



October 19, 2020

Via Email

Hon. Gordon MacDonald
Attorney General of the State of New Hampshire
33 Capitol Street
Concord, NH 03301

RE: Registration and Voting by Remote Learners

Dear Attorney General MacDonald:

We write in response to the New Hampshire Republican State Committee's ("NHRSC") letter of October 15, 2020 requesting that your office prohibit remote learners from registering to vote, requesting a ballot, or requesting an absentee ballot without confirming a current residential address and domicile in New Hampshire. This request should be rejected as it contrary to New Hampshire law and, coming 15 days before an election, would needlessly inject chaos and confusion into the final two weeks of voting.

First, despite having their rightful place in the State's political community challenged for decades, *see Newburger v. Peterson*, 344 F. Supp. 559 (D.N.H. 1972), college students attending institutions of higher learning in New Hampshire are explicitly permitted to vote in the State if domiciled here. RSA 654:1, I-a. Indeed, your office and the Secretary of State have been informing college student voters of their rights to vote in New Hampshire if they have established domicile while attending school. *See <https://sos.nh.gov/elections/information/faqs/voter-registration-motor-vehicle-law/>*

Your office cannot instruct local election officials to prohibit college students from voting, as NHRSC asks, because "Domicile for purposes of voting is a question of fact and intention coupled with manifestation of that intent." RSA 654:2. Whether a college student—or any voter—has established domicile is a factually-intensive and partially subjective inquiry that cannot be answered categorically.

In addition, New Hampshire law is clear: a temporary absence from a domicile (regardless of the length of time of that absence) shall not cause domicile for voting purposes to be lost. RSA 654:2, I. Domicile for voting purposes, once existing, continues to exist until another such domicile is gained. *Id.* Whether a student learning remotely is absent from the State temporarily (in which case domicile would be maintained in New Hampshire) or not; or whether a student learning remotely has established domicile somewhere else or not (in which case, again, domicile would be maintained in New Hampshire) are also factual questions which cannot be answered categorically.

Second, it is too close to the election for your office to change the guidance that it is providing college students. There is an election in 15 days and over 78,000 people have already returned absentee ballots in New Hampshire, including college students. Putting aside that the requested guidance would be contrary to law, changing the State's guidance to restrict the people who can vote in New Hampshire this close to the election will inject



needless confusion and chaos into an election that is already unprecedented in the State due to the COVID-19 pandemic. Moreover, to the extent that NHRSC is asking for changes to election procedures (i.e. “Do not send absentee ballots out of state to remote learners without confirming a current residential address and domicile in New Hampshire”), such changes this close to an election would burden already over-worked local election officials leading to even further confusion.

Sincerely,

/s/ Henry Klementowicz

Henry Klementowicz, Esq.
ACLU-NH, Staff Attorney

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