

July 7, 2022

Kathleen Cavalaro
32 Broad St
Rochester, NH 03867

Re: TikTok Video and Possible Voter Misinformation

Ms. Cavalaro:

Yesterday this Office received complaints concerning a TikTok video you posted where you made statements regarding Massachusetts residents being able to vote for you in your campaign for a New Hampshire state representative seat. Having reviewed the video, your comments to the social media post, and interviewed you, we accept your claim that the statements were made in jest and do not constitute criminal solicitation to wrongfully vote. We ask that you consider the risk of voter misinformation—particularly as you are a candidate for elected office seeking to win votes—in your future communications. We also ask that you take steps to mitigate the possible effects of your communications, even if they are being misinterpreted.

The complaints we received concerned a May 23, 2022, video you posted on the social media platform, TikTok. Those complaints alleged that you provided directions for people to vote for you in Rochester by taking a bus from Massachusetts. When we viewed your video on TikTok, we heard your statement, “You can actually vote for me. Just get on one of those buses that comes in from Massachusetts and go to Ward 2 in Rochester and vote for me.”

As with most social media platforms, TikTok allows users to comment on content. The top comment on your video is a “pinned” comment from yourself, also made on May 23, 2022, reading, “For legal reasons and bc Repubs are not funny, this is a joke. I am making fun of Republicans.” “Pinned” comments are those that the writer purposefully places at the very top of a thread or comments section so that they will be read first.

Yesterday the Attorney General’s Chief Investigator Richard Tracy interviewed you by phone. You maintained that the post was made with humorous intent, evidenced by your demeanor and subsequent comments.

It appears clear from social media commentary that consumers have viewed your post either as humor, an attempt at humor, or a serious invitation to commit voter fraud. We recognize that consumers viewing your video at its original location on TikTok may see your pinned comment clarifying that the communication was a joke. We also recognize that any sharing of your video post—rendering it beyond your control—is likely to remove your clarifying comment from the communication, increasing the risk of misinterpretation. Additionally, we recognize that a wide swath of communications, including your video post, is protected speech under the First Amendment.

As the entity responsible for enforcement of our state's election laws, this Office appreciates opportunities to improve voter education. Understanding that it is still your prerogative to leave your May 23 video post as is, but given that there is a risk that your communication could result in voter confusion—or a criminal act if a Massachusetts resident votes in New Hampshire—we ask that you consider removing your May 23 video post from your TikTok account. If you will not do so, we request that you use your social media platform(s) to clarify that registering to vote in New Hampshire requires being *domiciled* here in our state.

Finally, we note that there are circumstances where a communication can constitute criminal solicitation to wrongfully vote in violation of RSA 659:34. Criminal solicitation is a communication that commands, solicits, or requests another person engage in criminal conduct where the communicator has a purpose that another individual engage in that criminal conduct. *See* RSA 629:2. RSA 659:34 concerning wrongful voting includes voting where a person is not qualified to vote. Therefore, soliciting individuals to vote where they are not qualified is a crime. As such, we note that it is very important that a speaker, who asserts that they are making a joke, ensure that the substance and context of a communication are very clear in showing that the communication is in jest.

This matter is closed.

Sincerely,

Myles B. Matteson
Deputy General Counsel
Attorney General's Office
Election Law Unit

CC: Terese Grinnell