

THE STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

JOHN D. RAUH

v.

JEFFREY R. HOWARD  
in his Capacity as Attorney General  
for the State of New Hampshire  
and  
ROBERT C. (BOB) SMITH

**PETITION OF JOHN D. RAUH**

NOW COMES JOHN D. RAUH ("Mr. Rauh"), of 11 Clearwater Drive, P.O. Box 729, Sunapee, County of Sullivan and State of New Hampshire, and complains against JEFFREY R. HOWARD, in his Capacity as Attorney General for the State of New Hampshire ("Mr. Howard"), with offices at the State of New Hampshire Department of Justice, 33 Capitol Street, Concord, County of Merrimack and State of New Hampshire, and ROBERT C. (BOB) SMITH ("Mr. Smith"), of Chase Point Road, Tuftonboro, County of Carroll and State of New Hampshire, and states as follows:

1. Mr. Rauh is a registered voter. See RSA 664:18 [Political Expenditures and Contributions - Enforcement - Complaints].
2. Mr. Smith is a candidate for his party's nomination for the office of United States Senator.
3. On July 11, 1996, Mr. Rauh filed a Petition with the State of New Hampshire Ballot Law Commission ["Ballot Law Commission"] asserting that Mr. Smith's efforts to avoid New Hampshire's campaign spending limits were

unavailing by virtue of his failure to submit two thousand (2,000) validly executed Primary Petitions. See RSA 655:22 [Number of Petitions].

4. On Thursday, July 18, 1996, the Ballot Law Commission sustained Mr. Rauh's Petition and ruled that Mr. Smith was "not entitled to have his name printed on the ballot". See Rauh v. Smith, Ballot Law Commission No. 96-2, Order dated July 18, 1996 at page 11. The Ballot Law Commission further ruled, however, that Mr. Smith's name could appear on the ballot if, by Friday morning, July 19, 1996, he filed an affidavit with the Secretary of State declaring that he would abide by the campaign spending limits prescribed by New Hampshire law. Id. at pages 11-12; see RSA 664:5-a [Limitations on Political Expenditures]. Mr. Smith did, in fact, file such an affidavit within the time limitation set forth by the Ballot Law Commission Order.

5. One who files an affidavit pursuant to RSA 664:5-a [Limitations on Political Expenditures] swears that he knows the voluntary expenditure limitations set out in RSA 664:5-b [Political Expenditure Limitation Amounts] and that he voluntarily agrees to limit his expenditures and those made on his behalf by his committee(s), his party and his immediate family to those set forth in the statute. For the office of United States Senator, the prescribed campaign spending limits are five hundred thousand (\$500,000) dollars in the primary election and five hundred thousand (\$500,000) dollars in the general election. RSA 664:5-b [Political Expenditure Limitation Amounts].

6. For the purpose of enforcing limitations on political expenditures, the Legislature has defined the term "total expenditures" as "the sum of all expenditures made to influence either a state primary or a state general

election made by a candidate and those made on his behalf by his committee or committees, his party, and his immediate family." RSA 664:5-b [Political Expenditure Limitation Amounts].

7. New Hampshire election law defines candidate as "any person publicly declared as such and for whom votes are sought in an election." RSA 664:2 II [Definitions - "Candidate"].

8. On May 2, 1995, Mr. Smith filed a Statement of Candidacy with the Secretary of the [U.S.] Senate. See Federal Election Commission ("FEC") Form 2, appended hereto as Exhibit A. This form must be filed within 15 days of an individual becoming a candidate. **This form was contemporaneously filed with the Office of the Secretary of State for the State of New Hampshire.**

9. An individual filing FEC Form 2 is not "testing the waters". This filing is a public declaration of one's candidacy for federal office; the filing is also a public declaration that the candidate and/or his or her committee is receiving contributions and/or making expenditures.

10. Moreover, the act of "testing the waters" is specifically distinguished from "campaigning" by a publicly declared candidate in the Federal Election Commission Campaign Guide for Congressional Candidates and Committees:

a. "Examples of permissible testing-the-waters activities include polling, travel and telephone calls undertaken to determine whether the individual should become a candidate.

b. Campaigning (as opposed to testing the waters) is suggested, for example, when individuals:

i. Make or authorize statements that refer to themselves as candidates ("Smith in '96" or "Smith for Senate") (parenthetical in original);

- ii. Raise more money than what is reasonably needed to test the waters or amass funds (seed money) to be used after candidacy is established;"

11. The Bob Smith for U.S. Senate Committee is obviously Mr. Smith's campaign committee and the expenditures made by this committee are made on behalf of Mr. Smith in his efforts to influence either a state primary or a state general election.

12. In 1995, the Bob Smith for U.S. Senate Committee made expenditures in the amount of \$195,014.10. FEC Form 3, appended hereto as Exhibit B. For the calendar year 1996 through July 15, 1996, the Bob Smith for U.S. Senate Committee made expenditures to influence the state primary in the amount of \$439,035.06. *Id.* Therefore, the Bob Smith for Senate Committee has, at a minimum, made "total expenditures" to influence the state primary in the amount of \$634,049.16.

13. The Legislature has stated that candidates, like Mr. Smith, who voluntarily agree to limit campaign expenditures, and who, again like Mr. Smith, exceed the total political expenditure limitations shall be subject to a fine pursuant to RSA 664:21 I(a) [Penalty]. Clearly, Bob Smith has exceeded the primary election limitation of \$500,000 by at least \$134,049.16.

14. Thus, by letter dated July 22, 1996, Mr. Rauh filed a Complaint with Mr. Howard requesting that the latter conduct an investigation and, as appropriate, to issue an Order directing Mr. Smith, his committee(s), his party and his immediate family to cease and desist from the foregoing campaign spending law violations. See Letter from John D. Rauh to Jeffrey R. Howard, Attorney General, dated July 22, 1996, appended hereto as Exhibit C.

15. By letter dated August 2, 1996, Mr. Howard, through his designee, Christopher P. Reid, Assistant Attorney General, Civil Bureau, declined to issue the requested cease and desist Order. See Letter from Christopher P. Reid, Assistant Attorney General, Civil Bureau, appended hereto as Exhibit D. The letter concludes, in relevant part, that New Hampshire's campaign spending law counts Mr. Smith's expenditures from the date he chose to file a document entitled "declaration of candidacy" with the Office of the New Hampshire Secretary of State (June 2, 1996), not before.

16. A dispute has therefore arisen concerning alleged violations of New Hampshire's election laws. New Hampshire law does not prescribe a specific statutory appeal procedure for one whose Complaint filed with the Attorney General under RSA 664:18 [Complaints] has not yielded a suitable cease and desist Order. Under RSA 665:7 [Ballot Law Commission - Additional Jurisdiction], the Ballot Law Commission has jurisdiction to "hear and determine all disputes involving alleged violations of New Hampshire election laws of a non-criminal nature for which no specific statutory appeal procedure has already been provided." Thus, the Ballot Law Commission has jurisdiction to hear and determine this dispute.

WHEREFORE, John D. Rauh respectfully requests that the Ballot Law Commission:

A. Declare that Mr. Smith has violated New Hampshire's campaign spending laws;

B. In addition, direct the Attorney General to prepare, issue and deliver to Mr. Smith an Order prescribing that the latter, his committee(s), his

party and his immediate family cease and desist from further expenditures made to influence the primary election;

C. In the alternative, order Mr. Smith, his committee(s), his party and his immediate family to cease and desist from further expenditures made to influence the primary election;

D. In addition, order that the excess expenditures to date be allocated to the influence of the general election; and

E. Grant such other and further relief as justice may require.

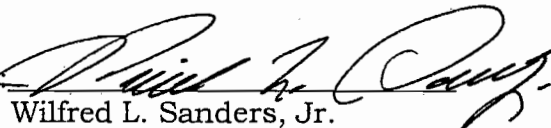
Respectfully submitted,

JOHN D. RAUH

By his attorneys,  
Sanders and McDermott

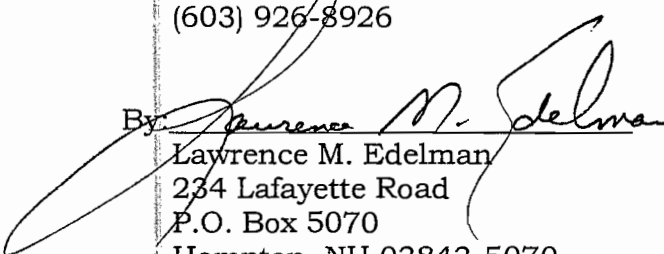
Date: August 6, 1996

By

  
Wilfred L. Sanders, Jr.  
234 Lafayette Road  
P.O. Box 5070  
Hampton, NH 03843-5070  
(603) 926-8926

Date: August 6, 1996

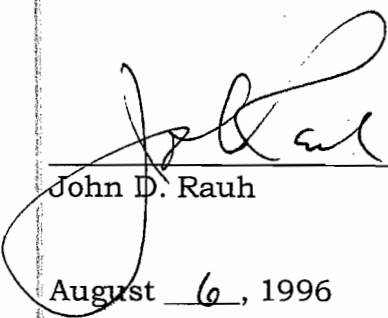
By

  
Lawrence M. Edelman  
234 Lafayette Road  
P.O. Box 5070  
Hampton, NH 03843-5070  
(603) 926-8926

Verification

I, John D. Rauh, having been first duly sworn, do state on my oath that I have read this Petition and to the best of my knowledge, information and belief, there are good grounds to support it and the factual allegations contained therein are truthful.

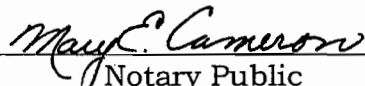
Date: August 6, 1996

  
\_\_\_\_\_  
John D. Rauh

State of New Hampshire  
County of Rockingham

August 6, 1996

Personally appeared before me, the undersigned officer, this 6<sup>th</sup> day of August, 1996, John D. Rauh, and after having been duly sworn, did state on his oath that he read this Petition and to the best of his knowledge, information and belief, there are good grounds to support it and the factual allegations contained therein are truthful.

  
\_\_\_\_\_  
Notary Public  
Justice of the Peace

MARY E. CAMERON, Notary Public  
My Commission Expires September 16, 1998