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September 20, 2016

Sent U.S. Mail and email to Karen.Ladd@sos.nh.gov.

New Hampshire Ballot Law Commission
c/o William Gardner, Secretary of State
State House, Room 204
107 North Main Street
Concord, NH 03301

Re: New Hampshire Democratic Party by Raymond Buckley,
Chair v. Shawn O'Connor

Dear Mr. Gardner:

Enclosed please find the original and five copies of Shawn
O'Connor's Objection to New Hampshire Democratic Party's
Motion for Reconsideration, for filing with the Commission.

Very truly yours,



Lawrence A. Vogelmann
lvogelman@davenixonlaw.com

LAV/lmp

Enclosure

cc: Shawn O'Connor
William Christie

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Case Number BLC 2016-4

New Hampshire Democratic Party,
By Raymond Buckley, Chair, Petitioner

v.

Shawn O'Connor

(United States Congress, First Congressional District)

**RESPONDENT, SHAWN O'CONNOR'S OBJECTION
TO PETITIONERS' MOTION FOR RECONSIDERATION**

Shawn O'Connor, through his attorney, Lawrence A. Vogelmann, of Nixon, Vogelmann, Barry, Slawsky & Simoneau, P.A., objects to the New Hampshire Democratic Party's [Party] motion for reconsideration.

1. On September 19, 2016, the New Hampshire Democratic Party filed a motion to reconsider the Ballot Law Commission's decision issued on September 16, 2016.

2. Because of the urgency of ballot issues being resolved expeditiously and with finality, the legislature, in RSA 665:7 makes clear that Ballot Commission rulings are final. There is no stated procedure for motions to reconsider and the Commission should not entertain the instant motion.

3. Indeed, Respondent O'Connor has relied on the statute and the Commission Chair's statement that theirs was a "final decision" in pouring money and resources into his campaign.

4. Even assuming that the instant motion is an appropriate vehicle to challenge the Commission's decision, the Party's, however, motion should be denied.

5. As correctly articulated in the Party's motion, a motion to reconsider must be based upon a misapprehension of either the law or fact. It cannot be used to circumvent the prohibition of judicial review set forth in RSA 665:7, nor can it be used to introduce facts not before the Commission at the time of the hearing. The Commission cannot be said to misapprehend facts it never heard.

6. The Party claims that the Secretary of State provided incomplete information during the hearing when in answer to a question the Deputy Secretary of State responded that the nomination paper did not contain any warning regarding signing more than one candidate.

7. The Party claims that there was a version of the nomination paper on the Secretary of State's website that did set forth that prohibition.

8. First, the nomination papers delivered to the Secretary of State that were signed on behalf of Respondent O'Connor and presented to the Commission had no such warning.

9. In fact the portion of the two nomination papers that are filled out and signed by registered voters as exhibits 1 and 2 to the Party's motion are identical. The only apparent difference is that the reverse of exhibit 2 contains statutory references.

10. The Party's claim that there is "another version of the petition which not only informs the potential signor of the provisions of RSA 655:40, but actually

contains the full text of RSA 655:40” is disingenuous. The back side of Exhibit 2 sets forth five statutes, one of which contains twelve words regarding duplicate papers. Those statutes provide no effective notice to any voter that only one paper per office may be signed.

11. Realistically, no voter can be expected to read all five statutes on the back of a nomination paper prior to signing. This is not the type of notice contemplated by the Commission in making its ruling. In fact, the Commission Chairman, in suggesting to the Secretary of State a revision to the form, suggested that such a warning should be clear and bold, to advise voters of the law’s requirement. Hiding a supposed warning amidst other statutes in fine print on the back of the nomination paper does not constitute such a clear warning.

12. More importantly, there was absolutely no evidence submitted about the alternate nomination paper at the hearing. A motion to reconsider is not a vehicle to introduce evidence that, for whatever reason, a party did not introduce during the hearing itself.

13. The Party also claims that somehow the use of the nominating papers by the O’Connor campaign that did not contain this supposed “warning” was done either intentionally or due to incompetence.

14. The notion that somehow the O’Connor campaign at the time they were collecting petitions knew that the issue of duplicate papers was going to come up and intentionally chose the nomination paper that did not contain the statutes is ludicrous.

15. Also ludicrous is the notion that somehow the O'Connor campaign was incompetent in failing to use the petition containing the statute. This incompetence, the Party argues, forfeits "any right to any type of equitable relief." That argument has no legal basis and even more telling sounds of desperation.

16. In fact the O'Connor Campaign, if necessary, will provide affidavits that at the time they downloaded the form, only Exhibit One was on the website.

17. Although it is unclear what legal principle the Party claims the Commission misapprehended, it appears the Party is arguing that the Commission "declined to apply the statute" and refused to render the disputed nomination papers invalid.

18. As was argued by the Respondent O'Connor, and recognized by the Commission, RSA 655:40 sets forth no remedy for duplicate ballots. The Party may desire that the Commission should fashion a remedy disqualifying those papers but the Commission chose not to do so, and the law does not mandate that it do so.

19. The decision by the Commission did not "misapprehend" the law; it just interpreted the law in a manner that the Party disagrees with.

WHEREFORE, for the reasons stated above, the Party's motion should be denied.

Respectfully submitted,

SHAWN O'CONNOR

By his attorneys,

NIXON, VOGELMAN, BARRY,
SLAWSKY & SIMONEAU, PA

Dated: September 20, 2016

By:



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing objection has this day been forwarded to William E. Christie, counsel for Petitioner.



Lawrence A. Vogelman