

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

In re New Hampshire Democratic Party

FINAL REPORT
September 26, 2023

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

I. FACTUAL BACKGROUND

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

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

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

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

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

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

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

II. APPLICABLE LAW

RSA 659:40 prohibits a person from "engag[ing] in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information."

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

III. CEASE AND DESIST ORDER

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

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

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

IV. REMEDIATION

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

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

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

V. CONCLUSION

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

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

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

This matter is closed.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



JOHN M. FORMELLA
ATTORNEY GENERAL

JAMES T. BOFFETTI
DEPUTY ATTORNEY GENERAL



September 23, 2022

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

Re: **CEASE AND DESIST ORDER**

Dear Attorney Christie:

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

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

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

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

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

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

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

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

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

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

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

Cease and Desist Order
Page 3 of 3

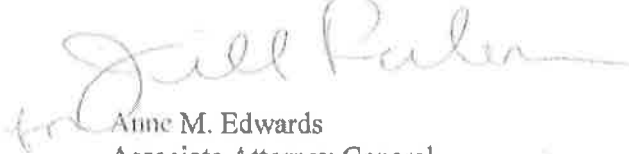
Clerk's Office, in order to obtain an absentee ballot for the 2022 General Election and assist each recipient with explaining how they can obtain an absentee ballot prior to the General Election.

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

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

Cease and Desist Order Issued
By the Authority of:

JOHN M. FORMELLA
ATTORNEY GENERAL

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

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

William F. Christie
Attorney At Law



September 27, 2022

VIA ELECTRONIC MAIL

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

Dear Attorney Edwards:

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

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

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

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

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

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

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

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

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

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

Very truly yours,

/s/ William E. Christie

William E. Christie
wchristie@shaheengordon.com

WEC/