

New Hampshire Ballot Law Commission

Objection to the New Hampshire Democratic State Committee Petition Requesting the Reversal of the New Hampshire Secretary of State's June 23, 2006 Ruling that the New Hampshire Democratic State Committee Cannot Designate a Candidate for State Senate after the Filing Deadline when that Candidate is Nominated for an Incompatible Office.

NOW COMES William Gardner, the New Hampshire Secretary of State by his Attorney James W. Kennedy, Attorney, New Hampshire Attorney General's Office at 33 Capitol Street, Concord, NH 03301, and respectfully objects to the New Hampshire Democratic Committee's ("Petitioner") request for the Ballot Law Commission ("BLC") to order the Secretary of State to accept the name of Jacalyn Cilley as the Democratic Party's designee for the Office of State Senate in District Six, and, in support thereof, respectfully states as follows:

A. Jurisdiction

Pursuant to RSA 665:7, the BLC has jurisdiction to hear this matter. RSA 665:7 provides:

The ballot law commission shall hear and determine disputes arising over whether nomination papers or declarations of candidacy filed with the secretary of state conform with the law. The decision of the ballot law commission in such cases shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.

B. Factual Background

On June 8, 2006 Jacalyn Cilley filed a declaration for candidacy form for State Representative for Strafford County District 3 with the Town of Barrington Town Clerk. On that form, Jacalyn Cilley declared, in part, that she was "not a candidate for incompatible offices as defined in RSA 655:10. . ." The New Hampshire Secretary of States office received that filing on June 9, 2006.

On June 21, 2006, after the statutory filing deadline for individuals to file themselves as candidates for State elected office in New Hampshire, at approximately 4:30 pm, Ray Buckley from the Petitioner submitted a party designation for Jacalyn Cilley to fill the vacancy for the State Senate District 6 seat in person at the New Hampshire Secretary of State's Office with Assistant Secretary of State, Karen Ladd. Mr. Buckley also delivered Ms. Cilley's completed declaration for filing for that State Senate Seat. On that form, Jacalyn Cilley declared, in part, that she was "not a candidate for incompatible offices as defined in RSA 655:10. . . ."

Ms. Ladd informed Mr. Buckley of a problem with the filing because Ms. Cilley was currently nominated to run for State Representative in Stafford County District 3. Due to the late hour of Mr. Buckley's filing, Ms. Ladd accepted the filing subject to the Secretary of State's final approval.

On June 22, 2006, Ms. Cilley submitted a withdrawal letter as a candidate for State Representative. On that same day, the Secretary of State rejected Ms. Cilley's withdrawal as a candidate for State Representative and also rejected the Petitioner's designation of Ms. Cilley as a candidate for State Senator.

C. Discussion

Part I, Article 11 of the New Hampshire Constitution provides in pertinent part that "[e]very inhabitant of the state, having the proper qualifications, has an equal right to be elected into office." Given this premise, the New Hampshire Legislature has set forth certain qualifications, rules and procedures under RSA chapter 655 entitled "nominations" for persons seeking elected office.

RSA 655:14 establishes the general qualifications that a candidate must meet at the time of filing and provides the time for filing a declaration of candidacy. Once a person has filed a declaration of candidacy “no withdrawal or declination of the candidate shall be accepted by the secretary of state subsequent to the last dates for filing a declaration of candidacy or the filing of nomination papers except as provided in RSA 655:31 (death of candidate) and 655:34 (straw candidate).” RSA 655:30. A candidate may be removed from a general election ballot if such candidate fails to meet the qualifications set forth in RSA 655:14, i.e. age or domicile, or the candidate may also be removed if such candidate suffers an incapacitating physical disability acquired subsequent to the primary. See RSA 655:38. Absent the provisions set forth in RSA 655:30 and RSA 655:38, RSA chapter 655 does not provide any other circumstance when a candidate may withdraw his or her nomination for candidacy after the filing deadline.

The policy reasoning behind RSA 655:30 is to avoid vacant ballots, and further, to dissuade persons from filing a declaration of candidacy with the mischievous intent of later withdrawing that filing to discourage others from filing a declaration for candidacy for that office.

Under limited circumstances and to prevent two persons running for incompatible offices, RSA 655:10 sets forth the procedure that the secretary of state must follow if a person erroneously files for incompatible offices or is erroneously nominated for incompatible offices. RSA 655:10, I provides in pertinent part: “[n]o person shall file declaration of candidacy or primary petitions for nomination at the primary for incompatible offices.” However, RSA 655:10, I goes on to provide that “[i]f any person shall file for incompatible offices, the secretary of state shall advise the person of the

provisions hereof and said person shall then advise the secretary of state which of said offices he or she wishes to retain in order to seek said nomination.” Id. RSA 655:10, II similarly provides that “[n]o person shall be nominated for incompatible offices”, but in the event that a person is nominated for incompatible offices, “the secretary of state shall advise the person of the provisions hereof and said person shall then advise the secretary of state which nomination the person wishes to retain”

Although the legislature permits a person to correct erroneous filings for incompatible offices, see RSA 655:10, I, and similarly permits a person to choose which office he or she seeks to retain in the event that he or she is nominated for two incompatible offices, see RSA 655:10, II, the legislature does not afford the same “what if” scenario to a “party” when that “party” designates a person to fill a vacancy. See RSA 655:10, III. Rather, RSA 655:10, III clearly states: “[a] party shall not designate a person to fill a vacancy if the person has been nominated for any incompatible office.”

The Petitioner argues that Ms. Cilley has not been nominated for any incompatible office when it designated her to fill the vacancy in State Senate Seat District 6. This argument is misplaced by the uncontested fact that Ms. Cilley filed a declaration of candidacy on June 8, 2006, nominating herself for State Representative in Strafford County, District 3 and by the principles of statutory construction.

In construing the meaning of the legislature’s use of the word “nominated” in RSA 655:10, III, it is necessary to consider the plain and ordinary meaning of such word. See Petition of Bailey, 146 N.H. 197, 198 (2001). Nominated is defined as “to propose by name as a candidate, especially for election.” The American Heritage Dictionary of the English Language, 1195 (2000). It follows that when an individual files a declaration

of candidacy, that individual is proposing himself or herself by name as a candidate. Therefore, when an individual nominates himself or herself to be a candidate for office and after the filing deadline has passed, a party committee cannot designate that individual as a candidate to fill a vacancy because that individual has been nominated for an incompatible office.

Contrary to the Petitioner's assertion that the New Hampshire election law statute does not use the word "nominate" in the context of being nominated as a candidate for the primary election, in the very statute the Petitioner's seek to designate Ms. Cilley as a candidate, the legislature uses the word nomination in that specific context. See RSA 655:32, I. RSA 655:32, I provides in pertinent part: "[i]n case no declaration shall be filed by a candidate for any nomination to be voted for at a primary, the nomination may be made by the appropriate party committee" Hence, the legislature is using the word "nomination" according to its plain and ordinary meaning, i.e. to propose a candidate for the upcoming primary election.

The Petitioner argues that because it designated Jacalyn Cilley for office, and she is currently nominated for another office for which she cannot withdraw, she is nevertheless permitted to file for an incompatible office under RSA 655:10, I. This interpretation of RSA 655:10 would lead to an absurd result, i.e. permitting persons to knowingly falsify the affidavit contained in the declaration for filing under RSA 655:14.

Here, Jacalyn Cilley filed a declaration of candidacy on June 8, 2006. In that declaration she completed an affidavit stating that she was not a candidate for incompatible offices as defined in RSA 655:10. Subsequent to that filing, and after the filing deadline, at the final filing hour to fill a vacancy, the Petitioner gave notice to the

Secretary of State that Jacalyn Cilley was being designated as its candidate to fill the vacancy in State Senate District 6. Also at that final hour, the Petitioner submitted Jacalyn Cilley's Declaration of Candidacy form in which she again signed an affidavit declaring that that she was not a candidate for incompatible office. Such action violates RSA 655:30 and counters the purpose of RSA 655:10.

Further, RSA 655:32, I works by way of a step-by step procedure. First, the appropriate party committee must notify in writing the individual it designates for a vacancy. See RSA 655:32, I. Next, and after the Secretary of State determines that such individual qualifies as a candidate, the individual, within the time allotted, completes a declaration of candidacy form and submits it the Secretary of State. In this case, because RSA 655:10, III does not allow the party to designate an individual to fill a vacancy if the person has been nominated for any incompatible office, the Secretary of State rejected Petitioner's designation in the first instance and never considered Jacalyn Cilley's declaration of candidacy for the State Senate District 6.

Thus, RSA 655:10, I does not apply to this case and contrary to Petitioner's argument, Jacalyn Cilley is not offered the choice of which office she wishes to seek under RSA 655:10, I. Under New Hampshire law, Jacalyn Cilley is still a candidate for State Representative in Stafford County District 3.

Accordingly, the Secretary of State properly rejected the DNHC's June 21, 2006 designation of Jacalyn Cilley as the person to fill State Senate seat District 6 and properly did not accept Jacalyn Cilley's June 22, 2006 notice of withdrawal as a candidate for State Representative for Strafford County District 3.

D. Conclusion

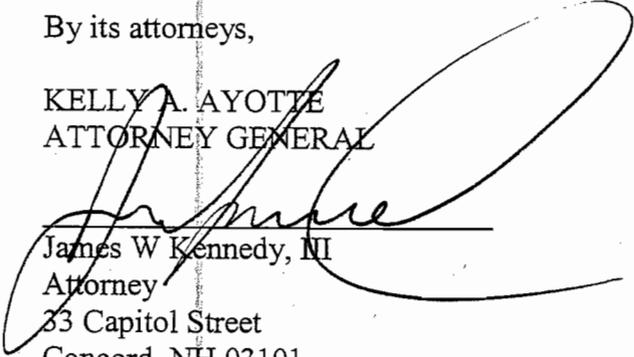
For the foregoing reasons, the State respectfully requests that this Commission
affirm the decision of the Secretary of State.

Respectfully submitted,

William Gardner,
Secretary of State
THE STATE OF NEW HAMPSHIRE

By its attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL



James W Kennedy, III
Attorney
33 Capitol Street
Concord, NH 03101
(603) 271-3679