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June 29, 2006

Secretary of State William M. Gardner
State House, Room 204
107 North Main Street
Concord, New Hampshire 03301-4989

RE: Petition of the New Hampshire Democratic State Committee

Dear Mr. Secretary:

Enclosed is an original and five copies of a response to the objection of the New Hampshire Secretary of State for distribution to the Ballot Law Commissioners.

I have also enclosed a designation of Senator Peter Burling to act as the representative for the party in my absence.

Thank you.

Very truly yours,



Kathleen N. Sullivan
ksullivan@wadleighlaw.com

/sos

enclosures

cc: James W. Kennedy, III, Esquire

RECEIVED

JUN 30 2006

**NEW HAMPSHIRE
SECRETARY OF STATE**

DESIGNATION OF REPRESENTATIVE

The New Hampshire Democratic Party hereby designates Senator Peter H. Burling as its representative in the matter of the Petition of the New Hampshire Democratic State Committee regarding the ruling of the New Hampshire Secretary of State regarding designation of candidate in Senate District 6.

Dated: June 29, 2006



Kathleen N. Sullivan

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NEW HAMPSHIRE BALLOT LAW COMMISSION NEW HAMPSHIRE
SECRETARY OF STATE
PETITION OF THE NEW HAMPSHIRE DEMOCRATIC STATE COMMITTEE

RE: RULING OF THE NEW HAMPSHIRE SECRETARY OF STATE
REGARDING DESIGNATION OF CANDIDATE IN SENATE DISTRICT 6

RESPONSE TO OBJECTION OF THE NEW HAMPSHIRE SECRETARY OF STATE

NOW COMES the New Hampshire Democratic State Committee (the "Democratic Party"), and, in response to the Objection filed by the New Hampshire Secretary of State in the above-captioned matter, respectfully states as follows:

1. The Secretary's Use of the Word "Nominated" Contradicts the Statutory Intent of RSA 655.

The Secretary's Objection attempts to create a meaning of the word "nominated" that is not supported by the statute. In essence, the Secretary's argument is that by filing a Declaration of Candidacy, a candidate nominates him or herself for the party's nomination - i.e., Rep. Cilley has nominated herself to be nominated. This analysis relies on one dictionary definition of the term "nominate." The analysis is flawed for two reasons.

First, the Objection ignores the purpose of RSA 655. The purpose of N.H. RSA 655 is to establish the method of nominating candidates to be on the November ballot. The statute sets forth two methods of "nominations." One is by primary (RSA 655:11 through 29). The other method is, "nomination by nomination papers" (RSA 655:40 through 45). In short, the entire statutory scheme, read as a whole, has to do with the manner in which individuals are nominated for inclusion on the general election ballot. It is apparent from a reading of RSA 655 that the term "nominated" means to be nominated for inclusion on the November ballot, either as a party nominee chosen in September, or as a non-party candidate nominated by nomination papers ("As an alternative to *nomination* by party primary, a candidate may have his name placed on the ballot ... by submitting the requisite number of *nomination* papers." RSA 655:40 [emphasis added]).

It is incumbent on this Commission to examine the entire statute, and not isolate one word and one alternative dictionary definition as the Secretary has done in the Objection. As the court stated in Appeal of Currin, 149 N.H. 303 (2003), “[a]lthough we give undefined language its plain and ordinary meaning, we must keep in mind the intent of the Legislation, which is determined by examining the construction of the statute as a whole, and not simply by examining isolated words and phrases found therein.” Id., at 306, *citing* Appeal of Holloran, 147 N.H. 177, 179 (2001). The Objection does exactly what the Court in Appeal of Currin says cannot be done: isolates one word outside of the entire statutory framework.

Second, the definition used in the Objection is but one definition. The American Heritage Dictionary of the English Language actually has two definitions. One is to propose by name as a candidate. The other is to “designate or appoint to an office, responsibility or honor.” See, Exhibit A attached hereto. Thus, the term “nominate” means to designate someone to a responsibility, which is what a party primary does: the primary designates the candidate to represent the party. This is also the case with the Cambridge Dictionary’s Online definition of “nominate” as to officially chose someone for a job or to do something, and the word “nomination,” as “when someone is officially chosen for a job or position.” See Exhibit B attached hereto. The party primary chooses the person for the job of representing the party in November, and the nomination takes place when someone is officially chosen for the job of being the Democratic nominee.

To read the term “nominate” in RSA 655 to mean that the candidate is “nominating” herself for nomination is nonsensical in light of the use of the word “nominated” throughout RSA 655 as referring to nomination at a primary or nomination by the submission of nomination parties. The Objection’s effort to rely on one selectively chosen dictionary definition, and to ignore the plain meaning of the statute, defies the rules of statutory construction.

2. The Secretary of State Has Usurped the Authority of the Ballot Law Commission in Rejecting Representative Cilley's Candidacy.

RSA 655 does not give the Secretary of State the authority to object the party's designation, or the filing by Rep. Cilley. RSA 655 imposes very limited authority and duties upon the Secretary of State. The duties given to the Secretary of State are as follows:

- a. In RSA 655:10, to advise candidates as to incompatible office situations.
- b. In RSA 655:11, to prepare and distribute to Town and City Clerks, a notice in writing designating the offices for which candidates are to be nominated.
- c. In RSA 655:13, to furnish all forms necessary to carry out the provisions of the statute, and to provide directions to the clerks as to the posting of notices, holding of primaries, and making returns.
- d. In RSA 655:14-b, to reject Declarations of Candidacy, Declarations of Intent, Primary Petitions, or Assents to Candidacy if the filings do not conform to the provisions of this section only, which relates just to the form of the candidate's name on the ballot.
- e. In RSA 655:15-a, to accept filings for the Office of United States Senator and United States Representative.
- f. In RSA 655:18, to retain Declarations of Candidacy.
- g. In RSA 655:19 and 19-c, to deposit funds into the Election Fund.
- h. In RSA 655:27, to retain all primary petitions and Assents to Candidacy.
- i. In RSA 655:28, to not print names on the primary ballot unless the appropriate affidavit is filed.
- j. In RSA 655:30, to refuse to accept a withdrawal of candidacy except as provided in the statute.
- k. In RSA 655:38, to remove the name of a candidate after the candidate provides an affidavit that he or she no longer qualifies for office.

In short, the Secretary of State is not given any authority to reject a party's designation. So long as the appropriate papers are filed, the Secretary of State must put the person's name on the ballot.

It is the jurisdiction of this Ballot Law Commission, pursuant to RSA 655:7, to hear and determine whether disputes arising over whether nomination papers or Declarations of Candidacy conform with the law. By taking any action other than accepting the party designation and the candidate filing, the Secretary of State went gone beyond the ministerial duties prescribed in the statute, and taken an adjudicatory action, for which he had no authority.

Once the party designated Rep. Cilley, unless and until some other person or party challenged the designation or the filing, the Secretary of State had absolutely no statutory authority to do anything. If this Ballot Law Commission permits the Secretary of State to expand his powers beyond the ministerial duties set forth in RSA 655, it would be ceding to the Secretary of State the very power and authority given to this Commission by the Legislature. It is for this Commission to determine the definition of the term “nominate”, not the Secretary of State. It is for this Commission to look at the statute as a whole, and determine whether the party has the right to designate a candidate who has previously filed. These are not the duties of the Secretary of State and, while the Democratic Party respects the integrity and good intentions of the Secretary of State, in this case, he has erred in stepping beyond his statutory authority.

This principle is crucial to the longstanding New Hampshire tradition that our Secretary of State is a neutral election official. The Republican Party objected publicly to the Democratic Party’s designation of Rep. Cilley; the Republican Party has every right to file an objection to this designation with this Commission. These disputes should be litigated by the partisans in front of the Ballot Law Commission, not decided by the neutral election law official. Nor should the Secretary of State, challenge any political party’s designation, or the candidacy of any person, whether Democrat, Republican, Libertarian, or Independent, or engage in the interpretation of the election laws. Again, the Democratic Party respects the integrity and the good intentions of the Secretary

of State, but it is up to the respective political parties and political candidates to challenge filings and designations by appealing to this Commission. It is important to note that RSA 665 makes the Secretary of State the recording officer and clerk of the Ballot Law Commission, another reason why the Secretary of State should be adjudicating disputes that rightfully come before this Commission.

3. The Secretary of State Does Not Have the Authority to Fashion a New Remedy for the Filing of Papers for Incompatible Office.

The Secretary of State argues that Rep. Cilley filed a Declaration of Candidacy stating that she was not a candidate for incompatible office, and that by signing the Declaration of Candidacy, she violated RSA 655:30. RSA 655:30 does states that the candidate must sign an affidavit stating that the candidate is not a candidate for an incompatible office. However, it is not Rep. Cilley's intention to be a candidate for incompatible office. As stated in RSA 655:10, if the candidate has filed for an incompatible office, the Secretary of State shall advise the candidate, and then the candidate shall elect which office the candidate wishes to chose. Once the candidate has chosen, the candidate will then no longer be a candidate for incompatible office. Therefore, the intentions of RSA 655:30 are met. It should also be noted that RSA 655:10 actually contemplates the case where a person has been nominated for incompatible offices. The Secretary of State advises the candidate, and the candidate then chooses which nomination to accept.

4. Conclusion.

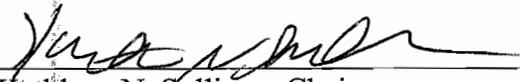
The policy of the Legislature as expressed in RSA 655:30 is to provide the political parties with the opportunity to fill the ballot. Consequently, it is incumbent upon this Commission to read the statutes in such a way as to promote that policy. The parties, the Secretary of State, the Attorney General and even this Commission may disagree with the Legislature's enacting a statute which permits the parties to fill the primary ballot with a candidate who has previously filed for another

office, but without express statutory language prohibiting the designation, the statute must be enforced as written. Moreover, the Secretary of State lacked the statutory authority to refuse to accept the Democratic Party's designation of a candidate for the primary ballot. It is up to this Ballot Law Commission to make these determinations, not the Secretary of State.

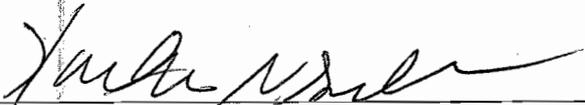
Respectfully submitted,

New Hampshire Democratic State Committee

Dated: June 29th, 2006

By: 
Kathleen N. Sullivan, Chairperson
95 Market Street
Manchester, NH 03101
(603)669-4140

I hereby certify that a copy of this Response has been this day been sent, postage prepaid, to James W. Kennedy, III, Attorney for the State of New Hampshire.


Kathleen N. Sullivan, Chairperson



Blue collar

Exhibit A

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The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

nominate

SYLLABICATION: nom·i·nate

PRONUNCIATION: nŏm'ē-nāt'

TRANSITIVE VERB: Inflected forms: nom·i·nat·ed, nom·i·nat·ing, nom·i·nates

1. To propose by name as a candidate, especially for election. 2. To designate or appoint to an office, responsibility, or honor. See synonyms at appoint.

ETYMOLOGY: Latin nŏmināre, nŏmināt-, to name, from nŏmen, nŏmin-, name. See nŏmen- in Appendix I.

OTHER FORMS: nom' i·na'tor —NOUN

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Definition

[← Back to results](#)**nominate** (CHOOSE) [Show phonetics](#)

verb [T]

to officially choose someone for a job or to do something:

*She was nominated **as** the delegation's official interpreter.*

[+ to infinitive] *President Yeltsin nominated acting prime minister Sergei Kiriyenko to head the government.*

nomination [Show phonetics](#)

noun [C or U]

when someone is officially chosen for a job or position:

*The nomination **of** Judge Watkins as head of the inquiry was a surprise.*

nominee [Show phonetics](#)

noun [C]

a person who is officially chosen for a position or job

(from Cambridge Advanced Learner's Dictionary)

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