

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

New Hampshire Democratic Party

BLC 2006-4

BACKGROUND

On June 27, 2006, the Secretary of State received a request for hearing from the New Hampshire Democratic State Committee (the "Petitioner"). The Petitioner requested the Ballot Law Commission (the "Commission") "to reverse the decision of the Secretary of State, and to order the Secretary of State to place Representative Cilley's name on the primary ballot for the State Senate in District 6 for the September, 2006 primary election." The Petitioner alleged that Representative Jacalyn Cilley should be on the ballot pursuant to RSA 655:10, III which states as follows:

A party shall not designate a person to fill a vacancy if the person has been nominated for any incompatible office.

FINDINGS OF FACT

A hearing was held on July 6, 2006. Senator and Attorney Peter Hoe Burling, representing the New Hampshire Democratic State Committee, called two witnesses. Raymond Buckley, Director of the New Hampshire Senate Democratic Caucus and Vice-Chairman of the New Hampshire Democratic State Committee testified in support of the Petition. Mr. Buckley testified that on June 21, 2006, the deadline for a party to submit a candidate to fill a vacancy, he and several others met with Representative Cilley to request that she agree to allow her name to be presented by

the Democratic Party to be placed on the ballot for State Senate in District 6. At the conclusion of that meeting, Representative Cilley filled out the forms consenting to be the designated candidate for the District 6 senate seat, gave them to Mr. Buckley, and told him that she would call with her final decision on whether he could submit her name for the seat.

Mr. Buckley then left the Democratic Party Office to go to the Secretary of State's Office with various filings, including a letter from the Democratic Chairperson and forms completed by Representative Cilley to have Representative Cilley's name placed on the District 6 ballot. Mr. Buckley testified he received a call at approximately 4:00 p.m. from Representative Cilley authorizing him to file the senate papers she had previously signed.

When Mr. Buckley attempted to file the District 6 papers, he was told there was an issue because Representative Cilley had already filed as a candidate for State Representative. At that time there was a conversation with the Secretary of State and other individuals in the Secretary of State's Office. At the conclusion of that meeting, Mr. Buckley overheard the Secretary of State say he could accept the filing and Representative Cilley would have to choose between the House or Senate ballot.

Shortly after submitting the paperwork for the District 6 senate seat, Mr. Buckley left the Secretary of State's Office and, upon returning to his office, checked the Secretary of State's website. At that time, Representative Cilley's name was listed as a candidate for both the senate and house seats. On the evening of June 22, 2006, Mr. Buckley again checked the Secretary of State's website. At that time,

Representative Cilley was identified as a candidate for the senate and was no longer listed as a candidate for the house.

On Friday, June 23, 2006, Mr. Buckley was advised by a third party that Representative Cilley's name was no longer listed as a candidate for the senate and was only listed as a candidate for the house. Mr. Buckley then spoke with the Secretary of State and learned that the Secretary of State had changed his decision based primarily upon a dictionary definition of the word "nomination". RSA 655:10 states that "A party shall not designate a person to fill a vacancy if the person has been nominated for any incompatible office." [Emphasis added] The Secretary of State informed Mr. Buckley that because Representative Cilley had previously filed for election to the House of Representatives, the Democratic Party could not designate her to fill the District 6 vacancy because, according to the Secretary of State, she had been nominated for an incompatible office.

Representative Dan Eaton testified next on behalf of the Democratic Party. Representative Eaton testified that at approximately 4:00 p.m. on June 21, 2006 he was in the Secretary of State's Office. He overheard the conversation between the Secretary of State and his staff discussing the Democratic Party's submission of Representative Cilley to fill the District 6 senate seat. Representative Eaton testified that he heard the Secretary of State say that the Democratic Party's filing was acceptable and Representative Cilley would have to make a choice between the house or senate seats.

James Kennedy, representing the Secretary of State, called two witnesses to support the Secretary of State's decision. Assistant Secretary of State Karen Ladd

testified first on behalf of the Secretary of State. Ms. Ladd testified that Mr. Buckley attempted to file the District 6 papers at approximately 4:30 p.m. on June 21, 2006. Ms. Ladd testified that she told Mr. Buckley the Secretary of State's Office could not accept the filing because Representative Cilley had already filed as State Representative. Based upon Ms. Ladd's subsequent conversation with the Secretary of State, however, the Secretary of State's Office agreed to accept the filing. Later in the day on June 21, 2006, Ms. Ladd updated the Secretary of State's website to include Representative Cilley as a candidate for the State Senate. On June 22, 2006, Ms. Ladd contacted Representative Cilley and advised her that she would have to pick either the senate race or the house race. Later on that day, Representative Cilley hand delivered a letter withdrawing from the race for the House of Representatives.

Ms. Ladd testified that the Secretary of State did accept the Democratic Party filing for Senate District 6 on the 21st. She first learned that the Secretary of State had changed his mind about the filing on June 23, 2006. At that time, the Secretary of State told her that they could not accept the filing and to remove Representative Cilley from the Secretary of State's website as a candidate for the senate.

Secretary of State William Gardner testified next. He described the Secretary of State's Office as being extremely busy on June 21, 2006. In addition to the deadline for parties to designate a person to fill a vacancy, several other filings were due on that day. At approximately 4:50 p.m. on June 21, 2006, he had to make a quick decision as to whether or not to accept the Democratic Party's filing for the District 6 senate seat. As was his practice, his inclination was to accept the filing to

deal with it when he had more time. In his mind, he had conditionally accepted the Democratic Party's designation, intending to revisit the issue after the 21st.

On June 22, 2006 he went through the statute and recognized he had not previously dealt with a filing under RSA 655:10, III. After consultation with legal counsel, the Secretary of State determined that Representative Cilley had previously been nominated for the House of Representatives. Because this was an incompatible office, pursuant to his interpretation of RSA 655:10, III, he changed his previous determination and decided his office could not accept the Democratic Party's filing for the Senate District 6.

Following the testimony presented both on behalf of the Democratic Party and the Secretary of State, Senator Burling entered an offer of proof that Senator Hassen had filed in 2002 for a state seat with the House of Representatives. She was subsequently approached by the Democratic Party and asked to run for State Senate and was thereafter designated by the Democratic Party as a candidate for State Senate. At that time, the Secretary of State accepted the Democratic Party's submission and asked Senator Hassen to elect which office she intended to run for. The factual scenario was essentially the same as that that was being presented by the Democratic Party regarding Senate District 6. Attorney Kennedy noted that in 2002, the incompatible office provision of RSA 655:10 was not in effect.

Following the presentations by the Democratic Party and the Secretary of State's Office, Representative Steve Vaillancourt testified as to the intent of House Bill 394. Representative Vaillancourt was a prime sponsor of that legislation.

Former Representative Donald Stritch also testified with regard to the use of the word “nomination”.

RULINGS OF LAW

The word “nominated” is not defined in RSA Chapter 655. It is the finding of the Ballot Law Commission that nominated in the context of RSA 655:10 means the selection of an individual following a party primary. This is consistent with the use of the word “nomination” in RSA 652:1 and RSA 652:5. When a candidate submits his or her name to the Secretary of State to be placed on the ballot for the primary election, the individual filing for declaration of candidacy and has not yet been nominated. In addition, RSA 655:10, I states that “no person shall file declaration of candidacy or primary petitions for nomination at the primary for incompatible offices.” [emphasis added]. If the general court intended the filing of a declaration of candidacy to be the equivalent of a nomination, such language would be included in RSA 655:10, I. Therefore, RSA 655.10, III only prohibits designation of an individual by a political party if that person has been nominated by primary vote for an incompatible office at the primary.

The Ballot Law Commission finds that Representative Cilley made her filings for the both the House of Representatives and the Senate in good faith based upon advice she received at the time of the filing for the State Senate District 6 seat. The Ballot Law commission is of the opinion that as phrased, there is the potential that ballots can be manipulated if somebody were to act in bad faith. However, the statute as written authorizes a party to designate a person to fill a vacancy even if that individual had previously filed a declaration of candidacy for an incompatible office,

and this results in inconsistent filings. The structure of RSA 655:10 allows the individual who had previously filed a declaration of candidacy, then was designated by a party to fill a vacancy, to select either one of the two incompatible offices. The Commission is required to uphold the intent of all the provisions of the statute and make them work together to make sense.

Under the language of RSA 655:10, the State Democratic Party had the right to designate Jacalyn Cilley as its nominee for the District 6 State Senate seat.

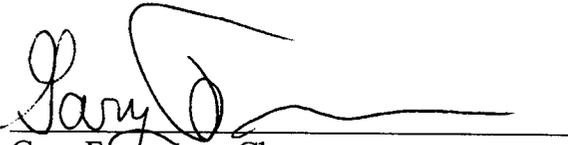
ORDER

The Commission orders that Jacalyn Cilley's name shall appear on the ballot for the District 6 State Senate seat.

SO ORDERED.

New Hampshire Ballot Law Commission

Date: 8/1/06


Gary Francoeur, Chm.
Bradford E. Cook
Charles Chandler
Stephen Duprey

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

New Hampshire Democratic Party

BLC 2006-4

DISSENTING OPINION

I respectfully dissent from the Commission's Order. The State of New Hampshire has an excellent reputation for holding fair and open elections, in large part due to the work of the Secretary of State. At the time of the filing of the Democratic Party's nomination for the District 6 State Senate seat, the Secretary of State only had approximately thirty minutes to review and determine whether or not the filing was valid. After studying the statute and seeking legal counsel, the Secretary of State determined that Jacalyn Cilley does not have the appropriate qualifications for the State Senate District 6 seat because she had previously been nominated for an incompatible office.

With each declaration of candidacy filed by a candidate, the candidate must swear that he or she is not a candidate for an incompatible office. It is my position that the majority is in error and the Secretary of State's decision that Representative Cilley was not qualified for the State Senate District 6 seat should be upheld. For this reason, I respectfully dissent from the majority's decision.

Date: _____

7/17/06



Paul McGuirk