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THE STATE OF NEW HAMPSHIRE
BEFORE THE BALLOT LAW COMMISSION

In re Candidacy of Peter Flood

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APPEAL OF NEW HAMPSHIRE DEMOCRATIC PARTY
PURSANT TO RSA 655:4, II

The New Hampshire Democratic Party (the "Party"), by its legal counsel, Mark C. Rouvalis, submits this appeal of the decision of the Secretary of State with respect to the candidacy of Peter Flood. In support of this appeal, the Party states as follows:

1. Cynthia McGovern timely filed a Declaration of Candidacy for the Democratic Primary for the U.S. Congressional Seat for the First District. Subsequently, she withdrew her candidacy, in effect resigning from her position as a candidate.
2. Pursuant to RSA 655:32, the Party filled the vacancy created by Ms. McGovern's withdrawal by timely making the filings required by this statute, for Peter Flood.
3. The Secretary of State apparently has taken the position orally that this substitution may not occur and that Ms. McGovern's name must remain on the ballot, despite her withdrawal, for the primary and general elections.
4. The decision of the Secretary is erroneous as a matter of law. RSA 655:32 is specifically designed to address the circumstances when there is a vacancy for an office. Under RSA 655:12, vacancy is defined to include a resignation. When Ms. McGovern withdrew from the race, a vacancy within the meaning of the law was created, thereby allowing the Party to

follow the procedures in RSA 655:32 for filling that office. The Party then timely filed its substitution papers.

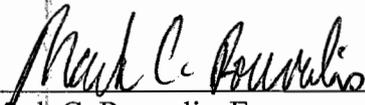
5. One purpose behind the statute allowing substitution of candidates is to ensure that each party has a candidate who wants to be on the ballot. In this case, if the Secretary of State does not remove Ms. McGovern's name from the ballot, or otherwise indicate that her candidacy has been withdrawn, that purpose will be defeated. Further, it will create confusion in the eyes of the public and lead to a result which does not advance the goals of the electoral process to have a clear election between candidates of the two parties. In a highly visible race such as this one, it is critical that the State not contribute to confusion among the voting age populace by placing the name of a candidate on the ballot who has withdrawn.

6. RSA 655:37 also supports the position that Mr. Flood's name should be placed on the ballot for the general election. That statute allows the appropriate party committee to notify the Secretary of State in writing of a person to designate to fill a vacancy occurring after the State primary election. Under RSA 655:12, a vacancy includes a resignation. In this case, Ms. McGovern's withdrawal from the race is equivalent to a resignation, leaving a vacancy for the general election. Unless the Party is permitted to substitute Mr. Flood as a candidate to fill the vacancy created by Ms. McGovern's withdrawal, the general election ballot will not reflect the reality that a candidate has withdrawn, does not want to be considered for the Congressional office, does not want her name to appear on the ballot, and there is a candidate who has allowed his party to fill the vacancy created by the withdrawal and who does want to be on the ballot.

WHEREFORE, the New Hampshire Democratic Party requests that the Commission:

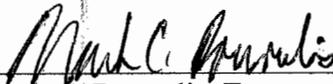
- A. Remove Ms. McGovern's name from the primary ballot for the U.S. Congressional Seat in the First District;
- B. Place Peter Flood's name on the ballot as a candidate for the United States First Congressional District Seat in the primary election; and
- C. Place Peter Flood's name on the ballot for the general election as a candidate for the United States First Congressional District Seat.

Respectfully submitted,

By: 
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Democratic Party
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Certificate of Service

I hereby certify that an original and five copies of the foregoing Appeal of New Hampshire Democratic Party Pursuant to RSA 655:4, II, was hand delivered (one copy faxed) to William M. Gardner, Secretary of State, this 19th day of June, 1998..


Mark C. Rouvalis, Esq.