
[Draft] Continued Preservation of November 5, 2024 Ballots & Election Materials

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 1 attachment (160 KB)

USDOJ Pre-Litigation Hold Letter.pdf;

Please see below and attached from Secretary of State, David M. Scanlan

Good afternoon, Election Officials:

First, I want to commend you all for conducting another excellent, well-run state primary election. We greatly appreciate your hard work and dedication to ensuring that New Hampshire elections are secure, transparent, and trustworthy.

Second, the purpose of this letter is to notify you that the U.S. Department of Justice, Civil Rights Division ("USDOJ") sent a letter to the Secretary of State's Office directing this office to enact a pre-litigation hold to preserve election records "for the prior 22 months, including records from the 2024 federal election."

USDOJ says that the pre-litigation hold is based on an "investigation and ongoing litigation as to the extent to which you [the Secretary of State's Office] have failed to comply with your duties under the" Civil Rights Act ("CRA") and Help America Vote Act ("HAVA").

However, USDOJ has not identified any basis for believing the State may have failed to comply with any specific provision of the CRA or HAVA during the 2024 state general election. Nor has USDOJ identified any state election procedure that needs to be corrected to comply with the CRA or HAVA in the upcoming November 3, 2026 state general election. Nor has USDOJ provided any evidence indicating that any state or local election official may have violated federal law at any point in the past 22 months.

Even though USDOJ did not send this pre-litigation hold letter to N.H. municipalities and failed to identify any factual or legal basis for demanding that the Secretary of State enact a pre-litigation hold, based on legal advice from the New Hampshire Attorney General's Office, this office is ***instructing all municipalities to preserve the records identified in the attached letter, including election records and ballots relating to the November 5, 2024 state general election, until further notice.***

Although the Secretary of State's Office will preserve records in accordance with USDOJ's pre-litigation hold letter, USDOJ has not articulated any legal right to inspect or copy any such records that are private and confidential under state law. This Office will evaluate any demand to inspect or copy such records on a case-by-case basis when and if USDOJ makes a demand.

For example, in 2025, USDOJ demanded access to all information in the Statewide Voter Registration System, including private voter information that N.H. law requires to be kept confidential. This Office reviewed USDOJ's demand letter and determined that USDOJ did not have authority under federal law to demand that information. The U.S. District Court for the District of New Hampshire dismissed USDOJ's subsequent lawsuit for that information, agreeing with this office that USDOJ did not have authority to demand that information. The District Court's decision is on appeal at the First Circuit.

If you have any questions about what documents need to be preserved, please direct them to Attorney Doug Bruno, Elections Legal Counsel for the Secretary of State's Office (Douglas.Bruno@sos.nh.gov).

David M. Scanlan
Secretary of State



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