers

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

d. Note taking and modification of tallies

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

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

IV. CONCLUSION

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

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

Sincerely,

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

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

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL

August 19, 2022

Paul Forcier
[redacted]
Haverhill, NH (Woodsville) 03785

Re: Haverhill Electioneering Facebook Post

Dear Mr. Forcier:

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

I. FACTUAL BACKGROUND

a. Contact with you

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

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

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

b. Contact with Brigitte Codling

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

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

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

II. APPLICABLE LAW

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

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

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

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

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

III. ANALYSIS

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

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

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

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

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

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

IV. CONCLUSION

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

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

Sincerely,

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

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

Note to File

Teresa Vigneault, Alleged Illegal Campaign Activity - sign theft	2021151262	8/26/2022 11:34:00 AM	Note to File

- There are no investigative leads or prospects for additional information. Closed with a note to file.