

THE STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

BLC-2010-6

Cheshire District No. 4 (Chesterfield, Hinsdale, Winchester)

**ORDER**

On November 18, 2010, the Ballot Law Commission (“the Commission”) held a public hearing, pursuant to RSA 665:8 to hear and determine appeals from recounts in the election for the office of State Representative in Cheshire District No. 4.

The Commission considered the matter of a group of forty-three ballots that were cast in the town of Hinsdale, all of which contained handwritten numbers on those ballots. Those numbers were in addition to ballots cast for candidates in the usual manner. The Commission heard testimony from Richard Johnson, town moderator, who testified that he first learned of the discrepancy from the Secretary of State’s Office. He stated that the ballots in his town were hand-counted, that he supervised the counting that evening and did not witness any individuals counting ballots place a mark on any of the ballots. He further testified that the town clerk indicated a lack of knowledge about the source of the handwritten numbers on the ballots. The Secretary of State took the position that all ballots should be counted and that the similar pattern to the handwritten marks suggested that the markings were made by a poll worker/counter in an effort to tally votes.

The Commission also heard from representatives for both parties. Attorney Charles G. Douglas, III, for the Republican Party, argued that the markings showed a high level of consistency and that there was no evidence of fraud. Attorney Peter Hoe Burling, for the

Democratic Party, argued that the evidence could lead to the conclusion that these ballots were pre-marked or used as tally sheets, and therefore not legitimate votes, and that the votes contained therein should not be counted. All concerned stated that the numbers appeared to have been put on the ballots after they were cast, and did not appear to have been placed on them by voters. The moderator stated that the number of ballots counted, and the number of voters marked on the checklist matched, so there did not appear to be ballots for more voters than were checked off, indicating that all ballots counted had been cast by voters, and extra ballots had not somehow been added.

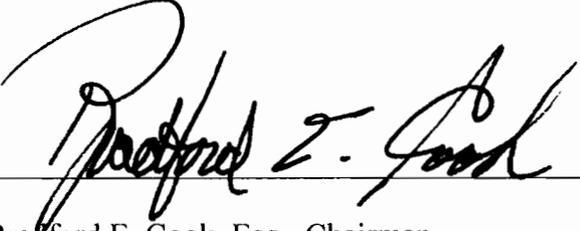
The Commission, by a four to one vote [Commissioner Clemons in dissent], voted to uphold the decision of the Secretary of State to count the votes on all forty-three ballots.

The Commission then considered five challenged ballots. By unanimous vote, the Commission upheld the decision of the Secretary of State for each of those ballots. In Exhibit #1, the voter made two marks for write-in candidates in the State Representative section without writing in a name, in addition to voting for four candidates in that race. The Secretary of State considered the write-in marks as no votes and counted the other four votes for those respective candidates. Exhibit #2 presented the same issue as the forty-three ballots that contained handwritten numbers on the ballots, in addition to votes for respective candidates. The Secretary of State counted all votes for the respective candidates and disregarded the hand-written numbers. In Exhibits #3 and #4, the voter placed an X in the write-in column without writing a name on the ballot. The Secretary of State considered that a "no vote" and counted the other votes for the respective candidates. In Exhibit #5, the number "3" was placed below candidate Edwin Smith. The Secretary of State disregarded that number and counted the ballot for Smith.

As a result of the decisions made on the ballots, the results as determined after the recount were confirmed.

New Hampshire Ballot Law Commission

Date: 11/24/10

  
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Bradford E. Cook, Esq., Chairman  
Jane Clemons  
Gregory Martin  
Martha Van Oot  
Sheila Roberge