

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Petition of Carolyn B. Webber

BLC 2006-7

ORDER

On November 20, 2006, the Secretary of State received a written request from Carolyn B. Webber (“the Petitioner”) stating she wished to “appeal” the recount results for the Towns of Salem and Windham, House District 4. The Petitioner was an unsuccessful candidate for the District 4 House of Representatives seat, with candidate Jason Bedrick (“Bedrick”) as the successful candidate for the final seat.

The Ballot Law Commission (“the Commission”) held a hearing on November 27, 2006. At the hearing, the Petitioner was represented by Attorney Kathleen DeFrusia. Attorney DeFrusia raised two types of challenges to the District 4 recount. The first challenge was with respect to when the Secretary of State first announced a tie between the Petitioner and Bedrick, but then amended the announcement to certify Bedrick had received 5 more votes than the Petitioner. The second was a challenge of 12 ballots from Windham and forty-five ballots from Salem.

I. Initial Recount Announcement

The Petitioner, through her counsel, claimed that at the conclusion of the recount for District 4, that the Secretary of State’s Office originally declared a tie between the Petitioner and candidate Bedrick. However, at some point later that day, the Secretary of State’s office identified a tabulation error and announced that candidate Bedrick had

beaten the Petitioner by 5 votes. The Petitioner argued that once the Secretary of State announced a tie, it was too late to amend the certification.

At the hearing, Assistant Secretary of State Karen Ladd testified that she was the individual who was involved in the recount and had tabulated the tally sheets. She explained to the Commission how she kept a running tally of the votes by hash marks. At some point after the conclusion of the recount, an individual observing the recount asked to check her tally sheets. Assistant Secretary of State Ladd stated she gave the observer the tally sheets to review. She testified that she observed the individual the entire time he had possession of the sheets. She further stated that he did not have a writing instrument. According to Karen Ladd, after reviewing the sheets, the individual showed her that she had made a calculation error. Upon reviewing her tabulations, she did note that she had made an error and had missed five votes, which should have been counted for Bedrick. During the hearing Assistant Secretary of State Ladd showed the Commission tally sheet #20 where she identified the first tally where she made the original mistake. The Commission found that a tallying error had been made initially, but was properly corrected by the Secretary of State.

The Commission voted unanimously to dismiss this challenge by the Petitioner.

II. CHALLENGED BALLOTS

The Commission reviewed twelve (12) individual ballots from Windham identified as W-1 through W-12 and forty-five (45) individual ballots from Salem identified as S-1 through S-45. After hearing arguments from the Petitioner and Bedrick's attorney, Richard Lehman, the Commission voted to override the Secretary of

State's voting counts on three of the 57 ballots. Specifically, on W-1 ballot from Windham, the Commission voted 3 –2¹ that a vote for Bedrick should have been counted and this ballot should not have been viewed by the Secretary of State as an over vote. The Commissioner's voting in favor of counting the ballot for Bedrick, stated that the intent of the voter was clear by the ovals being filled in as opposed to stray hash marks for candidates on the democratic side of the ballot.

On ballot S-28 from the Town of Salem, the Secretary of State deemed this ballot as a straight ticket vote for the Republican Party. However, the Commission unanimously voted that this should not have been counted as a straight Republican ticket vote. The Commission found the voter's intent was not clear.

Ballot S-45 was counted by the Secretary of State as a Democratic straight ticket vote. The Commission voted unanimously to override the Secretary of State's decision citing their ruling on ballot S-28, again, because the voter's intent was not clear.

CONCLUSION

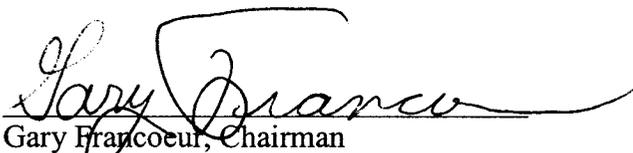
Wherefore, the Ballot Law Commission hereby upholds the Secretary of State's ballot counting in the District 4 House race in the Town of Windham on ballots W-2 through W-12 and in the Town of Salem, ballots S-1 through S-44 except for ballots S-28 and S-45. The Commission overrides the Secretary of State's counting of ballot W-1 and confirms Bedrick should receive a vote from that ballot, and in ballot S-28 Bedrick should not receive a vote and in ballot S-45 the Petitioner should not receive a vote.

¹ Voting "yes" were Commissioners Francoeur, Cook and Duprey. Voting "no" were Commissioners Chandler and McGuirk.

The Commission notes their decision does not change the overall election results.

SO ORDERED.

New Hampshire Ballot Law Commission

A handwritten signature in black ink, appearing to read "Gary Francoeur", written over a horizontal line.

Gary Francoeur, Chairman

Charles Chandler

Bradford E. Cook

Stephen Duprey

Paul McGuirk

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