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NEW HAMPSHIRE
SECRETARY OF STATE

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

BLC-96-11

In Re: Town of Merrimack, New Hampshire
Primary Election

DECISION

On Friday, September 27, 1996, the Ballot Law Commission convened a hearing concerning the September 10, 1996 primary election in the Town of Merrimack, New Hampshire. This hearing followed the Commission's receipt of written complaints by Lynne Schmidt (September 13, 1996 and September 20, 1996)¹, Benita R. Knight (September 19, 1996), Dr. Steven T. Birchall (September 20, 1996) and Randal L. Kottwitz (September 19, 1996). During the September 27, 1996 hearing, the Commission also received an undated letter from The Honorable John M. Gibson, State Representative, Hillsborough County District 18.

During the hearing, the Commission heard offers of proof by Randal L. Kottwitz, Lynne Schmidt and the Town Moderator, Lynn Christensen. Mr. Kottwitz, who appears on the general election ballot as the Democratic Nominee for State Representative in Hillsborough County District 18, brings his complaint before the Commission so as to also appear on the general election ballot as a Libertarian candidate for the same office. When the votes were tallied on September 10, 1996, Mr. Kottwitz received no votes on the Libertarian ballots. However, when a recount was conducted, he received four votes. It is also undisputed that 44 people in Merrimack had taken Libertarian ballots. However, ultimately only 43 Libertarian ballots were found. Moreover, the machine designated by the Moderator to count the Libertarian ballots, indicated

¹ The September 20, 1996 letter was also signed by Benita Knight, Charles and Beth Mower and Roseann Moore.

that 69 ballots had been cast. It is uncontroverted that had Mr. Kottwitz received five votes, he would have appeared on the list of Libertarian nominees on the November general election ballot.

By offer of proof, the Moderator, Ms. Christensen, addressed herself to the various matters raised in the letters sent to the Commission. She conceded that although the ballots were counted publicly, it is her practice to ask the public to leave while the ballot counters tally the votes. Once the public is invited back in, Ms. Christensen announces the unofficial totals from the machines. She also conceded that during the September 10, 1996 primary election she asked the counters to tally votes only for those people having more than ten votes because she initially failed to recognize that five votes would be enough to place the name of a Libertarian candidate for State Representative on the November general election ballot. Ms. Christensen stated that once she realized that she had given the wrong instructions, she corrected them. Responding to the concerns raised by Ms. Schmidt about the arrangement of the polling place, Ms. Christensen indicated that she had not changed the room arrangement from the configuration in which she found it when she arrived at the polling place.

Ms. Christensen offered several possible explanations for the discrepancy between the 44 Libertarian ballots given out, and the 43 ultimately counted. Following the September 27, 1996 hearing, the Commission was notified by the Secretary of State's office that the machine used to count the Libertarian ballots in Merrimack had, coincidentally, been serviced on the day of this Commission's hearing, September 27, 1996. Following the hearing, the Secretary of State was apparently notified by the voting machine service representative that the machine contained a crumpled Libertarian ballot, thus disclosing the whereabouts of the missing ballot. This ballot is available for inspection at the Secretary of State's office. However, the Commission wishes to note for the record that this ballot contained no votes for the Office of Hillsborough County State

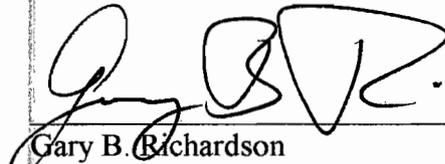
Representative District 18. Thus, it does not change the vote for Mr. Kottwitz and his name will appear only as a Democratic candidate for State Representative Hillsborough County District 18, on the general election ballot in Merrimack, New Hampshire.

The Commission does not find that any intentional irregularities occurred in the conduct of the September 10, 1996 primary election in Merrimack, New Hampshire. However, the Commission wishes to admonish the Town election officials that votes should be counted and tallied in public. RSA 659:63. Thus, the Town of Merrimack should discontinue the practice of excluding the public from the polling place while votes are being tallied. The Commission wishes to further advise the Town that all votes for all candidates should be counted and tallied during this process. The election laws apply equally to all voters and candidates, without regard to how many votes a candidate receives in the primary election. Clearly, much of the confusion and concern generated during the primary election in Merrimack could have been avoided had these procedures been followed by the Moderator.

So Ordered.

Date:

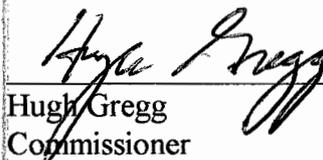
10/4/96



Gary B. Richardson
Chairman

Date:

10/6/96



Hugh Gregg
Commissioner

Date:

10/2/96



Emily Gray Rice
Commissioner