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September 8, 2000

New Hampshire Ballot Law Commission
C/o New Hampshire Department of State
State House, Room 204
Concord, NH 03301

RECEIVED
SEP 8 2000
NEW HAMPSHIRE
SECRETARY OF STATE

Re: Nomination Papers of Tom Stawasz BLC 2000-1

Dear Sirs:

I represent Tom Stawasz with regard to his recent filing of certified nomination papers with the Secretary of State pursuant to RSA chapter 655. I have been advised that Mr. Gardner has refused 47 such nomination papers filed by Mr. Stawasz. By this letter, I formally request that the Ballot Law Commission review and overturn Mr. Gardner's decision.

It is my understanding that Mr. Gardner's refused these nomination papers, because the individuals whose signatures Mr. Stawasz obtained do not appear on the checklist. I further understand that the local supervisors signed the nomination papers, but indicated that the signers did not appear on the checklist.

First, New Hampshire election laws do not grant the secretary of state with the authority to overrule the decision of the local supervisors of the checklist. By signing the nomination papers, the local supervisors certified that each signer is a legal voter in the town or ward where the signer is domiciled or registered.¹ RSA 655:41. Once the supervisors so certify the nomination papers, RSA 655:44 provides that they "shall be regarded as valid and shall be received by the secretary of state." Accordingly, Mr. Gardner lacks the legal authority to overrule the decision of the local supervisors of the checklist.

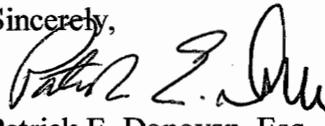
¹ More explicitly, RSA 655:41 provides that "[e]ach nomination paper shall be submitted to the supervisors of the checklist of the town or ward in which the signer is domiciled or registered, and a majority of the supervisors shall certify whether or not the signer is a legal voter in said town or ward." (emphasis added).

Second, even if Mr. Gardner possesses such authority, New Hampshire's election laws do not support the rationale by which he rejected Mr. Stawasz' nomination papers. RSA 655:40 sets forth the process for ballot access by nomination papers. This statute requires that nomination papers "shall be signed by such persons only as are qualified to vote at the state general election." No legal authority limits the definition of "qualified voters" to voters who are either registered or appear on the checklist. A "legal voter," however, is defined by both part 1, article 11 of the New Hampshire Constitution and RSA 654:1 as "[e]very inhabitant of the state, having a fixed and permanent established domicile, being a citizen of the United States of the age provided for . . ." Notably, RSA 654:7-a, II provides that "[a]ny person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered"

Accordingly, a "qualified voter" is not limited to those voters who appear on the checklist. Otherwise, RSA 654:7-a, II would be illogical and contradictory. Based on the explicit terms of the election laws, a qualified voter, like a legal voter, is any United States citizen, 18 years of age or older, who has a fixed and permanent domicile within a town or ward of this state.

My client relied upon the explicit terms of the election laws, as well as Mr. Gardner's representation that all certified nomination papers would be accepted. Each supervisor certified that each signer of Mr. Stawasz' nomination papers was a "legal voter," as required by the certification form. On behalf of Mr. Stawasz, I respectfully request that the Ballot Law Commission overturn the decision of the secretary of state and accept the nomination papers submitted by my client on September 6, 2000.

Sincerely,



Patrick E. Donovan, Esq.

cc: Tom Stawasz