

STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION

**RECEIVED**

JUL 30 2004

Petition of  
Richard P. Bosa

NEW HAMPSHIRE  
SECRETARY OF STATE

**ORDER**

This is an appeal of the ruling of the Secretary of State pursuant to RSA 655:14 that Petitioner Richard P. Bosa (“the petitioner”) was not a registered voter affiliated with the Democratic party on June 11, 2004, the date he filed his declaration of candidacy for the Office of United States Senator, and that therefore he was ineligible to appear on the primary ballot as a Democratic candidate.

On June 25, 2004, the Commission held a public hearing on this matter.<sup>1</sup> The petitioner appeared and testified, as did William H. Gardner, Secretary of State; counsel for the Secretary; and the Deputy City Clerk and Chairperson of the Registrars of the Checklist for the City of Portsmouth.

1. Qualifications

Part 1, Article 11, of the New Hampshire state constitution provides, in pertinent part, that “Every inhabitant of the state, having the proper qualifications, has an equal right to be elected into office.” Qualifications for the office of United States Senator include, pursuant to RSA 655:3, that a person must be qualified as provided in Article I, section 3, of the federal constitution. Pursuant to Article I, section 3 of the United States constitution, “No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.”

---

<sup>1</sup> The Petitioner requested that certain Commissioners recuse themselves from the proceedings. The Commissioners evaluated the Petitioner’s suggestions, but determined that the reasons raised were none demonstrating bias, and all Commissioners participated in the hearing and determination.

However, the “right” to appear on a ballot in order to run for office is subject to compliance with reasonable statutory regulation. *See e.g. Wilkes v. Jackson*, 101 N.H. 420 (1958), *State v. Sullivan*, 101 N.H. 429 (1958), *Henderson v. Stark, Sec. Of State*, 112 N.H. 351 (1972); *Kibbe v. Milton*, 142 N.H. 288 (1997). The criteria for a candidate to have his name printed on a primary ballot in New Hampshire, as opposed to being elected in a general election, are set forth in RSA 655.

RSA 655:14 provides:

The name of any person shall not be printed upon the ballot of any party for a primary unless he is a registered member of that party, he shall have met the age and domicile qualifications for the office he seeks at the time of the general election, he meets all the other qualifications at the time of filing, and he shall file with the appropriate official between the first Wednesday in June and the Friday of the following week a declaration of candidacy as provided in RSA 655:17.

## 2. Process and Eligibility

In addition to the provisions of RSA 655, RSA 654 provides the steps one must undertake in order to become a registered voter in New Hampshire. Pursuant to its provisions, an individual must fill out a voter registration form, RSA 654:7. The customary procedure for becoming a registered voter requires that application be made to the Town or City Clerk, or personally to the supervisors of the checklist, RSA 654:8, 11. Provision is also made for registration at the polling place on election day; RSA 654:7, 7-a, and for changing registration within the same city from one ward to another because the formerly registered voter has moved within the city, RSA 654:8-a.<sup>2</sup>

The next step to be taken with voter applications once they have been filed is to forward them to **the next meeting** of the supervisors of the checklist, RSA 654:9 (emphasis added). Pursuant to RSA 654:11, the supervisors of the checklist, once

---

<sup>2</sup> This decision will not address the process for voter registration on election day, or for changing registration within the same city, as they are not before the Commission.

applications have been submitted to them by the town or city clerk, or when an applicant submits the form to the supervisors in person at a session for the correction of the checklist, RSA 654:11, "shall cause the applicant's name to be added to the checklist, unless it is established that it is more likely than not that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof." The supervisors may reject an application and refuse to add the name of an applicant to the checklist, pursuant to RSA 654:12 and 13.

For primary elections, the supervisors of the checklist "shall meet on the Tuesday before the first Wednesday in June between 7:00 and 7:30 p.m. and at the discretion of the supervisors for extended hours," RSA 654:32.

It was undisputed at the hearing that the petitioner applied to become a registered Democrat in the City of Portsmouth on June 11, 2004. The Chairperson of the Registrars of the Checklist for the City of Portsmouth testified that the Registrars met as required on the Tuesday before the first Wednesday in June, 2004, June 1.

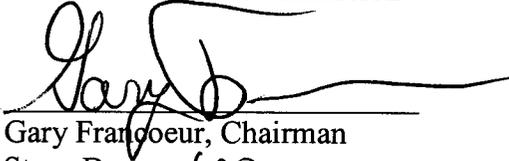
Prior to June 11, 2004, the petitioner had been recorded in the City of Portsmouth as a registered voter, affiliated with the Republican party. However, the petitioner testified that he filed a voter registration application in the City of Waco, Texas, on February 4, 2004. He further testified that at that time he had moved his domicile to Texas, moving with the intent to remain in Texas. The voter registration form the petitioner signed in Texas included the requirement: "You must register to vote in the county in which you reside." The signature block on the form further provides in part: "I affirm that I am a resident of this county." Although neither the City of Waco nor the

petitioner notified the City of Portsmouth that the petitioner had moved his domicile between his last registration with the City of Portsmouth and June 11, 2004, the Registrars of the Checklist in Portsmouth would have been authorized to remove his name from the checklist pursuant to RSA 654:36 and 44 had such information been provided to them. The petitioner could not have voted in New Hampshire without committing voter fraud, while registered and domiciled in Texas, RSA 659:34 RSA 659:34. The petitioner testified that he filed as a “new voter” in New Hampshire on June 11, 2004.

RSA 655:17 requires a candidate to sign a Declaration of Candidacy that certifies that among other things, the candidate is “a qualified voter” in the town or district from which he or she seeks to be elected, and that he or she is a “registered member” of a particular party. In order to become a “registered member” of a particular party, the application for registration of the candidate must be approved by the supervisors of the checklist. In the ordinary course, such as presented by the petitioner, such approval may only issue after the supervisors have met, and in fact, the Registrars of the Checklist for the City of Portsmouth did so meet and approve the petitioner’s application on June 17, 2004.

Based upon the foregoing, the Commission finds that notwithstanding the certification contained in his Declaration of Candidacy, the petitioner was not a qualified voter, and not a registered Democrat when he filed his Declaration. Having failed to meet the statutory requirements to appear on the primary ballot, the petitioner’s petition is accordingly denied.

**N.H. Ballot Law Commission**

A handwritten signature in cursive script, appearing to read "Gary Francoeur", written over a horizontal line.

Gary Francoeur, Chairman

Steve Duprey *SD*

Warren C. Henderson *WCH*

Charles Chandler *CC*

Anne Coughlin

Dated: July 22, 2004

STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION

**RECEIVED**

JUL 30 2004

NEW HAMPSHIRE  
SECRETARY OF STATE

Petition of  
Richard P. Bosa  
Request for Re-Hearing

**ORDER**

On June 29, 2004, the Secretary of State's Office received a request for re-hearing from Richard P. Bosa, ("the Petitioner") following upon the Commission's hearing of June 25, 2004. The matter before the Commission on June 25, 2004 was the Petitioner's appeal of the ruling of the Secretary of State that the Petitioner was not a registered voter affiliated with the Democratic party on June 11, 2004, and that therefore he was ineligible to appear on the primary ballot as a Democratic candidate.

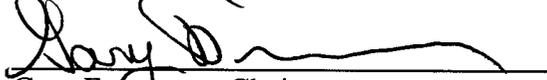
The Petitioner now contends that the hearing of June 25 must be voided and a new hearing held. Petitioner alleges that certain Commissioners are not appointed in compliance with RSA 665:1, in that the President of the Senate is to appoint two members, one from each party, and "[t]here are 2 Republicans and no Democrats from the Senate President." Petitioner further contends that, pursuant to RSA 665:2, "an alternate member who shall have the same qualifications as those of the commissioner whose place he or she is temporarily filling. Ann Coughlin was an alternate from the House for a vacant Democrat from the Senate. She was not a Senator."

Even if the Petitioner's objections were material, the doctrine of the Rule of Necessity requires that as the Commission is the only state body empowered to hear the

matters raised by the Petitioner, it is to the Commission as constituted the Petitioner must return. *See, e.g. Appeal of Jeffrey Lathrop & a.; Appeal of the Appalachian Mountain Club* 122 N.H. 262 (1982); *Grinell v. The State of New Hampshire* 122 N.H. 823 (1981). Not all positions of the Commission and alternates have to date been filled, and the positions to date have been filled with the appointees present at the hearing of June 25, 2004.

The Commission therefore denies Petitioner's request for a new hearing.

**New Hampshire Ballot Law Commission**



Gary Francoeur, Chairman

Steve Duprey *SD*

Warren C. Henderson *WCH*

Charles Chandler *CWC*

Anne Coughlin

Dated: July 22, 2004