

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

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William E. Christie
Attorney at Law

September 19, 2016

RECEIVED

SEP 19 2016

NEW HAMPSHIRE
DEPARTMENT OF STATE

HAND-DELIVERED

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

Re: New Hampshire Democratic Party, By Raymond Buckley, Chair v. Shawn O'Connor

Dear Secretary Gardner:

Enclosed please find an original and five (5) copies of the New Hampshire Democratic Party's Motion for Reconsideration for filing with the Commission.

Very truly yours,



William E. Christie
wchristie@shaheengordon.com

WEC/jdb
Enclosures
cc: Lawrence Vogelmann, Esquire

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Case Number BLC 2016-4

New Hampshire Democratic Party,
By Raymond Buckley, Chair

v.

Shawn O'Connor

(United States Congress, First Congressional District)

MOTION FOR RECONSIDERATION

NOW COMES the New Hampshire Democratic Party, by and through counsel, Shaheen & Gordon, P.A., and hereby moves that the Ballot Law Commission reconsider its decision¹ on the candidacy of Shawn O'Connor issued on September 16, 2016, and, in support thereof, states as follows:

1. On September 15, 2016, the Ballot Law Commission heard this matter and thereafter issued a ruling, which accepted all of the allegations of the New Hampshire Democratic Party ("NHDP") concerning the submission of multiple nomination papers signed by persons who also signed nomination papers for other candidates. The Commission correctly found that the submission of nomination papers from persons who had signed for more than one candidate violated RSA 655:40, however, it declined to apply the statute to render them invalid.
2. This decision to refuse to apply the law rested upon two bases, one factual and one legal, each of which was incorrect.
3. The factual mistake of the Commission arose out of incomplete information provided by the Secretary of State's office during the hearing. Commissioner Hollingworth

¹ It is well established under New Hampshire that a court or administrative body may reconsider a prior order when it misapprehended a point of law or fact.

asked if the nomination paper provided by the Secretary of State's office to candidates contained language that would inform voters of the prohibition against signing nomination papers for more than one candidate. The Deputy Secretary of State responded that the form did not contain any language providing notice to a voter of the provisions of RSA 655:40. This information was incorrect.

4. In actuality, the Secretary of State makes two forms of the nomination papers available to candidates on its website. Both bear the seal of the State of New Hampshire. The form of petition that was chosen by Mr. O'Connor to use in his interactions with voters does not in fact contain any reference to the prohibition against multiple nomination papers for the same office by the same voter. See Exhibit 1 (available at sos.nh.gov/WorkArea/DownloadAsset.aspx?id=50567).

5. However, equally available to Mr. O'Connor is another version of the petition which not only informs the potential signer of the provisions of RSA 655:40, but actually contains the full text of RSA 655:40, thus explicitly putting voters on notice that they can only sign one nomination paper, including the phrase, "**no voter shall sign more than one nomination paper for each office to be voted for...**". (emphasis added). See Exhibit 2 (available at sos.nh.gov/WorkArea/DownloadAsset.aspx?id=50568). The version of the nomination paper informing voters they may only sign one nomination paper for each office actually comes up first in a google search for the relevant documents.

6. Each candidate has the ability to obtain the form that accurately describes the law and provides notice to a voter that she may only sign one nomination paper per office. If a candidate chooses not to provide the form with the warning, the candidate can easily instruct his canvassers to verbally inform voters of the law. Mr. O'Connor chose not to do either. Rather,

Mr. O'Connor relied upon nomination papers from individuals who, he claims, were not informed in any way of the effect of signing a petition. Having either through intent or incompetence failed to provide the voters with any warning about the consequences of signing a nomination paper, he has forfeited any right to any type of equitable relief from the provisions of the law.

7. It is clear that this factual error was central to the Commission's ruling, which explicitly states, **"The Commission also notes that if the nomination paper form provided notice to those filling it out of the requirement not to sign papers for more than one candidate for a particular office, this would be sufficient to disallow those papers signed by voters who have signed more than one."** There was such a form available to Mr. O'Connor and he should not be rewarded his failure to use it by this Commission's refusals to follow the clear language of the law.

WHEREFORE, NHDP respectfully requests that the Ballot Law Commission:

- a. Reconsider its Order dated September 16, 2016;
- b. Consider the Issues Raised Herein on or Before its Next Scheduled Meeting;
- c. Grant the Within Motion;
- d. Grant the NHDP's Objection to Mr. O'Connor's Placement on the General Election Ballot; and
- e. Grant Such Relief as is Necessary, Just and fair.

Respectfully submitted,

By Their Attorneys:
Raymond Buckley, Chair
New Hampshire Democratic Party
SHAHEEN & GORDON, P.A.

Dated: September 19, 2016



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CERTIFICATE OF SERVICE

I certify that a copy of this Motion has been forwarded on the date stated above to Lawrence Vogelman, Esquire, counsel to Respondent.



William E. Christie
NH Bar #11255

EXHIBIT 1



**STATE OF NEW HAMPSHIRE
Nomination Paper
(For State General Election)
RSA 655:40 - 45**

The subscriber, a registered voter in the State of New Hampshire, hereby makes the following nomination to be voted for at the state general election to be held on **November 8, 2016** and requests that the name of said candidate be placed upon the official ballot to be used in said election as a candidate of the following Political Organization _____

Candidate's Name _____

Candidate's Domicile _____

For the Office of _____

District No. _____

RSA 655:45

No person shall falsely make or file or knowingly deface or destroy any nomination paper, or any part thereof, or sign any nomination paper contrary to the provision of law knowing the same, or any party thereof, to be falsely made or suppress any nomination paper, or any part thereof, which has been duly filed. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or be guilty of a felony if any other person.

Voter's Signature _____ Date: _____

Print Voter's Name _____

Voter's Domicile _____
(street address) (town or city) (ward)

Voter's Mailing Address _____
(street address) (town or city) (ward)

CERTIFICATE OF SUPERVISORS OF THE CHECKLIST

The undersigned, a **MAJORITY** of the **SUPERVISORS OF THE CHECKLIST** (or Registrars of Voters), hereby certify that the voter signing this nomination paper is a registered voter in the town/ward of _____

The signer of this paper is **NOT** a registered voter in this town or ward Date signed _____

RSA 655:41, II. The city clerk may certify that the signer is a registered voter, if in a city

Filing Deadlines:

- August 10, 2016** - Last day to submit signed nomination papers to Supervisors of the Checklist in town or city
- August 31, 2016 5:00 p.m.** - Supervisors must have nomination papers certified for candidates and organizations
- September 7, 2016 5:00 p.m.** - Last day to file certified nomination papers with Secretary of State's Office

EXHIBIT 2



STATE OF NEW HAMPSHIRE
Nomination Paper
(For State General Election)
RSA 655:40 – 45)

The subscriber, a registered voter in the State of New Hampshire, hereby makes the following nomination to be voted for at the state general election to be held on **November 8, 2016**, and requests that the name of said candidate be placed upon the official ballot to be used in said election as a candidate of the following Political Organization _____.

Candidate's Name _____

Candidate's Domicile _____
(street) (town or city) (ward) (zip)

For the Office of _____ District No. _____

RSA 655:45

No person shall falsely make or file or knowingly deface or destroy any nomination paper, or any part thereof, or sign any nomination paper contrary to the provisions of law knowing the same, or any part thereof, to be falsely made or suppress any nomination paper, or any part thereof, which has been duly filed. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or be guilty of a felony if any other person.

Voter's Signature _____ Date: _____

Print Voter's Name _____

Voter's Domicile _____
(street address) (town or city) (ward)

Voter's Mailing Address _____
(street address) (town or city) (ward)

CERTIFICATE OF SUPERVISORS OF THE CHECKLIST

The undersigned, a **MAJORITY** of the **SUPERVISORS OF THE CHECKLIST** (or Registrars of Voters), hereby certify that the voter signing this nomination paper is a registered voter in the town/ward of

The signer of this paper is **NOT** a registered voter in this town or ward Date signed _____

RSA 655:41, II. The city clerk may certify that the signer is a registered voter, if in a city.

Filing Deadlines:

August 10, 2016 – Last day to submit signed nomination papers to Supervisors of the Checklist in town or city
August 31, 2016 – Supervisors must have nomination papers certified for candidates and organizations
September 7, 2016 – Last day to file certified nomination papers with Secretary of State's Office

OVER →

Nomination by Nomination Papers

655:40 General Provisions. As an alternative to nomination by party primary, a candidate may have his or her name placed on the ballot for the state general election by submitting the requisite number of nomination papers. Such papers shall contain the name and domicile of the candidate, the office for which the candidate is nominated and the political organization or principles the candidate represents. Nomination papers shall be signed by such persons only as are registered to vote at the state general election. No voter shall sign more than one nomination paper for each office to be voted for, and no nomination paper shall contain the names of more candidates than there are offices to be filled. Each voter shall sign an individual nomination paper. *Nomination papers shall be dated in the year of the election.*

655:41 Certification. I. Each nomination paper shall be submitted to the supervisors of the checklist of the town or ward in which the signer is domiciled or is registered, and a majority of the supervisors shall certify whether or not the signer is a registered voter in said town or ward. The **supervisors of the checklist** shall certify nomination papers under this section in a timely fashion, so that their certification shall be complete for each candidate, together with any objections to the nomination papers submitted, no later than 5:00 p.m. on the Wednesday 2 weeks before the primary (**August 31, 2016**). Each nomination paper shall be submitted to the supervisors of the checklist no later than 5:00 p.m. on the Wednesday 5 weeks before the primary (**August 10, 2016**)

II. The city clerk may perform the responsibilities of the supervisors of the checklist under this section.

655:42 Number. I. It shall require the names of 3,000 registered voters, 1,500 from each United States congressional district in the state, to nominate by nomination papers a candidate for president, United States senator or governor.

II. It shall require the names of 1,500 registered voters registered in the district to nominate by nomination papers a candidate for United States representative; 750 to nominate a candidate for councilor or state senator; and 150 to nominate a candidate for state representative or county officer.

III. It shall require the names of registered voters equaling 3 percent of the total votes cast at the previous state general election to nominate by nomination papers a political organization.

655:43 Filing Deadline. I. Nomination papers shall be filed with the secretary of state no later than 5:00 p.m. on the Wednesday one week before the primary (**September 7, 2016**). Nomination papers to be filed shall be grouped by municipality. No nomination papers shall be accepted by the secretary of state unless the candidate shall have met the age and domicile qualifications for the office he or she seeks at the time of the general election and meets all the other qualifications at the time of filing; and if a candidate for the office of governor, executive councilor, state senator, or state representative, unless the candidate shall file with the nomination papers an affidavit of qualifications as provided for in RSA 655:28 and 655:29; and if a candidate for United States senator or United States representative, unless the candidate shall meet the qualifications for office under RSA 655:3 and 655:4.

II. No candidate who intends to run for any state or federal office in the state general election by means of nomination papers shall have his or her name placed on the ballot unless the candidate files a declaration of intent, as provided in RSA 655:17-a or 655:17-b, within the filing deadline required by RSA 655:14-a (**June 1-10, 2016**). Any person who files on the last day of the filing period must do so in person before the secretary of state.

III. No political organization shall have the names of its candidates placed on the ballot unless the chairman of the organization files a declaration of intent, as provided in RSA 655:17-c, within the filing deadline for candidates established in RSA 655:14-a.

IV. No person who filed as a candidate in the state primary election shall be eligible to have his or her name placed on the ballot for the state general election by submitting nomination papers as provided in this subdivision.

655:44 Objections. Nomination papers made in accordance with the provisions of this chapter shall be regarded as valid and shall be received by the secretary of state unless objection thereto is made in writing no later than the Monday following the last day for the filing of such papers.