

STATE OF NEW HAMPSHIRE

Ballot Law Commission

In Re: Kristi St. Laurent

Response to Motion to Dismiss

Candidate Kristi St. Laurent, by and through her counsel, Paul Twomey, responds as follows to the Motion to Dismiss filed by the Republican candidates (hereafter Appellees) :

1. The Motion to Dismiss is both premature and misguided. It is premature in that Appellant St. Laurent has not yet been provided an opportunity to present her claims to the Commission in full. Nothing in either the statutes or the rules of the Commission require a full exposition of claims prior to the hearing. It may well be that after hearing, the Appellees will have a motion to dismiss, but that depends upon the sufficiency of the presentation of claims at the hearing.
2. The Motion furthermore only examines one portion of the statutes that provide jurisdiction to the BLC and ignores several others that relate to the present appeal. The one section cited by the Appellees allows the Commission to review specific rulings made upon challenges to specific ballots. While that is implicated in this appeal, the jurisdictional grounds for appeal as well as the specific grounds relied upon by Appellant extend well beyond the section cited by Appellees.
3. RSA 665:5 (II) states that, "The Commission shall hear and decide **all** pending matters concerning the election of persons to the New Hampshire General Court. At this time the Commission may act on **any** other pending matters."
4. RSA 665:8 (II), Appeals from Recounts, states *inter alia* that "The Ballot Law Commission shall then meet to review **all of the rulings of the Secretary of State** on ballots protested during the recount."
5. RSA 660:5 states that "The candidates, their counsel and assistants shall have the right to inspect the ballots" and "Each candidate, or his or her counsel or designee shall have the right to protest the counting **or the failure to count any ballot**. The Secretary of State shall thereupon rule on such ballot and shall attach thereto a memorandum stating such ruling."
6. In the recount during this case the Secretary of State denied the Appellants request to review all of the rejected absentee ballots, failed to allow challenges to such ballots and failed to attach a memorandum of the ruling to the ballots. These actions were without any basis in law and deprived the Appellant of her right to a fair and full review of the ballots received in this case. She was left with no means to determine whether she was the rightful winning candidate and denied due process of law under the State and Federal Constitutions. In spite of multiple requests for a written rule on the issue of inspection and challenges of reject absentee ballots, the Secretary refused to address the issue prior to the recount and thereby further deprived Appellant of a fair and full recount and Due Process of Law.
7. On November 22, 2020, undersigned counsel learned for the first time that not all the ballots were even transmitted to the recount. Apparently, some boxes of ballots including rejected absentee ballots remained in Windham and were not sent to Concord until after the recount

had been completed. They were made available to representatives of the candidates at 3 pm on the last business day before the BLC hearing for inspection only, no challenges were allowed, and no memorandum of decision was attached to the ballots. It remains unclear whether anyone, including the Secretary of State, has seen all the rejected ballots. At any rate, the number of rejected ballots seen to date exceeds the margin of reported victory from the election day count.

8. The massive and bizarre discrepancy between the results of the largely machine count at the polling site on Election Day can only be explained by either a programmed failure of the machine count or a massive error during the recount. The Secretary refused to engage in any examination of the reasons for the discrepancy on the ground that there was no need resolve the issue since they both showed the same winners. This failure to resolve the discrepancy violated the clear mandate of RSA 660:5 which states, "If at any time during the counting of ballots a discrepancy appears in any ballot for any reason, the secretary of state shall suspend the recount until the discrepancy is resolved." In the instant case the discrepancies extended to 1300 ballots and was never resolved. Since the number of rejected absentee ballots exceeded the margin of the election day reports, if the mistake is in the machine generated total, it may well be that the number of wrongly rejected absentee ballot is more than enough to affect the outcome of the election.
9. As stated above the discrepancies could have arisen from incorrect programming of the counting machines or mistakes that occurred at the recount. Apart from the possibility of a double count of ballots discussed in the Appeal Request, the members of the Windham Select Board have pointed out the failure of the Secretary of State to fully reconcile the number of ballots in the recount. This is a reconciliation procedure which the Secretary mandates be done by local officials in every town in New Hampshire on election day but which he failed to perform in his own recount
10. If the discrepancy is the result of faulty programming of the machines, an inquiry must be conducted to determine the cause and scope of the faulty programming.
11. There can be no public confidence in the outcome of this election without resolving the source of the discrepancies in voting totals. The Commission should suspend proceedings and request a full and transparent investigation of the source and nature of the error. The Windham Select Board has requested such an Investigation by the Attorney General and Appellant hereby joins in this request. It may well be that once the nature of the problem is identified, it will be clear that the Appellees are the winners. If so, Ms. St. Laurent will withdraw her appeal and extend congratulations to her fellow candidates. But in the absence of an explanation, both she, the other candidates, the officials and citizens of Windham can have no confidence in the outcome of their election.

Respectfully submitted,

Kristi St Laurent, by her attorney.

(s) Paul Twomey