

**STATE OF NEW HAMPSHIRE**  
**BALLOT LAW COMMISSION**

**Petition of New Hampshire Republican State Committee**

**Eligibility of George Cleveland**

**BLC 2006-5**

**BACKGROUND**

On July 25, 2006, the Secretary of State received a request for hearing from the New Hampshire Republican State Committee (the "Petitioner"). The Petitioner requested from the Ballot Law Commission (the "Commission") "a review of Mr. George Cleveland as an eligible Democratic Party candidate for Senate District Three." The petitioner alleged that George Cleveland did not meet the requirements to appear on the primary ballot as a candidate for the Democratic Party pursuant to RSA 655:14. RSA 655:14 states in relevant part as follows:

The name of any person shall not be printed upon the ballot of any party for a primary unless he is a registered member of that party, he shall have met the age and domicile qualifications for the office he seeks at the time of the general election, he meets all the other qualifications at the time of filing, and he shall file with the appropriate official between the first Wednesday in June and the Friday of the following week a declaration of candidacy as provided in RSA 655:17.

**FINDINGS OF FACT**

A hearing was held on August 1, 2006. Attorney Charles Douglas appeared representing the New Hampshire Republican State Committee Senator and Attorney

Peter Hoe Burling appeared representing George Cleveland and Attorney James Kennedy appeared representing the Secretary of State.

Attorney Douglas presented his testimony based on an offer of proof without objection by anybody present and with permission from the Commission. Attorney Douglas presented evidence that historically, Mr. Cleveland is party designation on published checklists for the Town of Tamworth, New Hampshire as follows: February 2000 presidential election – Republican; November 2000 general election Republican; November 2002 general election – Republican; January 2004 primary Democrat; November 2004 undeclared; March 2006 undeclared.

Attorney Douglas argued that the posted checklists are the only facts that should be presented to the Commission. He stated that the Democratic Party should not circumvent information contained on checklists by the testimony of individuals who contradict the written evidence based on memory or interpretation of the checklists.

Attorney Kennedy presented one live witness, Sharon Nothnagle, a Supervisor of the Checklist for the Town of Tamworth. In the September 2004 election, Mr. Cleveland voted as was evidenced by the “√” beside his name marked by the Ballot Clerk. At that time, Mr. Cleveland took the ballot for the Democratic Party. This is documented by an arrow from Mr. Cleveland’s name to the designation “DEM” on the September 14, 2004 checklist. The designation “DEM” was written on the line for another voter, Kenneth Clayton, and an arrow had been drawn from Mr. Cleveland’s name to the designation “DEM.” It was the testimony of Ms. Nothnagle that the Supervisors of the Checklist concluded it was the clear intention of the Ballot

Clerk to connect Mr. Cleveland's name to the designation of Democrat. After Mr. Cleveland completed his ballot, he was required to check-out with the Town clerk to confirm he had voted and returned his completed ballot. On the check-out list for the September 14, 2004 primary, Mr. Cleveland is identified as having turned in a Democratic ballot. Ms. Nothnagle testified that because Mr. Cleveland is designated on the check-out list as both having received and turned in a Democratic ballot, this confirms the Supervisors of the Checklist conclusion is that the arrow drawn on the original checklist to the designation "DEM" means that Mr. Cleveland changed his party affiliation to Democrat on September 14, 2004.

Ms. Nothnagle testified that the Supervisors of the Checklist have reviewed all of the change of party affiliation forms between September 14, 2004 and August 1, 2006, the date of the hearing before the Commission. That review confirmed that Mr. Cleveland did not modify his party affiliation from Democrat following the September 14, 2004 election. As a result, the Supervisors of the Checklist concluded that the designation of Mr. Cleveland as undeclared was incorrect because Mr. Cleveland properly registered as a Democrat on September 14, 2004, and did not subsequently change his affiliation. Therefore, Ms. Nothnagle concluded that there was a clerical error on the part of the Supervisors of the Checklist and at no time did Mr. Cleveland change his party designation from the Democratic Party. Ms. Nothnagle testified that a new checklist has not been published and such publication is not required until the next checklist must be posted. That next published checklist, however, will designate Mr. Cleveland as being affiliated with the Democratic Party.

Attorney Kennedy also presented an Affidavit from the Chairman of the Tamworth Supervisors of the Checklist. In that statement, Mr. Ball concluded that Mr. Cleveland took all necessary steps on September 14, 2004 to change his party affiliation to the Democratic Party and the checklist for the Town of Tamworth should properly show Mr. Cleveland as having registered as a Democrat.

Attorney Peter Burling presented the testimony of George Cleveland. Mr. Cleveland testified that when he voted in the September 2004 primary, he requested a ballot for the Democratic Party. Since September of 2004, he has not taken any steps to change his party affiliation from the Democratic Party. It was the testimony of Mr. Cleveland that in September of 2004 he intended to register as a Democrat and he has not changed that party affiliation since September of 2004.

#### **RULINGS OF LAW**

RSA 655:14 allows a person to be printed as a candidate for a party only if that individual is a registered member of that party and meets all other qualifications at the time of filing. The Ballot Law Commission finds that George Cleveland took all necessary steps to register as a Democrat on September 14, 2004. He was not properly listed on the official checklist for the Town of Tamworth, but such omission was not due to any action or inaction on the part of Mr. Cleveland. Mr. Cleveland was a registered member of the Democratic Party at the time that he filed as a candidate for Senate District Three. Therefore, Mr. Cleveland is a qualified candidate for the Office of State Senate, District Three.

**ORDER**

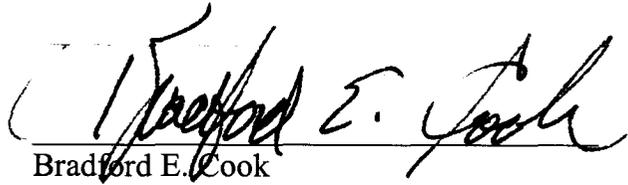
The Commission orders that George Cleveland's name appear on the ballot for the District Three State Senate seat.

SO ORDERED

New Hampshire Ballot Law Commission

Date:

4/2/07



Bradford E. Cook  
Charles Chandler  
Paul McGuirk  
Gregory T. Martin