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May 30, 2018

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

RE: Request for an Opinion of the Justices (Amending Definition of Resident and Residency) – Case No. 2018-0267

Dear Ms. Fox:

Enclosed herewith please find for filing an original and eight copies of a Memorandum in behalf of the NH Secretary of State to be considered by the Court in the above-entitled matter.

Sincerely,



Eugene Van Loan III

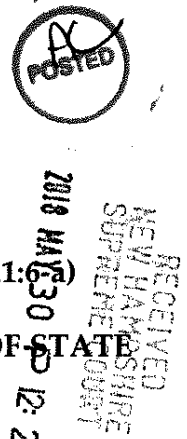
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Enclosures

cc: The Honorable Christopher T. Sununu, Governor (w/encl.)
Governor's Council (w/encl.)
Attorney General Gordon J. MacDonald, Esq. (w/encl.)

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THE STATE OF NEW HAMPSHIRE
SUPREME COURT
CASE NO. 2018-0267



Request for an Opinion of the Justices (Amending RSA 21:6 and 21:10)

MEMORANDUM OF LAW OF THE NEW HAMPSHIRE SECRETARY OF STATE

NOW COMES William M. Gardner, Secretary of State for the State of New Hampshire, by and through counsel, and files this Memorandum providing the Court with information regarding HB 1264.

QUESTIONS PRESENTED

Upon request of the Governor and Executive Council, the Supreme Court has been asked to provide their opinion relative to amending the definition of “resident,” “inhabitant,” “residence,” and “residency” as contemplated in House Bill 1264 (HB 1264). The following questions have been presented:

1. **HB 1264’s facial constitutional validity.** Under the New Hampshire Constitution and the United States Constitution, is it facially constitutional to subject those who are domiciled in New Hampshire for voting purposes to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSAs 261:45 and 263:35 and to pay any fees or taxes associated therewith?
2. **HB 1264’s as applied constitutional validity.** Under the New Hampshire Constitution and the United States Constitution, as applied to students attending postsecondary institutions within New Hampshire who currently claim this state as their domicile for voting purposes but who do not claim it as their residence, is it constitutional to subject the previously-mentioned postsecondary students to the same legal requirements as those who are residents of New Hampshire, including but not limited to the requirements to take actions required by RSAs

261:45 and 263:35 and to pay any fees or taxes associated therewith?

DISCUSSION

In resolving these constitutional questions, if accepted for review, the Court may want to consider the impact, if any, HB 1264 will have on New Hampshire election law and procedure. As New Hampshire's chief election officer, pursuant to RSA 652:23 specifically, and RSA chapters 652-671 generally, the Secretary of State oversees the implementation, administration, monitoring, and enforcement (alongside the Attorney General) of our state's election laws and is, therefore, uniquely suited to discuss HB 1264's impact, or lack thereof, on New Hampshire election law and procedure.

HB 1264 amends only the terms "resident," "inhabitant," "residence," and "residency" as defined in RSA chapter 21. New Hampshire election law, RSA chapters 652-671, is devoid of citations to RSAs 21:6 and 21:6-a, the statutes which HB 1264 seeks to amend. While some of these terms are used in the New Hampshire Constitution and New Hampshire election law, "domicile" is the term used relative to voter eligibility. In the context of election law, domicile has its origins in Part I, Article 11 of the New Hampshire Constitution: "All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. Every person shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile." N.H. CONST. pt. I, art. 11.

"Domicile," in turn, is defined by statute "as that one place where a person, more than

any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I.

Domicile is not defined by RSA 21:6 or 21:6-a, and any changes to those statutes do not alter the definition of “domicile” under New Hampshire election law. Accordingly, because the language of HB 1264 leaves New Hampshire election law unchanged, all pre-, post-, and Election Day procedures will remain unaffected whether or not HB 1264 becomes law, including, but not limited to:

- i. Voter eligibility, including voter qualifications and events of disqualification. *See, e.g.*, RSAs 654:1 – 654:6;
- ii. The act of registering to vote and voting. *See, e.g.*, RSAs 654:7 – 654:24;
- iii. Procedures related to the registration of voters. *See, e.g.*, RSAs 654:7 – 654:15;
- iv. Preparation and publication of voting materials, including printing ballots, affidavits, notices, forms, checklists, and such other materials for use during elections. *See, e.g.*, RSA 656;
- v. Procedures related to the counting of votes and certification of results. *See, e.g.*, RSAs 659:58 – 659:65; and
- vi. Procedures related to preservation of checklists, ballots, and such other voting materials to be retained after elections. *See, e.g.*, RSAs 659:95 – 659:103.

In short, New Hampshire election law and the procedures prescribed therein for the administration of elections in this state will remain as they are even if HB 1264 is enacted. Further, because HB 1264 leaves New Hampshire election law unchanged,

the interpretation of said laws will remain the same. As a result, the Secretary of State has no intent to make changes to the current implementation, administration, monitoring, or enforcement of the state's election law in the event of HB 1264 is enacted.

CONCLUSION

The effect HB 1264 has or may have on election law and procedure, as discussed above, is one of many issues this court may consider in answering the questions presented. The Secretary of State provides this information only for the purpose of facilitating the court's analysis to the extent it deems this information relevant.


Respectfully submitted

WILLIAM M. GARDNER
SECRETARY OF STATE

By his attorneys:

Dated: May 30, 2018

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CERTIFICATE OF SERVICE

I, Eugene M. Van Loan, III, do hereby certify that on this date I caused a copy of the foregoing memorandum to be delivered to the Attorney General, the Governor, and the Governor's Council, the parties of record to this Request for Advisory Opinion.

Dated: May 30, 2018


Eugene M. Van Loan, III