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October 21, 2020

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Re: Registration and Voting by Remote Learners

Dear Attorney List:

This responds to your October 15 and October 21, 2020 letters. At the outset, the determination of where any prospective voter is domiciled hinges on the facts relevant to that particular individual. RSA 654:2, I; RSA 654:1. As a result, broad guidance may not capture every possible permutation. With that in mind, we offer the following response to the two points you have raised.

Your first point is premised on the assertion RSA 654:1, I-a creates “an unusual accommodation for ‘a student of any institution of learning’ in the state.” The statute is neither unusual nor an accommodation. As the New Hampshire Supreme Court has recently confirmed, it reflects longstanding domicile law that a student living in New Hampshire and attending an institution of learning may lawfully claim domicile in the town or ward in which the student lives if the student’s claim of domicile meets the requirements of RSA 654:1, I. *See, e.g., Casey v. New Hampshire Secretary of State*, 173 N.H. \_\_\_, 2020 WL 2565302 (N.H. May 20, 2020) (a student living in New Hampshire while attending an institution of learning may claim New Hampshire as his or her domicile if the student’s claim of domicile meets the requirements of RSA 654:1, I).

Once a student lawfully establishes domicile in New Hampshire under RSA 654:1, I, the student does not lose his or her domicile due to temporary absence. RSA 654:2, I, states: “A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile.” RSA 654:2, I; *see also Casey*, 173 N.H. at \_\_\_, 2020 WL 2565302, at \*5 (“Thus, a temporary absence from a domicile, once acquired, does not result in a change of domicile.”) (citing *Atherton v. Thornton*, 8 N.H. 178, 180 (1835)). Under this provision, any person – including a student – who has established a domicile in New Hampshire consistent with RSA 654:1, I & I-a,

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but who is temporarily absent from the State by virtue of the COVID-19 pandemic or any other reason, remains domiciled within the State unless he or she establishes domicile elsewhere.

As to your second point, to be domiciled under RSA 654:1, I, an individual must “establish[] physical presence and manifest[] an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” Thus, a person who has never established a physical presence in New Hampshire cannot be domiciled in the State for voting purposes. We believe that the extensive written guidance issued by the Secretary of State in the *Election Procedure Manual: 2020-2021* gives clear and adequate explanation as to the law regarding domicile and the documentation required to prove it for voting purposes. *See, e.g., id.* at pp. 171-82.

Sincerely,



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cc: William M. Gardner, Secretary of State  
Bryan Gould, New Hampshire Republican Party  
William Christie, New Hampshire Democratic Party  
Henry Klementowicz, American Civil Liberties Union