

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

In re: The Manchester Republican City Committee
and Toni Pappas

v.

Leona Dykstra

DECISION

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**NEW HAMPSHIRE
SECRETARY OF STATE**

On October 16, 2000, pursuant to RSA 665, the Ballot Law Commission ("the Commission") held a public hearing on the Petition to remove Leona Dykstra as Libertarian candidate for Hillsborough County Commissioner District 1 for failure to comply with RSA 655.

On September 29, 2000, the Ballot Law Commission held that Libertarians are not a political party within the context of RSA 652:11, as they did not receive at least four percent of the total number of votes cast in the last gubernatorial election. Therefore, the Commission held that RSA 659:91-a, the "sore loser statute," did not preclude candidates who ran in the 2000 primary election as either a Republican or Democrat from having their names placed on the ballot for the 2000 general election as a Libertarian "party" candidate. Accordingly, the Commission found that the Secretary of State was authorized to include on the ballot for the general election any Libertarian candidate otherwise qualified.

The Petitioners in this matter contend that Leona Dykstra is not otherwise qualified, asserting that RSA 655:43, III precludes her from having her name placed on

the ballot for the general election as a Libertarian, as she filed as a Republican candidate in the state primary election. RSA 655:43, III provides that, "No person who filed as a candidate in the state primary election shall be eligible to have his name placed on the ballot for the state general election by submitting nomination papers as provided in this subdivision."

Historically, there were two ways by which a candidate could be listed on the ballot for the general election: nomination through the primary process and nomination through a candidate's filing of nomination papers with the Secretary of State. This latter provision, contained at RSA 655:43, III, was enacted in 1981. Laws of 1981, Ch. 531:5. Subsequently, in 1996, the Legislature developed another mechanism by which a candidate's name might be listed on the ballot for the state general election, RSA 655:40-a and RSA 655:40-b. Under RSA 655:40-a, "[a] political party may have its name placed on the ballot for the state general election by submitting the requisite number of nomination papers, in the form prescribed by the secretary of state, pursuant to RSA 655:42, III." The Libertarians have satisfied this provision. RSA 655:40-b provides that "[t]he names of the candidates to be listed on the state general election ballot under the political party nominated pursuant to RSA 655:40-a shall be submitted to the secretary of state..." and requires that "[w]hen the list of candidates is filed, it shall be accompanied by a declaration of candidacy signed by each of the candidates ... in the form prescribed by RSA 655:17." These requirements were also satisfied.

The Commission finds that RSA 655:43, III does not relate to the nomination process created by the Legislature under RSA 655:40-a and RSA 655:40-b. Ms. Dykstra

did not seek to be listed on the ballot under RSA 655:43, III. She did not submit nomination papers as provided in that subdivision. Rather, Ms. Dykstra's nomination was submitted by the Libertarian party to the Secretary of State through the process laid out in RSA 655:40-a and RSA 655:40-b.

Accordingly, the Commission finds that Leona Dykstra's name may remain on the ballot for the general election.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 10/20/00

By: 

Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Emily Gray Rice, Commissioner

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