

THE STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE BALLOT COMMISSION

In Re: State Election
Held on November 8, 1994

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DEC 27 1994

NEW HAMPSHIRE
SECRETARY OF STATE

Decision

On November 28, 1994 the Ballot Law Commission (Commission) heard appeals of recounts involving the State Election held on November 8, 1994. Four of the appeals involved common issues related to the counting of straight party ballots. Because the appeals involved common issues, the hearings were consolidated. Several of the appeals involved other issues relating to particular ballots and other alleged voting irregularities. Those issues have been or will be decided by the Commission in separate opinions. The four appeals consolidated for hearing are as follows:

Daren F. McGettigan	State Representative Hillsborough County District 11
Celestine Wiggins	State Representative Sullivan County District 4
Robert H. Skinner & Joan Tuck	Supervisor and Town Clerk Rockingham County District 27
Madelyn Ahlgren	State Representative Hillsborough County District 40

The common thread involved in these appeals are ballots on which the voter marked his or her ballot as a straight party ballot and also marked the ballot for an individual candidate in a race with more than one candidate to be elected. The relevant ballots and election returns were part of the record before the Commission. In some cases, the voter voted for an individual candidate of the same party as the straight party ballot, and in others the voter voted for a candidate of the opposite party. In each of the appeals the appellant takes the

position that the voter, by voting for an individual candidate for a particular office, intended to vote only for that candidate for that office in spite of the fact that the voter indicated an intention to vote a straight ticket. In effect, the argument is that the individual vote negated the effect of the straight party ballot for that office. For example, in the Rockingham County District 27 race for state representative there were four candidates running for three seats. On one ballot a voter who voted a straight Republican ballot placed an X in the box after one of the Republican candidates but not for any of the other candidates. The protesting candidate takes the position that the intention of the voter was to vote only for the individual candidate for whom the voter marked an X after the name and therefore no votes should be counted for the Republican candidates who did not receive an X after their names.

The touchstone of the Commission's inquiry is the intention of the voter. However, that intention is not considered in the abstract and must be determined based on the instructions that were given to the voter and the statutes that the legislature has seen fit to enact.

RSA 659:17 and RSA 659:66 were amended by the 1994 Session of the Legislature. RSA 659:17 III and 659:66 now read as follows:

"III. In a state general election, the following instructions to voters for straight ticket voting shall be printed on the ballot: Make the appropriate mark for the political party of your choice if you wish to vote for all candidates running in that party. If you vote a straight ticket, but wish to vote for one or more individual candidates of a different party, you may do so, and your vote for an individual candidate will override the straight party vote for that office. However, if you vote for one candidate of a different party for an office where more than one candidate is to be elected, be sure to vote individually for all candidates of your choice for that office, because

your straight ticket vote will not be counted for that office."

"659:66 Counting Straight Party Vote. If, in accordance with RSA 659:17, a ballot is marked to indicate a straight party vote, but an appropriate mark is beside the name of a candidate of a different party for any office, or the name of a person is written on the lines for write-in votes, then the vote so appropriately marked or so written on the lines for write-in votes shall be counted and shall override the straight party vote for that office."

RSA 659:17 and RSA 659:66 make it clear that if an individual votes a straight ticket and then votes for a candidate of a different party for an office for which more than one candidate is to be elected, the voter must vote individually for all candidates of their choice for that office because the straight ticket vote will not be counted for that office. The logic of the statute is obviously to prevent the over-vote that would occur if the individual vote and the straight ticket votes were counted.

The same logic does not apply in the case of a straight ticket vote and a vote for an individual candidate of the same party for which the straight ticket vote was entered. In such a case no over vote occurs because the candidate receiving the individual vote cannot receive more than one vote.

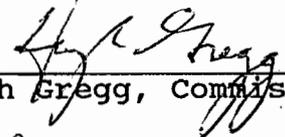
RSA 659:17, III advises voters to vote a straight ticket "if you wish to vote for all candidates running in that party". When a voter votes a straight ticket, it is assumed that the voter intended to cast a vote for all of the candidates from that party whose names appear on the ballot. A straight-ticket voter who wants to deny a candidate his or her vote is free to erase or cancel the name of the candidate on the ballot. None of the ballots subject to the recount appeal evidence any erasure or cancellation of the candidates' names. The Commission cannot presume that the voter did not intend to vote for all candidates on the straight ticket, without some overt act on the

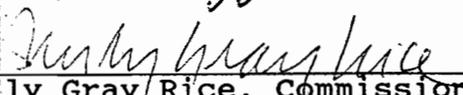
part of the voter indicating an intention not to vote for the candidate. Accordingly, the rulings of the Secretary of State as to the straight party ballots are upheld and the appeals are dismissed.

The testimony heard by the Commission revealed that there is considerable confusion and misunderstanding among candidates and local election officials regarding the proper counting of straight ticket ballots. Several witnesses suggested that the layout of the ballots and the instructions to voters be modified to avoid this confusion. The Commission shares these concerns and has voted to ask the Secretary of State to recommend to the legislature changes in the law to clarify and simplify voting procedures as he deems necessary. These could include the use of a different ballot for straight ticket voters, better instructions to the voter or the elimination of straight ticket voting altogether.

New Hampshire Ballot Law
Commission

By 
Gary B. Richardson, Chairman


Hugh Gregg, Commissioner


Emily Gray Rice, Commissioner