

STATE OF NEW HAMPSHIRE
DEPARTMENT OF JUSTICE

In re Hanover-Lyme Town Democratic Committee

FINAL REPORT
September 26, 2023

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

I. FACTUAL BACKGROUND

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

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

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

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

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

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

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

II. APPLICABLE LAW

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

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

III. CEASE AND DESIST ORDER

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

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

IV. REMEDIATION

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

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

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

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

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

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

V. CONCLUSION

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

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

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

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

This matter is closed.

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397



GORDON J. MACDONALD
ATTORNEY GENERAL

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL



October 15, 2020

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

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

Dear Chair Nelson:

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

Factual Background

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

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

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

Deborah Nelson
October 15, 2020
Page 2 of 3

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

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

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

Analysis

RSA 656:18 states that –

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

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

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

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

Deborah Nelson
October 15, 2020
Page 3 of 3

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

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

Order

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

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

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

Cease and Desist Order Issued
By the Authority of:

GORDON J. MACDONALD
ATTORNEY GENERAL



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

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



Written Plan by Hanover/Lyme Town Democratic Committee

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

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

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

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

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