

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Appeal of Albert Howard

BLC 2008-1

ORDER

On February 15, 2008, the Secretary of State received a Petition for Appeal for the Ballot Law Commission from Albert Howard (the "Appellant"). Appellant raises eight disputes in this appeal. The first two relate to the Diabold Optical Scanner, alleging that the machines are unfit and questioning whether local election officials allowed illegal substitution of unexamined or non-certified election devices, as well as alleging non-compliance with HAVA. The next five issues raised by Appellant involve the security of ballots, location of memory cards post-election, and transport/storage of ballots. The final dispute raised by the Appellant focuses on alleged inadequacies in the ballot count or recount procedures.

The Secretary of State filed a Motion to Dismiss the Appeal on April 9, 2008, claiming that the Ballot Law Commission had no jurisdiction under RSA 665:8 to hear the Appellant's appeal of the recount nor any other issues raised by Appellant in his petition. The matter was scheduled for hearing on April 18, 2008 at 1 pm with notice duly given to the parties.

On April 14, 2008, counsel for the Commission sent an e-mail to Mr. Howard in response to questions the Appellant posed about the hearing process. In the e-mail, she advised the upcoming hearing would begin with consideration of the Secretary of State's Motion to Dismiss and that Mr. Howard would have an opportunity at that time to object

to the Motion. She also suggested that the Appellant might wish to submit a written objection, stressing that this would not be required, however. Counsel for the Commission advised Appellant that should the Motion to Dismiss be denied, the Commission would then proceed directly to the appeal on the merits.

On April 18, 2008, the hearing was called to order at 1:20 pm after a period of time awaiting the arrival of the Appellant. During this time, a member of the audience attempted to reach the Appellant by cellular telephone. The Commission proceeded with the Motion to Dismiss at approximately 1:23 pm with the hope that the Appellant might still arrive. During the hearing, the Commission heard from the State and invited testimony from others in the audience. The Appellant remained absent.

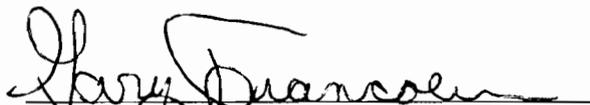
In ruling on the Motion to Dismiss, the Commission notes that no evidence was forthcoming regarding problems with the State of New Hampshire's election or recount procedures. With regard to the contested ballots, that the Commission reviewed, none could be construed as being marked in favor of the Appellant. The Commission also notes that the problems Appellant ascribes to the Diabold Optical Scanner machines played no role in the recount since each ballot on recount was counted by hand. The Commission therefore grants the State's Motion to Dismiss the appeal.

SO ORDERED.

Date: _____

4/18/08

New Hampshire Ballot Law Commission


Gary Francoeur, Chairman
Bradford E. Cook
Charles Chandler
Paul McGuirk
Stephen M. Duprey