

JUL 2.5 1896 NEW HAMPSHIRE SECRETARY OF STATE

STATE OF NEW HAMPSHIRE

Keefe A 96-7 BIC

B2Cdocket no. 96-7

BALLOT LAW COMMISSION

N.H. Republican State Committee

v.

Joe Keefe

PETITION OF THE N.H. REPUBLICAN STATE COMMITTEE

NOW COMES the N.H. Republican State Committee, by and through its attorneys, Cleveland, Waters and Bass, P.A., and requests that the Ballot Law Commission declare and determine that Joe Keefe, Democratic Party candidate for the office of Representative to Congress, First District, failed to comply with New Hampshire's statutory requirements for appearing on the Primary Ballot and, as a result, strike Joe Keefe's name from appearing on the official ballot as a candidate for the office of Representative to Congress, First District, or, alternatively, order that, unless he agrees to abide by the voluntary spending limits, his name be stricken from appearing on the official ballot as a candidate for the office of Representative to Congress, First District. In support thereof, the Petitioner states as follows:

<u>Parties</u>

- 1. Petitioner, the N.H. Republican State Committee, is a state political party organization organized pursuant to RSA 667:21-22, with a principal place of business at 134 North Main Street, Concord, New Hampshire.
- 2. Respondent, Joe Keefe, of 1550 Union Street, Manchester, New Hampshire, is a declared candidate for the Democratic

nomination for the office of Representative to Congress, First District.

<u>Jurisdiction</u>

- 3. The Ballot Law Commission has jurisdiction over this Petition pursuant to RSA 665:5 and 7.
- 4. Because this Petition is based on claims of illegality and fraud, this Petition is timely filed. See Rauh v. Smith; Douglas v. Swett, BLC Docket #96-2, 96-4, Order dated July 18, 1996 (the "Order"), at 10, 18. See also Colby v. Broderick, 96 N.H. 316 (1950).

<u>Facts</u>

A. Background.

- 5. In seeking the Democratic nomination for the office of Representative to Congress, First District, Joe Keefe elected to not abide by the voluntary spending limits set forth in RSA 664:5-b and chose to have his name placed on the ballot by submitting at least 1,000 primary petitions to the Secretary of State by June 14, 1996. See RSA 655:14; 655:19; 655:19-b; 655:19-c; 655:20; 655:22.
- 6. On or before June 14, 1996, Joe Keefe submitted, according to the Secretary of State, 1,278 petitions to the Secretary of State. On July 22, 1996, the Secretary of State produced for Petitioner copies of only 1,222 petitions filed on Mr. Keefe's behalf.
- B. Petitions Signed by Individuals Not Registered as Democrats.
- 7. Based on voter checklist information, a substantial number of Mr. Keefe's petitions were signed by individuals who were

not registered Democrats. On July 23, 1996, a sample consisting of 155 petitions signed by individuals purported to be registered Democrats in the City of Manchester were checked to determine if they were eligible to file primary petitions for Mr. Keefe as of July 1, 1996. It was determined that, as of that date, 18 of those 155 (approximately 12%) were not registered as Democrats in the City of Manchester and were ineligible. Upon information and belief, this was a representative sample, and, based on such sample, a substantial number of the petitions submitted by Mr. Keefe were not signed by registered Democrats. Furthermore, at least seven (7) petitions were signed by individuals who were not domiciled in the First Congressional District.

C. <u>Duplicate and Triplicate Petitions</u>.

8. On information and belief, at least 37 of Mr. Keefe's petitions are duplicates or triplicates. That is, at least 17 individuals signed two (2) petitions each and at least one (1) individual signed three (3) petitions.

D. <u>Defective Petitions</u>.

9. In addition, at least eleven (11) of Mr. Keefe's petitions are substantively defective in that they are not notarized, are not notarized properly, or fail to contain the requisite information about the person who signed the petition.

- E. <u>Petitions Purportedly Acknowledged Before Matthew S. Pappas and Benjamin D. Lewis.</u>
- 10. Matthew S. Pappas purportedly took the acknowledgement on at least 160 petitions on behalf of Mr. Keefe, including one (1) petition described in paragraph 9 above, and Benjamin D. Lewis purportedly took the acknowledgement on at least 126 petitions on behalf of Mr. Keefe, including three (3) petitions described in paragraph 9 above.
- 11. In previous proceedings before the Ballot Law Commission in <u>Douglas v. Swett</u>, BLC Docket #96-4, it was found that Mr. Pappas signed acknowledgements on a substantial number of petitions on behalf of Dick Swett, a Democratic candidate for the United States Senate, when signatories were not in his presence and that the acknowledgments on a significant number of Pappas petitions were not truthful. <u>Order</u> at 15, 16.
- 12. Furthermore, the Ballot Law Commission found that Mr. Pappas "intentionally evaded service of a subpoena to avoid testifying before the Commission," Order at 15, and in fact did not testify in that matter.
- 13. On information and belief, although Mr. Lewis was subpoenaed to testify before the Ballot Law Commission in <u>Douglas</u> <u>v. Swett</u>, he did not appear. No findings of fact were made with regard to Mr. Lewis.
- 14. The findings of the Ballot Law Commission in <u>Douglas v.</u>
 <u>Swett</u>, and Mr. Pappas' and Mr. Lewis' failure to appear before the
 Commission in that matter, give rise to a reasonable inference that
 Mr. Pappas and Mr. Lewis were grossly negligent in acknowledging

petitions on behalf of Joe Keefe and otherwise engaged in misconduct and deceptive behavior.

- Pappas, the acknowledgement of a vast majority indicate they were "witnessed" on May 26, 1996 and virtually if not all of the 160 petitions indicated that they were "witnessed" in Merrimack County. On July 22, 1996, a sample of seven (7) of the individuals whose names appeared on these petitions were contacted by telephone. In response to inquiries, one (1) had no recollection of signing a petition for Mr. Keefe; one (1) was a registered Republican; six (6) did not know a Matthew Pappas; all seven (7) were signed in Derry, Londonderry or Manchester; and all of the six who recalled signing a petition stated that no identification was asked for and no oath was administered. Upon information and belief, this was a representative sample, and, based on such sample, a substantial number, if not all, of the 160 petitions in question are invalid.
- 16. Of the 126 petitions purportedly acknowledged before Mr. Lewis, the acknowledgement on each indicates they were "witnessed" in Belknap County. Virtually all of the petitions on which Mr. Lewis is named as the acknowledging officer were signed by residents in towns or cities not located in Belknap County. On July 22, 1996, a sample of six (6) of the individuals whose names appeared as qualified voters on primary petitions filed on behalf of Mr. Keefe and purportedly acknowledged by Mr. Lewis were contacted by telephone. In response to inquiries, one (1) has no recollection of signing a petition for Mr. Keefe; none were signed

in Belknap County; none know a Benjamin Lewis; and all of the five (5) who recalled signing a petition stated that no identification was asked for and no oath was administered. Upon information and belief, this was a representative sample, and, based on such sample, a substantial number, if not all, of the 126 petitions in question are invalid.

17. On July 22, 1996, representative samplings of the petitions purportedly acknowledged before Mr. Pappas and Mr. Lewis for Deborah Arnesen, candidate for Congress in the Second Congressional District, were also taken and the results of those samples are consistent with the findings set forth in paragraphs 15 and 16 above. See N.H. Republican State Committee v. Arnesen, petition dated the date hereof, BLC Docket # (pending), ¶¶ 15, 16.

F. Petitions Purportedly Acknowledged Before Others.

18. Based on the above facts, it is reasonable to infer that others who purportedly took acknowledgements on petitions submitted on behalf of Mr. Keefe similarly engaged in conduct not in accordance with the statutory requirements for taking the acknowledgement on such petitions.

Grounds for Relief

19. RSA 655:20 requires petitions to be signed by members of the candidate's political party. Therefore, a substantial number of Mr. Keefe's petitions as described in paragraph 7 above are invalid and illegal.

- 20. RSA 655:23 requires that no voter sign more than one primary petition for the same office. Therefore, the 37 petitions described in paragraph 8 above are invalid and illegal.
- 21. A valid primary petition must be acknowledged in person before a notary public or justice of the peace, who is obligated to verify the identify of the person signing the petition, personally observe the signing and have the signatory subscribe under oath that the information in the petition is true. RSA 655:21. See also RSA 456:6. On information and belief, Mr. Pappas' and Mr. Lewis' conduct with regard to the 160 and 126 petitions each acknowledged respectively on behalf of Joe Keefe may be so egregious as to constitute possible fraud and each of those petitions, plus those petitions described in paragraphs 9 and 18 above are invalid and illegal for failing to conform to these statutory requirements.
- 22. Because Joe Keefe refused to agree to the voluntary spending limits set forth in RSA 664:5-a and 5-b, he was required to submit at least 1,000 valid primary petitions on or before June 14, 1996 and his failure to submit 1,000 valid primary petitions on or before June 14, 1996 is a violation of New Hampshire's election laws. See RSA 655:14; 655:19; 655:19-b; 655:19-c; 655:20; 655:22.

WHEREFORE, the N.H. Republican State Committee respectfully requests that the Ballot Law Commission:

A. Schedule a hearing on this matter at its convenience;

- B. Upon hearing, rule that Joe Keefe has failed to submit the requisite petitions in the form prescribed by law in violation of New Hampshire's election laws;
- C. Order that Joe Keefe's name be stricken from appearing on the Democratic primary election ballot or, in the alternative;
- D. Order that, unless Joe Keefe agrees to abide by the voluntary spending limits set forth in RSA 664:5-b, his name be stricken from appearing on the Democratic primary election ballot; and
 - E. Order such other and further relief as is reasonable.

Respectfully submitted, N.H. REPUBLICAN STATE COMMITTEE By its Attorneys, CLEVELAND, WATERS AND BASS, P.A.

Dated: July <u>75</u>, 1996

Bv:

Roger G Burlingame Philip M. Hastings

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 1996, a copy of this Petition was hand-delivered to the New Hampshire Ballot Law Commission, c/o the New Hampshire Department of State, Secretary of State's Office and to Respondent Joe Keefe, c/o Keefe for Congress, 788 Elm Street, Manchester, New Hampshire; and mailed, postage prepaid to Attorney Christopher Reid, Assistant Attorney General. Further, copies were faxed on this date to Ballot Law Commission Standing Members Chairman Gary Richardson, Esq.; the Honorable Hugh Gregg; Attorney Emily Rice; and Joe Keefe.

Philip M. Hastings