

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Case Number BLC 2016-4

**New Hampshire Democratic Party
By Raymond Buckley, Chair**

v.

Shawn O'Connor

Shawn O'Connor, of Bedford, New Hampshire, submitted 1508 nomination papers on the form promulgated by the Secretary of State, to be listed on the November general election ballot as an independent candidate for United States House of Representatives in the First District of New Hampshire, pursuant to RSA 655:40. He submitted the nomination papers in compliance with all time limits required in statute. The New Hampshire Democratic Party filed a timely objection to the O'Connor filing, contending that the nomination papers did not comply with the requirements of statute for a number of reasons, including the fact that three people filed two nomination papers, and twenty-six filed nomination papers for another candidate in addition to Mr. O'Connor, thus violating the provisions of RSA 655:40, which states, in relevant part, "No voter shall sign more than one nomination paper for each office to be voted for...." In addition, fourteen nomination papers contained allegedly confusing, incomplete, or inaccurate addresses or dates, which the Democratic Party contended invalidated them. All of the 1508 nomination papers were certified by the relevant local election officials, as required by statute.

A hearing was held by the Ballot Law Commission on the complaint, on September 15, 2016. At the hearing, Mr. O'Connor contested the objection on a number of bases, and sought to submit a number of additional nomination papers which had not been certified by election officials for reasons O'Connor contended were invalid. He also indicated that officials of the Secretary of State's office and local election officials had informed him that such failure to certify could be appealed to the Ballot Law Commission which, he contended, has jurisdiction to require they be accepted as timely. He contested the assertions of the petitioner on the matters of disqualification of voters who signed two petitions contending that there was no notice to voters that they could only sign papers for one candidate and indicating that by signing the nomination papers, voters demonstrated the requisite support for the candidate which was the underlying purpose of the statute. Further, he contends that the statute contains no remedy in the event more than one nomination paper is signed by a voter. His response to the challenge to those voters who had allegedly inaccurate, incomplete or otherwise faulty addresses or dates on the nomination papers was that that information is not required by statute to be submitted, and certification by election officials is sufficient. Both parties submitted extensive written material in the form of copies of nomination papers, summaries of contested documents and calculation of total submissions, affidavits of the circumstances of signing such documents, certifying documents, and voter intent.

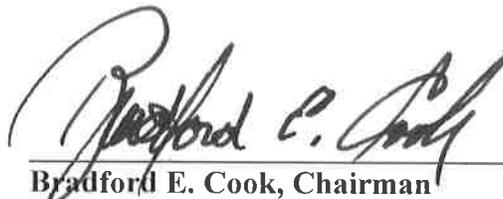
Representatives of the Secretary of State described the process of submitting nomination papers, obtaining election official certification, and reviewing the materials after submission.

After considering the evidence and circumstances of the matter, the Ballot Law Commission voted that three of the duplicate nomination papers (one for each voter submitting two identical papers) should be disallowed. On the matter of the nomination papers certified by election officials but allegedly being faulty due to address, date or other details, the Commission considers the certification to be sufficient to verify the accuracy of the papers. On the matter of voters signing nomination papers for more than one candidate, the question is not as clear. On the one hand, the statutory language clearly states that a voter shall not sign more than one nomination paper for a candidate for a particular office. However, there is neither a statutorily prescribed remedy if a voter does so, nor is there any mechanism to notify voters of the ramifications of doing so. Evidence at the hearing suggested that many voters, had they known of the requirement, would not have signed nomination papers for another candidate. The purpose of the statutory system for nomination by submission of papers is to demonstrate support for a candidate, and the Commission notes the complexity and difficulty of the process. The Commission also notes that if the nomination paper form provided notice to those filling it out of the requirement not to sign papers for more than one candidate for a particular office, this would be sufficient to disallow those papers signed by voters who have signed more than one. The Commission recommends to the Secretary of State that such a notice be included prominently on the form for future elections.

As to reviewing and requiring nomination papers not certified by local election officials to be added to those submitted according to statute, the Commission notes that there is no statutory process for appealing the failure to certify, and to attempt to do so after the fact would open to challenge all sorts of actions that are preconditions to various parts of the nomination and voting system. It declines to enter that quagmire. Should the legislature clarify the process or add an appeal process for actions at such a stage in the process, it is free to do so, but the Commission will not take that action on its own volition. Therefore, it declines to add any nomination papers to those already submitted in a timely fashion, it being up to the individual candidates to obtain nomination papers, have them certified and submitted.

Therefore, the Commission votes to accept all nomination papers submitted by Shawn O'Conner with the exception of the three duplicates, for a total of 1505, and to allow his name to be printed on the ballot as an independent candidate for United States House of Representatives in the First District of New Hampshire in the November, 2016 general election.

So ordered.



Bradford E. Cook, Chairman

Sheila Francoeur

Beverly Hollingworth

Bobby Stephen

Commissioner Dean Eggert, dissenting in part and concurring in part:

NH RSA 675:44 states that “nomination papers made in accordance with provisions of this chapter [655] shall be regarded as valid and shall be received by the Secretary of State unless objection thereto is made in writing no later than the Monday following the last day for the filing of such papers.” In the event an objection is timely filed, the Ballot Law Commission clearly has jurisdiction to hear the objection. See NH RSA 665:6(II). RSA 665:6(II) indicates that “when nomination papers as provided in RSA 655:40-43...are in apparent conformity with the law, they shall be valid unless written objection to their conformity with the law is filed,” in accord with RSA 655:44. The Ballot Law Commission is required to “meet as provided in RSA 665:5 in order to hear and decide all the objections.” Id. As written, the statutory role of the Ballot Law Commission is to hear the matter and identify whether the nomination papers which are the subject of “written objection” conform with the law. See NH RSA 665:6(II) and 655:44.

In my opinion, the onus lies on a candidate to ensure that they submit the statutory amount of signatures (in this case 1,500) on nomination papers which conform with RSA 655:40. The objection process set forth in RSA 655:44 is the remedy to be used when a third party objects to the validity of the nomination papers; i.e., whether they conform with the law.

While I agree with the majority’s opinion that the law is complex and presents certain difficulties, it is the role of the potential nominee to ensure that their nomination papers conform to the law. This case illustrates why it is advisable for a candidate to educate those who solicit signatures on their behalf as to the law, and to engage in the due diligence necessary to ensure that they will be able to deliver the requisite number of conforming nomination papers.

In this case, the black letter law compels me to not only concur with the majority ruling on three of the six duplicate nomination papers, but also to accept the objecting party’s argument as to the other double signatories. The objecting party presented documentary evidence that voters who signed nomination papers for Mr. O’Connor also signed nomination papers for another candidate seeking the same office. This contravenes the prohibition of RSA 655:44 and for that reason alone, I would sustain the objections of Mr. Buckley (the New Hampshire Democratic Party) to those 26 nomination papers.

I concur with that portion of the decision which holds that the Ballot Law Commission will not delve into disputes regarding nomination papers which have not been filed with the Secretary of State. RSA 665:7 indicates “that the Ballot Law Commission shall hear and determine disputes arising over whether nomination papers or declarations of candidacy filed with the Secretary of State clearly conform with the law. RSA 665:7. (emphasis added)” As a result, the law as currently written, does not give the Ballot Law Commission jurisdiction over nomination papers which have not been filed with the Secretary of State; i.e., those that are not certified by the supervisors of the checklist.

For the reasons stated above, I would find that Mr. O’Connor’s name should not be placed on the official ballot due to his failure to submit a sufficient number of signatures in conformity with the law. Even were I to deem the five (5) affidavits submitted by Mr. O’Connor

(Yergeau, Richki, Ropp, Dolmon, and Chretien) to be relevant, and accept the argument that there should be further inquiry beyond the black letter law, the potential nominee would fall short of the requisite 1,500 minimum signatures.

Dated: September 16, 2016



Dean B. Eggert, Commissioner