STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

RECEIVED

Petitions of Randolph Holden, Janet Schaefer Hammond, Doris Haddock

NEW HAMPSHIRE SECRETARY OF STATE

JUL 3 0 2004

ORDER

On July 6, 2004, Petitioner Randolph Holden contacted the Secretary of State regarding his desire to use his nickname on the ballot in the upcoming election. Pursuant to RSA 665:9, Mr. Holden requested a hearing before the Ballot Law Commission.

The Secretary of State also received requests for clarification or hearing on the issue of the use of nicknames on the ballot from several other individuals, including Ms. Janet Schaefer Hammond, Ms. Doris Haddock, Mr. Edwin O. Smith, Mr. Howard C. Dickinson, and Mr. Marshall Lee Quandt.

On July 12, 2004, the Commission held a public hearing on this matter.¹ Included in those appearing and testifying before the Commission were Deputy Secretary of State David Scanlon, Clerk of the House Karen Wadsworth, Mr. Randolph Holden, Ms. Janet Schaefer Hammond, Ms. Doris Haddock and her counsel Mr. Mark Fernald, Esq., as well as members of the public testifying on behalf of Ms. Haddock.

1. Applicable Provision

RSA 655:14-b, entitled "Form of Candidate's Name on Ballot" provides:

I. Every candidate for state or federal office who intends to have his name printed upon the ballot of any party for a primary shall designate in his declaration of candidacy, or on his primary petitions and assents to candidacy, the form in which his name shall be printed on the ballot. The candidate may designate his given, first, and middle name, the

Commissioners Warren Henderson, Charles Chandler, Anne Coughlin, Paul McGuirk and Stephen Duprey attended and participated in the hearing and determinations.

initials of his given, first, and middle name, a nickname, or any combination thereof as the form in which his name shall be printed on the ballot, but he shall not designate a deceptive name. If the candidate designates a nickname in place of or in combination with his given name or the initials thereof, his nickname shall be set off with quotation marks and shall be placed immediately before his surname. If the candidate designates a nickname, the nickname shall be customarily related to the candidate's given name. A candidate shall include his surname in his designation of the form in which his name shall be printed on the ballot.

Counsel for the Secretary of State submitted a memorandum of law to the Commission. By this memorandum, the Secretary stated the view that under the statute, as reviewed along with its legislative history, a "nickname" may not be deceptive, and should, in order to be objectively analyzed by the Secretary or local official, be a familiar or shortened version of the proper name of the candidate, or a nickname that is commonly associated with a given or proper name. The Secretary also indicated that as the legislature provided for appeals to the Ballot Law Commission if a candidate objected to the Secretary's determination of the use of a particular nickname, the Ballot Law Commission may well have broader discretion in deciding on the use of a nickname.

2. Candidate Randolph Holden

Mr. Randolph Holden indicated by letter to the Secretary of State, and further in his testimony before the Commission that he had run in three previous political campaigns, and had included on the ballot since 1998, the nickname of "Rip." Mr. Holden also indicated he was known as "Rip" by his family since he was two years of age.

3. Candidate Janice Schaefer Hammond

Ms. Janice Schaefer Hammond testified that her nickname "Jill" was given to her by her grandmother shortly after her birth, perhaps based upon her name of "Janet Louise." She indicated that since that time, she has used the nickname "Jill" in both business and personal settings.

4. Candidate Doris Haddock

Ms. Haddock testified that she began using the nickname "Granny D." when she moved from Manchester, New Hampshire to Dublin, New Hampshire, in 1972, distinguishing her among family members from her mother-in-law and others, one of whom was nicknamed "Granny C." She further testified that she identified herself as "Granny D." to press and the public starting in January, 1999, when she began a walk across the country in support of certain political causes.

Counsel for Ms. Haddock stated that a name is a question of identity, and that "customarily related to a candidate's given name" could mean associated with that person's name, or to identify "this person." Members of the public testified they knew Ms. Haddock by the nickname "Granny D.," some for many years, others since the time of her walk across the country.

In the matter of these petitions, the Commissioners note that while the Secretary of State uses a bright line, objective test, permitting only nicknames derived from a candidate's given name, the Commission finds that a case-by-case determination, based upon the facts of each candidate, is the appropriate mechanism for its review. With respect to candidate Holden, four Commissioners voted in favor of permitting the candidate to use the nickname "Rip" on the ballot. One Commissioner voted against the use of this nickname, as it was not derived from the candidate's given name. With respect to candidate Schaefer Hammond, four Commissioners voted in favor of permitting the candidate to use the nickname "Jill" on the ballot. One Commissioner

voted against the use of this nickname, as it was not derived from the candidate's given name. With respect to candidate Haddock, four Commissioners voted against permitting the use of the nickname "Granny D." on the ballot. One Commissioner voted in favor of permitting its use; four indicated variously that the name was not derived from the candidate's given name, that the name included a term of endearment, and that the name was associated in the public eye with the candidate because of the candidate's walk in favor of a specific political cause.

The Commission notes that while a nickname may be in long term use, the origin of that nickname and the context of it use may be useful in its analysis of whether to permit the use of a nickname not clearly derived from a given name. The Commission finds that nicknames should neither be deceptive, nor a form of electioneering, such as the use of "Tax Cap" before a given name, nor used to elevate the status of the user, by adding a title.

N.H. Ballot Law Commission

Stephen Duprey, Acting Chairman

Warren C. Henderson WCG Charles Chandler C. WC

Anne Coughlin

Paul McGuirk

Dated: July 22, 2004

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STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petitions of Edwin Smith, Marshall Quandt, Charles Slone, Joseph Hoell

ORDER

On July 6, 2004, the Ballot Law Commission held a public hearing on the petitions of Randolph Holden, Janet Schaefer Hammond and Doris Haddock, pursuant to RSA 665:9. The Secretary of State had previously denied each individual's request to use a chosen nickname on the ballot.

On July 22, 2004, the Ballot Law Commission held a public hearing on the petitions of Edwin Smith, Marshall Quandt, Charles Slone and Joseph Hoell, whose requests to use the nicknames of "Smokey," "Lee," "Joe" and "JR," respectively, had also been denied by the Secretary of State. Mr. Edwin Smith, Mr. Marshall Quandt and Mr. Joseph Hoell appeared and testified before the Commission.

1. Applicable Provision

RSA 655:14-b, entitled "Form of Candidate's Name on Ballot" provides:

I. Every candidate for state or federal office who intends to have his name printed upon the ballot of any party for a primary shall designate in his declaration of candidacy, or on his primary petitions and assents to candidacy, the form in which his name shall be printed on the ballot. The candidate may designate his given, first, and middle name, the initials of his given, first, and middle name, a nickname, or any combination thereof as the form in which his name shall be printed on the ballot, but he shall not designate a deceptive name. If the candidate designates a nickname in place of or in combination with his given name or the initials thereof, his nickname shall be set off with quotation marks and shall be placed immediately before his surname. If the candidate designates a nickname, the nickname shall be customarily related to the candidate's given name. A candidate shall include his surname in his designation of the form in which his name shall be printed on the ballot.

Commissioners Gary Francoeur, Charles Chandler, Warren Henderson, Paul McGuirk and Franklin Torr attended and participated in the hearing and determinations on July 22, 2004.

2. <u>Testimony</u>

Mr. Edwin Smith testified before the Commission that he has been known as "Smokey" since shortly after he was born, both in business and personal life. He presented copies of a family photo album containing photographs taken throughout his life, with multiple photographs of him labeled "Smokey." He also indicated that his mother introduced him to friends as "Smokey," though his given name is Edwin Orson Smith. He further testified that in the last election, the name "Smokey" appeared on the ballot in addition to his given name.

Mr. Marshall Quandt testified that his nickname "Lee" was given to him by his father shortly after his birth, and that he had used the nickname in personal and business life since that time. Mr. Quandt testified, in response to a Commissioner's question, that his middle name is Erwin.

Mr. Joseph Hoell testified that his name is Joseph Albert Hoell, Jr. He stated that the name "JR Hoell" appeared on the ballot when he ran for office in his one previous campaign in New Hampshire. He indicated that he does not customarily use either "Joseph" or "Joe" in his personal or professional lives.

Mr. Charles Slone did not appear before the Commission.

In the matter of the petitions before it, with respect to the petition of Mr. Slone, the Commissioners voted unanimously to deny the petition, as Mr. Slone did not appear. With respect to Mr. Smith, Mr. Quandt, and Mr. Hoell, the Commissioners voted 3-2 against permitting the use of the proposed nicknames on the ballot. The Commissioners note that while the proposed nicknames are not

intended to deceive, and may help serve to identify the candidates should there be confusion in a particular election, the use of a nickname itself may be the source of a "leg up" in a campaign, possibly the equivalent of using a title or other distinguishing feature which might draw the eye of a prospective voter. The Commissioners are persuaded, by the numbers of appeals to use a nickname on the ballot, and the close questions arising over long-term use of a nickname, how the candidate is known in his or her community, the context of the use of the nickname, and the possibility that the mere use of a nickname may elevate the candidate in a voter's visual differentiation, that additional legislative guidance may be required on this issue.

N.H. Ballot Law Commission

Gary Francoeur, Chair Warren C. Henderson Charles Chandler Paul McGuirk

Franklin Torr

Dated: