

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF JUSTICE

*In re New Hampshire Republican State Committee*

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

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

**I. FACTUAL BACKGROUND**

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

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

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

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

## II. INVESTIGATION

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

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

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

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

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

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

### b. The Vendor and Mailer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Printing Company

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

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

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

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

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

d. Republican National Committee

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

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

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

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

### **III. REMEDATION**

#### **a. Management of the Return Postcards**

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

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

#### **b. Contact from the Public and Clerks' Offices**

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

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

#### IV. LEGAL ANALYSIS

RSA 659:40 defines voter suppression as follows:

III. No person shall engage in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information. Prohibited acts of voter suppression include:

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

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

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

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

#### V. CONCLUSION

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

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



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

This matter is closed.