

# JONES DAY

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November 24, 2015

## VIA ELECTRONIC MAIL AND HAND-DELIVERY

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

Re: Cullen Complaint

Dear Commissioners:

We represent Donald J. Trump and Donald J. Trump for President, Inc. It has come to our attention *via* media sources that Fergus Cullen has filed a letter complaint with the Commission earlier today concerning the status of Donald J. Trump as a candidate for President on the New Hampshire Republican Primary ballot. Cullen's letter cites no statute, precedent, or other legal authority in his letter requesting Mr. Trump be excluded from the ballot in New Hampshire. Instead, merely contains irrelevant *ad hominem* political attacks. We respectfully request that the letter be dismissed without further action by the Commission and Mr. Trump's name be printed on the ballot, since the Secretary of State has already determined Mr. Trump's declaration was sufficient and timely filed.

Prior to addressing the merits—or rather the lack thereof—we note that the letter was not properly filed, noticed, or served, and this matter is not on the agenda of the Notice of Hearing of the Ballot Law Commission. The Ballot Law Commission is scheduled to hear three matters today, all of which apparently were served on the interested parties, extensively briefed as to the merits, and submitted for public review well in advance of the meeting. By contrast, Cullen's letter purports to have been submitted to the Ballot Law Commission the day before this meeting. Our client learned of this challenge only after business hours the day before the Commission's meeting—from the media asking for comment, not from Cullen—and as a result, our client has had no meaningful opportunity to respond to the complaint or be represented at the Commission's meeting. *Compare, e.g.*, Bal. 204.03 (“Complaints shall be filed with the commission with copies of the complaint being served on persons reasonably believed to have interests adverse thereto”); 205.01(c) (“Replies shall be filed within 15 days from the date of the petition unless otherwise ordered by the commission”). Cullen is a regular fixture in New Hampshire politics and former chair of the New Hampshire Republican Party. He should be well-versed in the requirements of the Commission and know better than to file such a complaint

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on such short notice and without notifying the adverse party. Cullen's antics only confirm the frivolity of his efforts.

Notwithstanding the lack of due process and meaningful opportunity to be heard due to Cullen's last-minute theatrics, that Mr. Trump's name must be printed on the New Hampshire Republican Primary ballot is clear. Per the applicable statute:

"The names of any persons to be voted upon as candidates for president at the presidential primary *shall* be printed on the ballots upon the filing of declarations of candidacy with the secretary of state...."

RSA 655:47(I). The statute's use of *shall* in section I, coupled with absolute deference to the Secretary of State's decision as to the "regularity" of the filing in RSA 655:47(III) ("The decision of the secretary of state as to the regularity of declarations of candidacy filed under this section shall be final."), indicates that this Commission does not have discretion to look further than the regular and timely filing of the declaration. Indeed, the Commission has recognized precisely this in previous cases before it: "Absent an obvious defect in a filing for office (such as residency in a district different than that in which a candidate has filed, etc.), the Commission is limited to a review of the sufficiency of the filing of a candidate." Obama Order, BLC-2011-4 (First Order).<sup>1</sup> Simply, if the declaration is "regularly" filed as determined by the Secretary of State—as it was—the statute mandates that the candidate's name *shall* be printed.

Further, it is clear Mr. Trump's declaration that "I am a registered member of the Republican party" is entirely accurate. In addition to being the longstanding frontrunner in the Republican primary both nationally and within New Hampshire, Mr. Trump is a registered Republican in New York. Attached, please find the voter registration file from the New York State Board of Election's "NYSVoter Public Information" website, which is also publicly accessible by the Commission or any other member of the public. *See* Exhibit A. Where a candidate is a registered voter of a particular party—as here, where Mr. Trump is a registered Republican—the inquiry ends. As noted above, it is beyond the Commission's jurisdiction and outside the Commission's discretion to investigate further. Cullen's thoughts concerning how much a candidate conforms to his version of the ideal Republican is wholly and completely irrelevant under applicable law, as are Cullen's artificial Establishment litmus tests for membership in "his" party. It should come as no surprise that Cullen is working in support of John Kasich.

In sum, this complaint was not properly filed or served upon our client, who has not had a reasonable opportunity—or more than a few hours—to review the copy of the complaint

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<sup>1</sup> In fact, the Commission's jurisdiction is likely even narrower than this, given Section III of RSA 655:47's provision that the "decision of the secretary of state as to the regularity of the declarations . . . shall be final."

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provided by the press and respond. It does not cite a single law, precedent, or other legal authority, and is a last-ditch effort to exclude our client from the ballot in an attempt to prevent thousands of New Hampshire residents from having the opportunity to express their preference in the Republican primary. If proving party membership is required, we certainly expect the Commission to require similar proof of party registration from each candidate on both sides of the aisle.

Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'DMG II', is written over a faint, dotted line.

Donald F. McGahn II  
*Counsel to Donald J. Trump &  
Donald J. Trump for President, Inc.*

Enclosure