

GREGORY J. AHLGREN
ATTORNEY AT LAW
529 UNION STREET
MANCHESTER, NEW HAMPSHIRE 03104-4839

FAX
(603) 669-4129

TELEPHONE
(603) 669-0117

June 20, 2014

William Gardner, Secretary of State
State House
Room 204
107 N. Main St.
Concord, NH 03301-4989

Re: Petition of Walter P. Havenstein, Ballot Law Commission

Dear Secretary Gardner:

Enclosed please find an original and five copies of the New Hampshire Democratic Party's Answer and Cross-Petition to the Ballot Law Commission Petition Of Walter P. Havenstein together with six sets of attached exhibits, and an original and five copies of the New Hampshire Democratic Party's request for discovery.

I have on this date forwarded a copy of this letter and the within Answer and Request to David A. Vicinanza, Esquire, Kathleen M. Sullivan, Esquire, Governor Margaret Hassan, Office of the Governor, and Hemmingway for Governor.

At his request, I am also forwarding a copy of the Answer, attached exhibits, and request for discovery to Brad Cook, Esquire, Chairman of the Ballot Law Commission.

Thank you for your courteous attention to this matter.

Very truly yours,

Gregory J. Ahlgren

GJA/de
Enclosure

cc: Brad Cook, Chairman
David A. Vicinanza, Esquire
New Hampshire Democratic Party
Kathleen M. Sullivan, Esquire
Governor Margaret Hassan
Office of the Governor
Hemmingway for Governor

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

PETITION OF WALTER P. HAVENSTEIN

**RESPONDENT NEW HAMPSHIRE DEMOCRATIC PARTY'S
REQUEST THAT THE BALLOT LAW COMMISSION COMPEL
MR. HAVENSTEIN TO PRODUCE CERTAIN
DISCOVERABLE MATERIAL**

NOW COMES the New Hampshire Democratic Party, 105 N. State Street, Concord, NH, by and through its attorney, Gregory J. Ahlgren, and hereby requests that the Ballot Law Commission order Mr. Havenstein, at least 21 days prior to the final evidentiary trial hearing on his eligibility for governor, to produce to all parties and the Commission the following:

A. Complete copies (with schedules attached) and containing his signature of his Federal Tax Returns for tax years 2007 to present. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures. Mr. Havenstein alleges in his Petition that "true and correct" copies of said returns are attached, but a casual review indicates that only one page for each year has been attached.

B. Complete copies (with schedules attached) and containing his signature of his State of Maryland tax returns for tax years 2007 to present. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

C. Complete and signed tax return for taxation on interest and dividends paid to

the State of New Hampshire. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

D. Tax returns or other forms for any and all other taxes or fees paid to the State of Maryland from 2007 to present. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

E. Any and all W-9 forms that Mr. Havenstein received for tax years 2007 to present. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

F. A true copy of any and all motor vehicle operator licenses, together with complete copies of any and all applications for motor vehicle operator licenses and automobile registrations that Mr. Havenstein filed in the State of Maryland from 2007 to present. Mr. Havenstein may redact them, at his option, to black out his social security number and date of birth.

G. All contracts, powers of attorney, tax forms, affidavits, applications, mortgages, or deeds of trust and any and all other documentation incidental to the leasing or rental of, or purchase or sale of, any real estate by Mr. Havenstein, his spouse, or any and all trusts within the control of Mr. Havenstein or his wife from 2007 to present. Included in this request, but not limited to, is his dealings on any and all real estate located in Maryland, New Hampshire and North Carolina.

H. The name and business address of Mr. Havenstein's personal accountant for all tax years from 2007 to present.

I. Any and all contracts Mr. Havenstein entered into regarding executive relocation companies for the purchase or sale of residences in Maryland, Virginia and New

Hampshire (if any) and any contacts or other agreements, letters or documents in or by which Mr. Havenstein's employer agreed to assist Mr. Havenstein with residential relocation. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

J. Copies of any and all applications for governmental permits with regard to hunting, fishing, concealed weapon carry or any other other firearm permits made in the states of Maryland, Virginia, or North Carolina. Included in this request, but not limited thereby, is a request for any state permits required in addition to the Federal background check paperwork executed as part of the purchase of any and all firearms. Mr. Havenstein may redact them, at his option, to black out his social security number and date of birth.

K. Copies of any and all personal banking or investment account statements evidencing the location of any bank or investment account utilized by Mr. Havenstein from 2007 to present with any financial institution located in Virginia, Maryland, or North Carolina. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

L. A copy of those portions of Mr. Havenstein's contract with BAE Systems, Inc. relating to the term (length) of his employment with that company, including options to renew, and also relating to payment for social or other memberships such as, by way of example, golf club memberships. Mr. Havenstein may redact them, at his option, to black out his social security number, date of birth and any and all dollar figures.

IN SUPPORT THEREOF, the New Hampshire Democratic Party states as follows:

1. Walter P. Havenstein has filed a Petition For Declaratory Ruling with The Ballot Law Commission seeking guidance and determination as to whether he is eligible to run

for, and serve as, Governor of the State of New Hampshire.

2. In support of his Petition he has made factual allegations that he has been at all times, to the exclusion of all other jurisdictions, an inhabitant of the State of New Hampshire as required by RSA 21:6.

3. He has also alleged that pursuant to New Hampshire Constitution Part Second, Article 42 he has been at all times, in the seven years preceding the November 2014 election, an inhabitant of the State of New Hampshire.

4. In support of his Petition he has submitted selected documents to bolster his claim that he has been a New Hampshire inhabitant.

5. Based on information and belief, as more fully articulated in the New Hampshire Democratic Party's accompanying Answer and Cross-Petition to Walter Havenstein's Petition, there are other documents which may help shed light on the issue of whether Mr. Havenstein is eligible under the above provisions to run for, and serve as, Governor of the State of New Hampshire.

6. These documents as requested above would assist the New Hampshire Democratic Party and the Ballot Law Commission in resolving the issue raised by Mr. Havenstein in his Petition and coming to an accurate decision thereon.

7. All of the above requested documents have the potential to lead to evidence that will assist the Commission through adjudicating and resolving the issue raised in Mr. Havenstein's Petition.

8. The question of domicile turns on more than a candidate's claimed and conclusory statements of intent. As Mr. Havenstein's own Petition makes clear, there are substantial objective factors that suggest that Mr. Havenstein did not meet the seven year

requirement. The requested discovery will aid the fact-finder in weighing his claims.

9. In order to have an ordered discovery process, the New Hampshire Democratic Party is requesting, pursuant to Administrative Rule Ballot Law Commission 206.06, a prehearing conference in which a discovery and trial schedule may be set.

10. No Memorandum of Law accompanies this motion as the authority for the requested relief is cited herein.

WHEREFORE, the New Hampshire Democratic Party respectfully requests that this Commission:

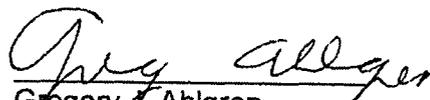
A. Grant this motion and order that Walter Havenstein produce the documents articulated above at least 14 days prior to a final evidentiary hearing on his Petition and include such an order in its Notice of Adjudicative Proceeding as provided for in New Hampshire Administrative Rule BAL 206.02,

B. Order a hearing pursuant to NH Administrative Rule Bal. 206.06 if the Respondent objects in whole or in part to production of the discovery sought and,

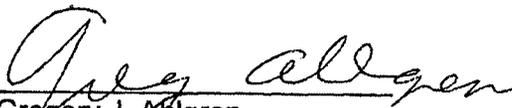
C. Grant such other relief as justice may require.

Respectfully submitted,
NH Democratic Party
By its Attorney

June 20, 2014


Gregory J. Ahlgren

I hereby certify that I have on this date forwarded a copy of this Answer to David A. Vicinanza, Esquire, Kathleen M. Sullivan, Esquire, Governor Margaret Hassan, Office of the Governor, and Hemmingway for Governor.


Gregory J. Arlgren

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

PETITION OF WALTER P. HAVENSTEIN

RESPONDENT NEW HAMPSHIRE DEMOCRATIC PARTY'S
ANSWER TO THE PETITION OF WALTER P. HAVENSTEIN
FOR A DECLARATORY RULING
AND
CROSS-PETITION FOR DECLARATION OF INELIGIBILITY

NOW COMES the New Hampshire Democratic Party, 105 N. State Street, Concord, NH, by and through its attorney, Gregory J. Ahlgren, and hereby answers the Petition of Walter P. Havenstein which seeks a declaratory ruling as to whether he is eligible to run for, and serve as, Governor of the State of New Hampshire, by stating as follows:

1. On or about June 11, 2014, Walter P. Havenstein filed a Petition with the New Hampshire Ballot Law Commission in which he avers that a question exists as to whether he is eligible to run for, and serve as, Governor of New Hampshire in light of the requirements of Part 2, Article 42 of the New Hampshire Constitution, and RSA 655:5.

2. Mr. Havenstein lists as potentially interested parties, and apparently seeks input from, the following: The New Hampshire Democratic Party, Kathleen N. Sullivan, Esquire, Governor Margaret Hassan, and the Hemmingway For Governor Committee. Based on information and belief, the Hemmingway for Governor Committee was named as Mr Hemingway is one of Walter Havenstein's opponents in the Republican Primary scheduled for this September. Governor Margaret Hassan was named as the presumptive Democratic nominee, who Mr. Havenstein would face in November should he prevail in his primary.

3. As the New Hampshire Democratic Party has been named as a potentially interested party, it will attempt to provide assistance, input, advice, and, where possible, information, to the Ballot Law Commission in order to answer the question posed by Mr. Havenstein's Petition.

4. Any analysis begins with the New Hampshire Constitution. Part Second, Article 42, establishes the qualifications for New Hampshire governors, and provides in pertinent part: "And no person shall be eligible for this office unless at the time of his election, he shall have been an *inhabitant* of this State for 7 years next preceding . . . [emphasis added]

5. NH RSA 655:5 provides that "to hold the office of governor, a person must be qualified as provided in Part 2, Article 42 of the State Constitution: at the time of the election, the person must have been an inhabitant of this state for 7 years next preceding, and be of the age of 30 years."

6. The definition of inhabitant for the purposes of elected office qualification is defined in two locations: in the New Hampshire Constitution, and in our state statutes. Prior to 1976, Part Second, Article 30 stated that for the purposes of both electing and being elected, a person was an inhabitant where "he dwelleth and hath his home." In 1976, the New Hampshire Constitution Part Second, Article 30 was amended such that "every person, qualified as the constitution provides, shall be considered an inhabitant for the purposes of being elected into any office or place within this State, in the Town, or Ward, where he is domiciled."

7. The requirement that a person must actually be an inhabitant of New Hampshire, as opposed to a part time or co-resident, has been a part of our State Constitution since its adoption in 1784. "The 7 year residency requirement first appeared in the NH Constitution of 1784. At that time the Chief Executive Officer was the "President" . . . the name of President was changed to Governor to denote the Chief Executive in the Constitution of 1791, but the 7 year requirement remained unchanged.

According to the New Hampshire Historian, Jeremy Belknap, the Constitution of 1784 was modeled almost entirely after the Massachusetts Constitution of 1780, which was written primarily by John Adams. At the time, the founding fathers were fashioning the Federal Constitution...they had available, if not as models at least as samples, the Constitution of Massachusetts (1780) and New Hampshire (1784)." *Chimento v. Stark* (D.N.H. 1973, 353F. Supp. 1211, aff'd 414 US 802 (1975).

8. A three judge panel of United States District Court upheld the validity under the Federal Constitution of the duration of the residency requirement, *supra*, stating that it served critically important State interests. "[It ensures] that the Chief Executive Officer of New Hampshire is exposed to the State and its people, thereby giving him familiarity with and awareness of the conditions, needs and problems of both the State of New Hampshire and the various segments of the population within the State, while at the same time giving the voters of the State an opportunity to gain by observation and personal contact some first hand knowledge of the candidates for governor; and second, to prevent frivolous candidacy by persons who have had little previous exposure to the problems and desires of the people of New Hampshire."

9. A year later, another three judge panel of the District of New Hampshire again upheld New Hampshire's durational residency requirement as it applied to the election of senators. *Sununu v Stark*, 383 F.Supp. 1287 (D.N.H., 1974). Writing for the panel, Judge Bownes discussed the policies that underlay the state's compelling interest in restricting the highest governmental offices to those who had actually inhabited the state for a period of seven years preceding their election. "As in *Chimento*, I hold that there is a compelling state interest in prescribing durational residency requirements for those candidates who seek state elective office. Counsel for Sununu admitted during oral argument that durational residency requirements are not *per se* unconstitutional. The State has the power, reserved to it by the Tenth Amendment to the United States Constitution and the compelling interest, to impose eligibility requirements upon those

who seek state-elective office. The three principal state interests served by the durational residency requirement are: first, to ensure that the candidate is familiar with his constituency; second, to ensure that the voters have been thoroughly exposed to the candidate; and third, to prevent political carpet bagging. See *Chimento v. Stark, supra*, 353 F.Supp. at 1215.”

10. These values are promoted only when a putative candidate actually maintains a physical presence within the state, taking an active part in civil and political life, interacting with the laws and people of New Hampshire in a continuous manner in a temporal period immediately preceding his/her pursuit of the highest office in the state. They are in no way promoted or protected by mere ownership of property by one without a corresponding physical presence in the state.

11. The term “inhabitant,” as applied to the qualifications of candidates, is currently defined in Part Second, Article 30 of the New Hampshire Constitution:

Art. 30. Inhabitant Defined

And every person, qualified as the constitution provides, shall be considered an inhabitant for the purpose of being elected into any office or place within this state, in the town, or ward, where he is domiciled.

12. Prior to 1976, the constitution did not use the word “domicile” in the definition of “inhabitant.” Rather, it stated that a person was an inhabitant “where he dwelleth and hath his home.” *The New Hampshire State Constitution*, Susan E. Marshall, Praegar (2004), at p. 149. This change was made in response to a recommendation of a Report to the Sixteenth Constitutional Convention by the Commission to Study the State Constitution, which had been established by the chaptered laws of 1973. The Commission made it clear that it continued to recognize the value of the familiarity with state issues that only actual physical presence affords. “It goes without saying that [an officeholder] should be familiar with the problems of the State or of the District which he

represents. This is the reason why a minimum period of residency is required for persons to serve in either house of the legislature or as governor." at page 18.

13. The Commission went on to clarify that the change from the phrase "where he dwelleth and hath his home" to "where he is domiciled," was intended to strengthen, not lessen, the requirements imposed on those seeking to hold office. "Besides, if residency is defined more strictly in terms of domicile, as we have recommended in Article 30, for all candidates for elective office, there is no danger that **any part-time resident** would ever qualify for [office]." at p. 19, [emphasis added]

14. At the Constitutional Convention itself, the entire discussion of Resolution 86, which contained the changes from "where he dwelleth and hath his home" to "domicile," concerned only the subject of a change in the qualifications for voters, without a single word of discussion concerning any change in the requirements to be elected to any office, including that of the governor. (See Journal of the Constitutional Convention of 1975, pages 33, 177, 181-183, 424-435). From the introduction of the resolution until its final adoption, not a single syllable was uttered that would indicate an intention to change the definition of inhabitant as it applied to those seeking office. Rather, the entire discussion was limited to the perceived need to tighten up the requirements to vote in reaction to the lowering of the voting age, and corresponding efforts by college students to register to vote in locations where they attended school.

15. When Resolution 86 was introduced to the Convention, the entirety of the introduction was the following: "Relating to the qualifications of voters and the administration of elections. Providing that the minimum age of voters is reduced to eighteen and that domicile rather than residence in a town, ward, or unincorporated place shall be a prerequisite for the voting privilege, and that the secretary of state shall receive and count votes and notify winners of biennial election contests. Bill of Rights." Journal, at p. 33.

16. This introduction is significant in two respects. To begin with, it only put the delegates under notice that they were considering changes to qualifications relating to voters, and not the qualifications of being elected. Second, in a manner wholly consistent with the prior cases interpreting Article 30, it equated the phrase "where he dwelleth and hath his home" with primary residence in New Hampshire, which is precisely what Mr. Havenstein has disavowed by repeatedly choosing to declare Maryland as his primary residence.

17. The Debate on Resolution 86 was held on June 12, 1974. (Journal, at page 177.) The relevant portion of the caption of the Amendment was amended to read, "[T]hat domicile rather than residence in a town, ward, or unincorporated place will be a prerequisite for the voting privilege."

18. In the debate that followed, the discussion was only about the right to vote. At no point did it indicate any intention to change the definition of "inhabitant" in Article 30 as it applied to persons seeking office. (pages 177 to 183).

19. The Resolution was adopted on June 20, 1974. The caption of the proposed amendment was reflected in a manner that further indicated that the only portion of the definition of inhabitant being changed was its application to voters. "...that domicile rather than being an inhabitant in a town, ward, or unincorporated place will be a prerequisite for the voting privilege." (Journal at p. 434)

20. The proposed amendment was presented to the voters on Nov. 2, 1976. The official New Hampshire Voter Guide given to the voters listed five separate constitutional changes proposed by the amendment. The only one relevant to domicile was once again only described as a change to voter eligibility. Voters had no reason to believe that an affirmative vote would have any effect on the qualifications to hold office: ".....b) to make domicile rather than being an inhabitant a prerequisite for the voting privilege."

21. The question as it appeared on the ballot itself again only discussed a change to the prerequisites for the voting privilege, without any mention or indication of a change to the qualifications to hold office.

22. Thus, neither the delegates to the Convention nor the voters who approved the 1976 amendment had any intention to affect a change in Part Second, Article 30 as it applied to the qualifications to hold office.

23. Our Supreme Court has held that a change not described on either the official state Voter Guide or the ballot is invalid. In *Fischer v. Governor*, 145 NH 28 (2000), our Supreme Court was faced with exactly the same situation where a change to the Constitution was not mentioned in either the Voter Guide or on the ballot. Coincidentally, this failure occurred in another part of very same Amendment 8 in a section that on its face removed the authority of the legislators to set minimal qualifications for voters in Part First, Article 11. The *Fischer* Court presented the legal issue before it: "It is clear, however, that the removal of the 'proper qualifications' language from the voting provision did not conform to the scope of the amendment intended by the constitutional convention. Specifically, it did not relate to the four intended substantive changes regarding age, domicile, duties of the secretary of state, and absentee voting, and far exceeded the convention's remaining intent to 'simplify' the wording of Article 11. Indeed, as noted by the State, the ballot questionnaire submitted to the citizens for ratification of the 1974 amendment failed to alert the voters to any substantive change to the legislature's authority to generally determine voter qualifications.....Further, while "the question submitted to the electorate need not inform it of the details nor full import of the proposed amendment," it must give "the ordinary person a clear idea of what he [or she] is voting for or against." at p. 37.

24. The *Fischer* Court then totally invalidated the unapproved change relating to voters qualifications in Article 11. "We conclude that the record manifests 'inescapable

grounds' that the voters were never given notice that the 1974 amendment changed or modified the legislature's authority to determine voter qualifications generally, much less completely eradicate it. See *Opinion of the Justices*, 101 N.H. at 543, 133 A.2d at 792. Thus, Part I, Article 11 was not properly amended to cause the removal of "proper qualifications" from the voting clause." at pages 38-39.

25. The changes to Part Second, Article 30 that purport to relate to candidate eligibility are similarly void, and without effect because they were neither presented to the voters nor adopted by them.

26. To qualify as an inhabitant eligible to run for state office in New Hampshire, a person has to have made New Hampshire her or his primary residence. While a person can leave the state for a defined limited purpose, and defined time, without losing status as an inhabitant, neither property ownership, intermittent contact, nor a vague intention to return in the future suffice to become or remain an inhabitant as defined in Article 30.

27. In *Felker v. Henderson*, 78 NH 509 (1917), the New Hampshire Supreme Court dealt with a citizen who wished to vote from a ward in which he had grown up, where he maintained ownership of his childhood home, and to which he indicated that he intended to return at some undefined point in time. As the Court held:

[T]he intention to retain a former domicile is unavailing if it is vague and indefinite in respect to the event upon which the intended return is predicated and in respect to the time of its occurrence. "If a person has actually removed to another place, with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is to be deemed his place of domicile, notwithstanding he may entertain a floating intention to return at some future period." Story Confl. Laws (7th ed.) s. 46. This statement has been generally recognized and applied in this country in cases of municipal domicile. "A mere contingent intention, a vague and uncertain intention, or, in the language of Story, a floating intention to return, however, will not prevent a change." Jacobs Domicile, s. 184. "Mere intention cannot effect the change, but the intention to remain, coupled with the act of actual residence, establishes the domicile, notwithstanding a floating intention to return at some future time."

at p. 512.

ANSWER TO PETITIONER'S SPECIFIC FACTUAL ALLEGATIONS

28. The allegations contained in paragraph 1 of the Petition are admitted.

29. The allegations contained in paragraph 2 of the Petition are admitted to the extent that a question exists as to whether Mr. Havenstein meets the eligibility requirement to hold the office of Governor, as he himself has raised. The balance of the allegations contained in that paragraph are denied.

30. With respect to the allegations contained in paragraph 3 of the Petition, it is denied that the question of whether Mr. Havenstein meets the definition of an inhabitant is either without merit or is irresponsible. In fact, this issue has been raised in Mr. Havenstein's own petition, as well as by his primary opponent. If Mr. Havenstein is not eligible to be Governor under the New Hampshire Constitution, then the dissemination of that information would not be misleading, but would be legally and factually accurate.

31. The allegations contained in paragraph 4 of the Petition are admitted in that Mr. Havenstein has indeed sought a declaratory ruling from the Ballot Law Commission to investigate whether he is eligible to run for the office of governor.

32. With respect to the allegations in Paragraph 5, the New Hampshire Democratic Party has insufficient knowledge at this time as to whether the ruling will benefit Mr. Havenstein. Based on information and belief, it would perhaps depend on what the ruling was. Presumably, an adverse ruling would not be welcomed by Mr. Havenstein.

33. The allegations contained in paragraph 6, to the extent that they state a legal interpretation, need no response.

34. The allegations contained in paragraph 7 are admitted.

35. With respect to the allegations contained in paragraphs 8 through 11, the addresses as stated in those four paragraphs are admitted.

36. With respect to the allegations contained in paragraph 12 through 43 of the petition, at this time there are insufficient facts to either admit or deny those allegations and therefore, under Ballot Law Commission Rule 205.01 (d), since sufficient knowledge is lacked to either admit or deny the allegations contained in those paragraphs, they should be treated as denied. For the reasons set forth below, as well as in an accompanying motion, the New Hampshire Democratic Party calls upon the The Ballot Law Commission to order Mr. Havenstein to produce certain articulated documentation which would assist the New Hampshire Democratic Party, other interested parties, and the Commission, to resolve the question raised by Mr. Havenstein as to whether he is eligible to run for Governor.

37. With respect to the allegations contained in paragraphs 44 through 50, it is admitted that the Petitioner has quoted certain statutes and court cases. However, it is denied that language from divorce or other civil cases defining domicile for service or venue purposes have anything to do with the Constitutional requirement that Mr. Havenstein be an inhabitant in New Hampshire for all seven years preceding the November 2014 election, or that pursuant to RSA 21:6 that he "has, through **all of his actions**, demonstrated a current intent to designate that place of abode as his principle place of physical presence for the indefinite future **to the exclusion of all others.**" [emphasis added]

38. With regard to the allegations contained in paragraphs 51 through 55, the New Hampshire Democratic Party does not have sufficient knowledge to either admit or deny those claims, and therefore, under the above cited ballot law rules, those allegations are denied.

39. With regard to the allegations contained in paragraph 56 of the Petition, such constitutes a conclusion which has not yet been determined, and therefore to that extent is denied.

**AND BY WAY OF FURTHER ANSWER AND CROSS-PETITION,
the New Hampshire Democratic Party states as follows:**

40. In his Petition, Walter P. Havenstein makes factual allegations regarding his contacts with the State of Maryland during the relevant seven years. Taken together, they call into question his eligibility to either run for, or serve as, Governor of the State of New Hampshire. Although he maintained a summer home at Lake Winnepesaukee, it appears that in January 2007 he purchased a home in Bethesda, Maryland (the "Maryland residence"). As part of the real estate closing, he and his wife executed an affidavit, under oath, in which to avail himself of certain Maryland tax breaks available only to Maryland residents. He swore and affirmed "under the penalties of perjury that the property herein conveyed is intended to be used as my/our principal residence by actually occupying the residence for at least seven (7) of the next twelve (12) months immediately after the property is conveyed." (See copy attached to deed in Exhibit A.) That intention is inconsistent with an intention to have his principal place of physical presence be New Hampshire, and inconsistent with RSA 21:6's requirement that to be considered a New Hampshire inhabitant an individual must have "through ***all of his actions***, demonstrated a current intent to designate [New Hampshire] as his principal place of physical presence for the indefinite future ***to the exclusion of all others.***" [emphasis added]

41. In addition, on or about May 23, 2012 it appears that Mr. Havenstein and his wife sold the Maryland residence located at 4821 Montgomery Lane, Bethesda, Maryland. In order to avoid the withholding of a portion of the sales price to pay all possible Maryland tax obligations, Mr. Havenstein and his wife, under penalty of perjury, signed a certification of "exemption from withholding upon disposition of Maryland real estate affidavit of residence or principle residence," which was recorded in the Montgomery County Circuit Court on or about May 25, 2012 at Book 44076, Page 0159 (the "2012 Affidavit of Maryland residence"). (Copy of the deed from Mr. Havenstein

and this 2012 Affidavit of Maryland residence is attached as Exhibit B.)

42. In this 2012 Affidavit of Maryland residence, Mr. Havenstein alleged under oath that "although I am no longer a resident of the State of Maryland, the property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessment and Taxation."

43. IRC 121 is a section of the United States Internal Revenue Code that excludes gain on the sale of residential property from the definition of gross income for Federal tax purposes if "**during the five-years ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence** for periods aggregating two years or more." [emphasis added] Again, this would be inconsistent with the requirement of NH RSA 21:6 stated above.

44. For his statements in the 2012 Affidavit of Maryland residence to be true, Mr. Havenstein would have had to have considered his Maryland residence to be his principal residence for two of the five years prior to May 23, 2012, i.e. for two of the five years preceding May 23, 2013. He would have had to have considered the Maryland residence to be his principal residence at least until May 23, 2009, which is the earliest date that the two years could have expired. May 23, 2009 is less than seven years prior to the November 4, 2014 election. Therefore, under the New Hampshire Constitution, Mr. Havenstein would not be qualified to serve as Governor of the State of New Hampshire.

45. In addition, Mr. Havenstein and his wife took advantage of State and County "homestead credits" to reduce the real estate taxes paid for his Maryland residence in tax years 2008, 2009, 2010 and 2011. (See copies of tax records attached as Exhibit C.) The 2011 tax year ended June 30, 2012, which is less than seven years prior to the November 4, 2014 election. Mr. Havenstein is therefore not qualified to serve as Governor of New Hampshire.

46. The laws of the state of Maryland, (Title 9, Property Tax Credits and

Property Tax Relief, subtitle 1, section 9-105 (d) (2)) state that to qualify for the homestead tax credit, "a homeowner must actually reside in the dwelling by July 1 of the taxable year for which the property tax credit under this section is to be allowed." The term "dwelling" is defined as the house that is "used as the *principal* residence of the homeowner . . ." Section 9-105 (a) (5) (i) (1). [emphasis added]

47. Under Title 9, the homestead tax exemption obtained by Mr. Havenstein could be taken only on his principal residence. By taking the exemption, Mr. Havenstein, as a matter of law, declared the Maryland residence to be his principal residence. Since by his own admission he was principally residing in Maryland, he can not have met the definition of an inhabitant under NH RSA 21:6 as he had not retained New Hampshire as "that place of abode as his *principal place* of physical presence for the indefinite future *to the exclusion of all others.*" [emphasis added]

48. Under Maryland Law, Mr. Havenstein could only qualify for the Maryland homestead tax exemption in each of the 2008, 2009, 2010 and 2011 tax years if he actually resided in the Maryland home by July 1, 2008, 2009, 2010 and 2011, and actually occupied, or expected to actually occupy, his Maryland residence for more than six of the 12 months in 2008, 2009, 2010 and 2011.

49. Therefore, Mr. Havenstein did not meet the requirement of being an inhabitant under NH RSA 21:6 in that he did not designate New Hampshire as his "*principal place of physical presence* for the indefinite future to the *exclusion of all others.*" [emphasis added]

50. According to the Maryland Assessment Procedures Manual (copy attached as Exhibit D) the term principal residence "has been defined to mean the one dwelling where the homeowner regularly resides and is the location designated by the owner for the legal purposes of voting, obtaining a driver's license, and filing income tax returns."
at p. 2

51. In his January 4, 2007 affidavit, executed to reduce his Maryland transfer

tax on the purchase price of his Maryland residence from .50% to .25%, Mr. Havenstein alleged that he would occupy the property as his principal residence.

52. When Mr. Havenstein purchased his Maryland residence on January 4, 2007, he and his wife also executed a deed of trust in the Maryland residence ("the mortgage") to Bank of America, N.A. securing an \$850,000.00 loan. The mortgage is signed by Mr. Havenstein and his signature is notarized. Paragraph 6 of the mortgage states: "6. Occupancy. Borrower shall occupy, establish and use the property as borrower's principal residence within 60 days after the execution of this security instrument and shall continue to occupy the property as borrower's principal residence for at least one year after the date of occupancy, unless the lender otherwise agrees in writing, which consent shall not be unreasonably withheld, unless extenuating circumstances exist which are beyond borrower's control." [emphasis added] (See copy attached as Exhibit E.)

53. Paragraph 8 of the mortgage states that "borrower will be in default if, during the loan application process, borrower...gave materially false, misleading or inaccurate information or statements to lender...in connection with the loan. Material representations include, but are not limited to, representations concerning borrower's occupancy of the property *as borrower's principal residence.*" [emphasis added]

54. Occupancy for one year from the date of the deed of trust would expire January 3, 2008, which is less than seven years preceding the date of the November 4, 2014 New Hampshire election.

55. Maryland Law, specifically Code of Maryland Regulations Section 11.17.21.04, attached hereto, requires that within 60 days of becoming a permanent resident of Maryland an individual must obtain a Maryland driver's license. Mr. Havenstein has admitted in his petition, as well as to various journalists, that he obtained a Maryland Driver's License. As part of the Maryland Driver License Application, the individual must show proof of residency in the State of Maryland. That

proof requires the submission of at least two source documents such as vehicle registration, property tax bill, a copy of Federal or Maryland tax return filings, major credit card bill, utility bills, or voter registration card. (See complete list attached as Exhibit F.)

56. According to his own Petition, Mr. Havenstein admits that he registered a car in Maryland.

57. Although Mr. Havenstein argues in his Petition that he also remained a licensed New Hampshire driver, the fact that he was licensed in Maryland as a permanent resident negates the requirement of RSA 21:6 that an individual, to be considered domiciled in New Hampshire, must, through "**all of his actions** demonstrate a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the **exclusion of all others.**" [emphasis added]

58. In addition, it appears that Mr. Havenstein used Bethesda as his address in at least one document attached to a Securities and Exchange Commission filing. On or about June 22, 2009, his then employer, BAE Systems, Inc., issued a letter to "Walter P. Havenstein, Bethesda, Maryland 20414" waving certain provisions of an employment agreement to permit him to accept an offer from SAIC, Inc. (See Exhibit G attached hereto).

59. Following Mr. Havenstein's hiring by SAIC, Inc., the corporate headquarters of the company was moved from San Diego, California to McLane, Virginia. A published report at the time stated that when Mr. Havenstein was hired, "Havenstein was based near Washington when he worked for BAE, and has ties to the area. When he was hired in June, SAIC, Inc. announced that his primary office location would be McLane." (See attached Exhibit H.)

60. Mr. Havenstein's employment and other ties to Bethesda predated the acquisition of his Maryland home. In 2009, an article in the San Diego Union Tribune regarding his hiring by SAIC, Inc. stated, "The new man in charge is Walt Havenstein,

who *has lived and worked in the Washington, DC area for the past six years . . .* SAIC's new headquarters is *20 minutes from Havenstein's home in Bethesda, Maryland* - three minutes longer than his former commute to BAE's headquarters . . ." [emphasis added] (See attached Exhibit I.)

61. As early as 2004, Mr. Havenstein and his spouse used Bethesda as their address. Attached as Exhibit J. is a Power of Attorney recorded in the Belknap County, New Hampshire Registry of Deeds signed by Mr. Havenstein referencing 4821 Montgomery Lane, Unit 102, Bethesda, Maryland as his address. Mr. Havenstein's signature on that document is actually acknowledged by a Maryland Notary Public, and presumably the signing took place in the State of Maryland.

62. Mr. Havenstein's actions in declaring his principal residence to be in Maryland in order to claim a homestead tax credit, effectively stripped him of all rights to claim residency in New Hampshire under New Hampshire Motor Vehicle Laws and all other statutes which provide benefits or privileges to residents of New Hampshire. RSA 259:88 defines a resident for purposes of the motor vehicle code as follows: "Resident" shall mean a resident of the state as defined in RSA 21:6, except that *no person shall be deemed to be a resident who claims residence in any other state for any purpose.* (emphasis added).

63. Thus, it was New Hampshire law, and not that of Maryland, that required Mr. Havenstein to turn in his New Hampshire license and registrations and obtain new ones in Maryland, his new state of residence.

64. Likewise, once Mr. Havenstein chose to declare Maryland his principal place of residence, he ceased to be either a resident or inhabitant of New Hampshire for any purpose. RSA 21 sets rules for statutory interpretation in New Hampshire and section 6 defined **both** resident and inhabitant in identical terms:

A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or

both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

65. Thus, in order to be either a resident or an inhabitant of New Hampshire, mere domicile or place of abode is not sufficient. A person must through "all of [their] actions" demonstrate a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others: "Mr. Havenstein fails on all accounts. During critical years in the seven year period not only has he failed to provide any indication that he designated New Hampshire as his principal place of residence, he has repeatedly declared his principal place of residence to be Maryland.

66. During the critical seven year period, the man who would be our governor was ineligible for a resident fishing license (RSA 214:9); ineligible to attend state colleges at tuition rates applicable for a resident; ineligible for resident discounts at state ski areas (RSA 227:14); and ineligible for disability and veterans exemptions to New Hampshire real estate taxes (RSA 72:37-b and RSA 72:28).

67. It is instructive to note that, in a manner totally consistent with all cases interpreting the phrase "inhabitant" in our Constitution, RSA 21:6 is clear that for all statutory purposes, "inhabitant" is an exact synonym of resident and is distinctly different from the concept of domicile in that it includes a requirement that a person manifest a clear intent to make New Hampshire the site of his or her permanent place of abode.

68. In addition to his multiple declarations of residency and employment in the State of Maryland, Mr. Havenstein has had significant personal and social contacts in the Bethesda, Maryland area. He grew up in Maryland and attended high school there. In a message written by him for his high school class reunion he stated, "From Walt:

Judy (Prang) and I celebrate our 37th anniversary today, 41 years after graduating from WCSH with the Class of 1967. Our 19th move ***brought us back to Bethesda 18 months ago***. Judy spends most of the year in New Hampshire where our son and daughter-in-law live, ***I stay busy traveling and working in Rockville in London, occasionally getting to New Hampshire.*** [Emphasis added] (See attached Exhibit K.)

69. Mr. Havenstein attended multiple publicized social and charitable events in the Bethesda area, including the 2010 charity works Dreamball at the National Building Museum in Washington, D.C., as well as the 2008 Charity Works 100 Point Wine Testing. (See Exhibits L and M attached hereto) Charity Works is a major philanthropic organization in the Washington Metropolitan area.

70. Mr. Havenstein gave multiple speeches in the Washington, D.C. area, such as his appearance at the 2010 event organized by the Maryland Department of Business and Economic Development, and a 2010 speech at the University of Maryland. (See attached Exhibits N and O.)

71. Most troubling, Mr. Havenstein has advocated on behalf of Maryland as the business location for corporations in transit, on multiple occasions in 2010 and 2011. This advocacy on behalf of his residential State of Maryland included appearing in a 2011 video from the Maryland Department of Business and Economic Development in which "Walter Havenstein discusses why he loves being a Maryland business." In a panel discussion at a meeting of the Democratic Governor's Association, Mr. Havenstein praises the ability of Maryland Governor O'Malley to partner with industry.

72. Mr. Havenstein's Petition was only filed on June 11, 2014. Needless to say, the New Hampshire Democratic Party has not yet had an opportunity to fully investigate this matter and acquire additional information that would be helpful to the Ballot Law Commission in addressing his question as to whether he is eligible to run for and serve as Governor of the State of New Hampshire. Accordingly, the New Hampshire Democratic Party is making a contemporaneous request in an

accompanying pleading for the Ballot Law Commission to compel Mr. Havenstein to produce additional information as articulated in that pleading. Depending on the results of that document request, the Democratic Party reserves the right to further amend this pleading and introduce other, yet undiscovered, evidence.

73. Once the New Hampshire Democratic Party, and the other parties to this matter, have had an opportunity to review that material and share it with the Ballot Law Commission, we trust that the Ballot Law Commission will be in a better position to make a determination that Mr. Havenstein has not been an inhabitant of the State of New Hampshire demonstrated "through all of his actions," and therefore has not expressed an intent to designate New Hampshire as his place of abode "to the exclusion of all others." Accordingly, Mr. Havenstein is ineligible to run for or serve as governor of the State of New Hampshire.

WHEREFORE, the New Hampshire Democratic Party respectfully requests that the Ballot Law Commission:

A. Conduct a preliminary hearing at which a discovery schedule in this matter can be set,

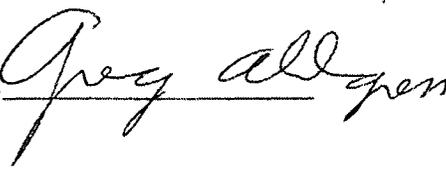
B. Compel Mr. Havenstein to produce those materials requested in the accompanying discovery request pleading,

C. After the material has been produced and all parties have had an opportunity to review same, to schedule an evidentiary hearing pursuant to Ballot Law Commission Rule 206.10 (a), and

D. After the conclusion of such trial type hearing, make a determination that Mr. Havenstein is not eligible to either run for, or serve as, Governor of New Hampshire.

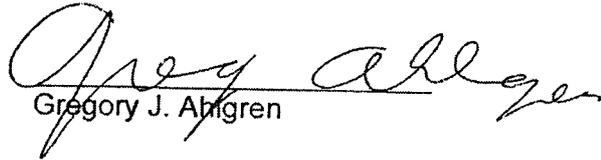
Respectfully submitted,
New Hampshire Democratic Party

June 20, 2014

By: 

Gregory J. Ahlgren
529 Union St.
Manchester, NH 03104
603-669-6117
NH Bar #: 267

I hereby certify that I have on this date forwarded a copy of this Answer to David A. Vicinanza, Esquire, Kathleen M. Sullivan, Esquire, Governor Margaret Hassan, Office of the Governor, and Hemmingway for Governor.


Gregory J. Ahlgren