

STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION

Petition

Of

New Hampshire Republican State Committee  
(State Senate Seat, District 14)

**RECEIVED**

SEP 29 2000

**NEW HAMPSHIRE  
SECRETARY OF STATE**

**DECISION**

On September 21, 2000, pursuant to RSA 655, the New Hampshire Republican State Committee through its Chairman Stephen Duprey, filed a complaint with the Ballot Law Commission ("the Commission") challenging the qualifications of State Senate District 14 candidate Leonard William Foy, III under Part II, Article 29 of the New Hampshire Constitution:

No person shall be capable of being elected a senator...who shall not have been an inhabitant of the State for seven years immediately preceding his election.

On September 27, 2000, the Commission held a public hearing on this matter, at which both Mr. Duprey and Mr. Foy testified. Chairman Duprey alleged both in his testimony and in his written complaint that Mr. Foy did not meet the constitutional residency requirement. Specifically, Mr. Duprey alleged that Mr. Foy did not meet the constitutional requirement because Mr. Foy lived, voted and obtained a driver's license outside the State of New Hampshire during the seven years immediately preceding the November 2000 general election. The claims were that Mr. Foy held a California driver's license from January 27, 1995, with an expiration date of March 7, 1998, and that Mr. Foy had a number of addresses in California. Mr. Duprey also stated that Mr. Foy had been previously registered to vote in

Walnut Creek, California as noted in Mr. Foy's New Hampshire voter registration card.<sup>1</sup>

Mr. Duprey also cited the fact that Mr. Foy was admitted to the California Bar on February 4, 1995 as being indicative that Mr. Foy was not domiciled in New Hampshire. Mr. Duprey argued that mere intent to return to New Hampshire is insufficient for Mr. Foy to maintain his domicile in the State of New Hampshire.

various point between 1986 and 1996, he had done so only for school or employment purposes. Mr. Foy testified that his intent was always to return to New Hampshire, and that any actions that he took were taken with the expectation that he was not foregoing his domicile in the State of New Hampshire.

RSA 21:6-a states that "...residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence". Although Mr. Foy's voting in California does demonstrate some inconsistency with his intent to remain domiciled in the State of New Hampshire, the weight of contrary evidence presented by Mr. Foy on this issue was persuasive. Mr. Foy presented as Exhibit Y the State of California 1996 voter registration card, which he testified that he had signed. Of note is the fact that the affidavit requires the registrant to state that "the residence address shown on this affidavit is my true and correct residence address." Unlike

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<sup>1</sup> During his testimony, Mr. Foy acknowledged he had previously voted in California and that his New Hampshire voter registration card should have listed Concord, California, not Walnut Creed, as the place in which he had previously been registered.

the State of New Hampshire voter registration card<sup>2</sup> and the 2000 California registration card<sup>3</sup>, there was no requirement on the 1996 form that the registrant, Mr. Foy, declare the State of California as his domicile in order to vote there.

In determining one's domicile, there are many factors which are relevant and which must be considered. Lundquist v. Precision Valley Aviation, Inc., 946 F2d 8 (1st Cir. 1991). Thus, a balancing test is required. The factors include a person's physical location, where they have voted, where they have obtained a driver's license, where they purchase property and pay taxes. Also to be factored into this balancing test is the intent of that individual. Mr. Foy made it very clear that his intent has always been to return to the State of New Hampshire and he has always regarded his domicile as being the State of New Hampshire. Although intent is not the only factor, it is one to be given considerable weight while also balancing the other factors.

In applying the balancing test in the specifics of this case, the Commission finds that Mr. Foy has maintained his intent to return to New Hampshire and has been domiciled in the State of New Hampshire since 1971. Therefore, he is a qualified candidate for the office of State Senate. Accordingly, the Commission hereby authorizes the retention of Mr. Foy's name on the ballot as the Democratic candidate for the District 14 State Senate seat.

In closing, the Commission wishes to make clear its decision is based solely on a legal analysis of the evidence presented. While the Commission recognizes the

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<sup>2</sup> Pursuant to N.H. RSA 654-7, the New Hampshire voter registration card requires the registrant to affirm that the registrant's permanent established domicile is in the State of New Hampshire.

<sup>3</sup> The 2000 California voter registration form, (Foy Exhibit X), now requires an affirmative statement that California is the domicile of the registrant.

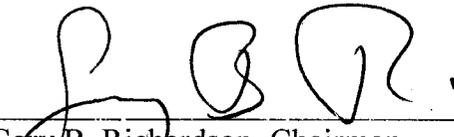
contentiousness of this challenge, it in no way factored into their decision. This was a close case, with well-presented, good faith arguments on both sides of the issue.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Dated: \_\_\_\_\_

9/29/00

By: \_\_\_\_\_

  
Gary B. Richardson, Chairman  
Hugh Gregg, Commissioner  
Emily Gray Rice, Commissioner

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