

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Case Number BLC 2015-3**

**Andy Martin v. Bernie Sanders**

This matter comes before the Commission on the complaint of Andy Martin, a resident of Manchester, registered Republican, and duly filed candidate for the Republican nomination for President in the 2016 Republican Presidential Primary. Mr. Martin challenges the qualifications and filing of Senator Bernie Sanders of Vermont, which filing was accepted by the Secretary of State for inclusion on the Democratic ballot, during the filing period which ended November 20, 2015. In addition, Mr. Martin has filed motions for the recusal of the Chairman of the Commission, and motions to postpone the hearing, among others. Notice of the hearing date for consideration of all challenges to filings in the Presidential Primary was published in the House Journal on November 6 and 13, and had been scheduled by the Secretary of State since October 1. Mr. Martin was informed and given actual notice of the hearing date upon his filing of his complaint on or about November 12. The Commission heard the complaint along with the other challenges to filings at a hearing held on November 24. Mr. Martin was allowed to attend the hearing by telephone, given his absence from the state on that date. Provisions were made for Mr. Martin to receive a transcript of the hearing.

At the hearing, the motion for postponement was denied, as it had been previously, after inquiry on what additional information Mr. Martin proposed to offer, and on the basis that the statutory structure for ballot preparation, and the practical necessities of timely preparation and distribution of ballots, requires prompt action on all challenges. In addition, after a full explanation of why he believed the bases for the recusal motion were incorrect, and after polling the Commission members as to their advice, the Chairman declined to recuse himself. Mr. Martin's requests for a record and transcript were referred to the stenographer who was keeping a record of the proceedings, and Mr. Martin may obtain such a transcript if he can arrange with the stenographer for its production and pay for it. A motion to issue a subpoena to Sen. Sanders was denied, as the Commission did not believe it would produce additional facts material to its decision and therefore declined to exercise its discretion to issue such a subpoena under its authority provided by RSA 665:12.

Sen. Sanders, through counsel, challenged Mr. Martin's standing to bring the matter before the Commission. The Commission accepted his standing to bring the challenge on the basis that, as a duly filed Republican candidate himself, he has the right to object to unqualified candidates appearing on the Democratic ballot, as they may attract the votes of undeclared voters who otherwise might take a Republican ballot and vote for Mr. Martin. Also, discussion of Mr. Martin's address or registration status, raised by Sander's counsel, are moot, given the finding of his standing as a candidate.

Unlike two of the challenges heard by the Commission on November 24 (BLC 2015-2 and BLC 2015-4), the challenge to Sen. Sanders' filing is solely a matter of New Hampshire statute and fact. Mr. Martin maintains that Sen. Sanders fails to qualify since he is not a Democrat.

New Hampshire statute regarding filing for the "Presidential Nominations," RSA 655:47 "Declaration of Candidacy," provides the following:

"I. The names of any persons to be voted upon as candidates for president at the presidential primary shall be printed on the ballots upon the filing of declarations of candidacy with the secretary of state in the following form and signed by the candidate: "I, \_\_\_\_\_, swear under penalties of perjury that I am qualified to be a candidate for president of the United States pursuant to article II, section I, clause 4 of the United States Constitution, which states, 'No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.' I further declare that I am domiciled in \_\_\_\_\_, in the city (or town or unincorporated place) of \_\_\_\_\_, county of \_\_\_\_\_, state of \_\_\_\_\_; **that I am a registered member of the \_\_\_\_\_ party**; that I am a candidate for the nomination for the office of president to be made at the primary election to be held on the \_\_\_\_\_ day of \_\_\_\_\_; and I hereby request that my name be printed on the official primary ballot of said \_\_\_\_\_ party as a candidate for such nomination.'" (Emphasis added.)

Sen. Sanders repeatedly has been elected as an Independent by the voters of Vermont. His status in the United States Senate is an "Independent" and, as far as the Commission is aware, he has taken no action to change his party affiliation in the Senate, although he chooses to and has been accepted by the Democratic Senate Caucus as a member, according to testimony. This, Mr. Martin maintains, is inconsistent with his statement in his filing that he is "a registered member of the Democratic party..." and should be the basis for rejection of his filing. The Secretary of State accepted the filing as having no obvious defect or error, and Mr. Martin challenges this decision as incorrect.

The Commission notes that Vermont, along with several other states, does not have voter registration by party, so technically, no one is a "registered member" of any party in Vermont or the other states. However, the parties and the Commission agree that the inability to register by party is not a defect in a filing for President, if it is impossible in the candidate's home state. Therefore, the factual inquiry for the Commission to make is whether the candidate is both "registered" and a "member" of the party which he claims on his filing form. There is no dispute as to whether he is registered to vote, so the inquiry solely is as to his party membership.

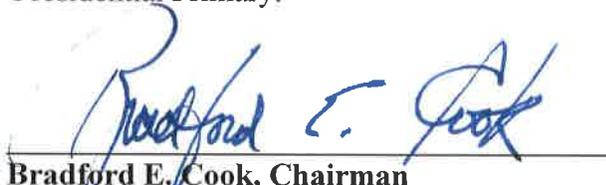
Sen. Sanders supplied the Commission with several pieces of evidence to support his claim to be a Democrat. First, he stated that from the date of filing on, he considered himself to be a Democrat, and so stated publicly when he filed. Second, he produced correspondence from the Chairs of the Democratic Party in Vermont and New Hampshire that the parties in those states consider him to be a Democrat. Third, he represented the fact that he has been placed on the ballot as a Democrat in his home state and others. Finally, he produced the list of delegates

to the Democratic National Convention in 2016 who have automatic delegate status because of their positions, under the rules of the Democratic Party, which includes Sen. Sanders as one of the so-called "super delegates." Supporting these assertions was testimony at the hearing by Raymond Buckley, Chair of the Democratic Party in New Hampshire, that only recognized Democrats can be delegates to the convention.

The Commission admits that Sen. Sander' status would be much more clear if he had changed his party designation in the Senate to "Democrat" from "Independent," which testimony indicated could be done without the holding of an intervening election, with historic precedents of Senators Thurmond, Jeffers and others cited to the Commission. However, the Commission is satisfied that by the preponderance of the evidence presented, and given the right of individuals to state their association with political parties of their choice and of parties to recognize individuals as members, which is not the subject of precise actions absent the ability to register in a particular party, Senator Bernie Sanders was and is, as of his filing, a Democrat, and the action of the Secretary of State in accepting his filing, was appropriate.

Therefore, the Ballot Law Commission upholds the decision of the Secretary of State to accept the filing of Sen. Bernie Sanders and agrees that his name shall be included on the Democratic ballot in the 2016 Presidential Primary.

**So ordered.**

A handwritten signature in blue ink, reading "Bradford E. Cook", is written over a horizontal line.

**Bradford E. Cook, Chairman**

**Michael Eaton**

**Dean Eggert**

**Beverly Hollingworth**

**Roger Wellington**