

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Richard P. Bosa

v.

Secretary of State

**Secretary of State's
Memorandum of Law**

Petitioner, Richard P. Bosa, on June 11, 2004, filed with the Secretary of State's Office as a candidate for nomination for the office of United States Senator and requested that his name be printed on the official primary ballot of the Democratic Party. Exhibit A, copy of Declaration of Candidacy. The Secretary of State, pursuant to RSA 655:14, has notified the Petitioner that his name will not be placed on the primary ballot because he is not a registered voter affiliated with the Democratic Party.

Before the Ballot Law Commission ("Commission") is an appeal of that determination. The Commission should uphold the Secretary of State's determination because on June 11, 2004 the Petitioner was not a properly registered voter in the State of New Hampshire. Even if the Commission were to find that the Petitioner's previous registration is still valid, he was not registered as affiliated with the Democratic Party. It is undisputed that on June 11, 2004 the Petitioner, asserting that he was not registered as a voter in New Hampshire, applied to be registered as a voter with the City Clerk's Office in the City of Portsmouth. The Board of Registrars in the City of Portsmouth did not consider that application until Thursday June 17, 2004.

The Petitioner first became a registered voter who is affiliated with the Democratic Party on that date, therefore, on June 11, 2004 he was ineligible to file as a candidate in the Democratic Party Primary.

Furthermore, New Hampshire law prohibits a voter from changing parties and then running for office or voting in the primary of the voter's new party after the session of the Board of Registrars for party changes and correction of the checklist that must be held prior to the first day of the filing period. Therefore, even if the Commission were to find that the Petitioner remained a legally registered voter in the State on June 11, 2004, because his name had not yet been removed from the Portsmouth checklist, he is prohibited from changing party affiliation after Wednesday, June 2, 2004. For this reasons the Commission should deny the Petition.

Right to Run for Office

There is a constitutional right to seek elective office. N.H. Const. Part 1, Article 11. "However, [this] "right" to appear on the ballot is subject to compliance with reasonable statutory regulation. *Rauh v. Smith*, No. 96-2, at 10 (N.H. Ballot Law Commission, July 18, 1996) attached as Exhibit B, (citing *Wilkes v. Jackson*, 101 N.H. 420 (1958) *See also State v. Sullivan*, 101 N.H. 429 (1958); *Henderson v. Stark, Sec. of State*, 112 N.H. 351 (1972); *Kibbe v. Milton*, 142 N.H. 288 (1997)).

Petitioner was not a registered voter in New Hampshire on June 11, 2004

On June 11, 2004, the Petitioner was a registered voter in McLennan County Texas and was not lawfully entitled to vote in New Hampshire until he had reestablished his voter registration in New Hampshire. A person cannot be a lawful voter in New Hampshire if that person is also a lawful voter in another jurisdiction.

Every inhabitant of the state, having **a single** established domicile for voting purposes, . . . shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that **one place** where a person, **more than any other place**, has established a physical presence and manifests an intent to maintain a **single continuous presence for** domestic, social, and **civil purposes relevant to participating in democratic self-government**. . . .

RSA 654:1 (emphasis added). As of February 4, 2004, and for an undetermined period of time thereafter the Petitioner claimed domicile in Texas and chose Texas as the one place where he established a physical presence and manifested an intent, by registering to vote, to participate in democratic self-government.

In Texas "'residence' means domicile, this is, one's home and fixed place of habitation to which one intends to return after temporary absence." V.T.C.A., Election Code §1.015, (a), attached as Exhibit C. In Texas "[a] person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home." *Id.* at (d). The Voter Registration Application signed by the Petitioner include the requirement: "You must register to vote in the county in which you reside." See Exhibit D, Texas

Voter Registration Application signed by the Petitioner. The signature block on that form states in pertinent part: "I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. I affirm that I am a resident of this county . . ." Exhibit D.

Given the character of the definition of residence in Texas and in New Hampshire and the character of the Texas voter registration form it not possible that the Petitioner could simultaneously hold lawful voter registrations in both states. RSA 654:1; compare *Petition of New Hampshire Republican State Committee (Leonard William Foy, III)* (Ballot Law Commission, Sept. 29, 2000) attached as Exhibit E, (voter registration in California did not preclude continuing domicile in New Hampshire where voter registration form did not require applicant to declare California as his domicile).

Therefore, while the Petitioner's name remained on the checklist in Portsmouth after February 4, 2004, during a time when the Petitioner was domiciled in Texas, he was not entitled to vote in New Hampshire.

I. A person is subject to a civil penalty not to exceed \$5,000 if such person:

...

(e) Votes for an office or measure at an election if such person is not qualified to vote as provided in RSA 654; or

...

II. A person is guilty of a class A misdemeanor if, at any election, such person purposefully or knowingly commits any of the acts listed in paragraph I.

RSA 659:34, Wrongful Voting; Penalties for Voter Fraud. Had the Petitioner purposely or knowingly voted in New Hampshire while domiciled in Texas, that act would have constituted a class A misdemeanor. To the extent that the Petitioner claims that he was not a registered voter in New Hampshire prior to submitting, on June 11, 2004, an application to register as affiliated with the Democratic Party, the Respondent agrees.

The registration form in Texas does not ask applicants to provide the location where they were previously registered to vote and asks for their prior residence only if the person previously lived elsewhere in Texas. Exhibit D. There is no requirement in law for the Petitioner or for Texas officials to notify the election officials in Portsmouth that the Petitioner had moved his domicile to Texas. That the election officials in Portsmouth did not learn of the Petitioner's move does not alter the fact that he moved and lost his status as a qualified voter. The Petitioner, upon returning to New Hampshire and re-establishing his domicile here had a duty to register to vote. Until he did so, he was not lawfully entitled to vote under his previous registration. While the Legislature has not made explicit provision that a person who moves their domicile from the State and then later moves their domicile back into the State must re-register, in light of RSA 659:34, the law must be read to include this requirement.

A person who applies for registration as a voter with a town or city clerk does not become a registered voter until the Board of Registrars or the Supervisors of the Checklist vote to add the person's name to the checklist. *Roger Franceour v. Secretary of State*, (Ballot Law Commission, August 2, 1996) attached as Exhibit F. In *Franceour* the Petitioner appealed a ruling by the Secretary of State that he was not

a registered voter in Goffstown on the date that he filed his declaration of candidacy for State Senate. Mr. Francoeur was in a similar position to that currently held by Mr. Bosa. Both filed for office at a moment in time before their application for registration as a voter had been acted on by the Supervisors of the Checklist/Registrars. "Mr. Francoeur did not apply to become a registered voter in the Town of Goffstown until July 8, 1996 and the Supervisors of the Checklist have not met as of this date to act on his application." *Id* at 2. The Commission must do in this case what it did with Mr. Francoeur.

Based on this information, the Commission finds that notwithstanding the certification contained therein, Mr. Francoeur was not a qualified voter in Senate District 20 when he filed his declaration of Candidacy **nor will he become a qualified voter therein until such time as the supervisors of the checklist have approved his application.**

Id (emphasis added). Town and city clerks are required by law to accept applications from people who wish to be registered as voters, but the clerk is not authorized to approve those applications or to add a person to the checklist.

The provisions of this section shall apply in all cities and in all towns. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city **may apply to the town or city clerk**, or to the supervisors of the checklist as provided in RSA 654:11, for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or **city clerk shall be required to accept applications** from such persons . . .

RSA 654:8, Application to Town or City Clerk (emphasis added). City clerks are required to forward the applications to the Board of Registrars for the city.

The provisions of this section shall apply in all cities and in all towns. The town or city clerk shall present to the next meeting of the supervisors of the checklist the voter registration forms of all persons making application to the clerk since the previous meeting of said supervisors.

RSA 654:9, Forms to be Forwarded. It is then the Board of Registrars in a city or the Supervisors of the Checklist in a town who determine, by majority vote, if the person will be added to the checklist and registered as a voter.

When the supervisors of the checklist receive a registration form from the town or city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his or her name to be added to the checklist, unless it is established that it is more likely than not that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6.

All decisions of the supervisors of the checklist shall be made by majority vote thereof.

RSA 654:11, Application to Supervisors (emphasis added). Therefore, although the Petitioner's act of submitting an application to register as a voter affiliated with the Democratic Party on June 11, 2004 to the City Clerk's Office in Portsmouth started the registration process, the Petitioner did not become a registered voter until the Board of Registrars voted on Thursday June 17, 2004, to add his name to the checklist.

As it did in the Francoeur case in 1996, the Commission must deny the Petitioner's appeal because he was not a registered voter affiliated with the Democratic Party on June 11, 2004 when he filed to run in the Democratic Party primary.

Alternatively, Prior Registration as a Republican prohibits Party Change.

The Legislature has established that in order to be a candidate for nomination by a party to a public office, an individual must be a registered member of that party. One purpose for this requirement is preserving the legitimacy of the primary election process and the integrity of political parties.

A primary is intended to be the selection by those voters who have chosen to affiliate together because of common interests or beliefs of a nominee who will advance those common interests and beliefs. In part to prevent mischievous and insincere affiliation with a party for strategic purposes, the Legislature has limited the ability to change party affiliation. In order to run as a candidate for nomination by the Democratic Party or to vote in the Democratic Party Primary a voter who has a registered party affiliation must be registered as a member of the Democratic Party before the first day for filing for office. The purpose of this restriction is to prevent members of one party from unduly influencing the outcome of the other party by either running as candidates in that party's primary or by voting in the opposing party's primary.

Without this restriction, a voter who favored the election of a member of his or her own party and who believed that candidate would be successful in the primary without the voter's support could switch parties for the purpose of voting for the weakest candidate in the opposing party. Without this restriction, a voter who

believed he or she could run as a candidate in the opposing party and draw votes away from the strongest opponent of the person they actually favored, could do so.

The limitation on changing party after the filing period opens prevents such opportunistic filing or voting. This limitation preserves the right of those persons who sincerely affiliate with a party to choose the nominee who best reflects their common interests.

This limitation on changing party does not prevent people from making sincere decisions to alter their affiliation, it only requires them to do so no later than the day before the filing period ends. It prevents opportunistic party changes which may be prompted only when it is learned who else is or is not seeking a particular nomination.

While the sincerity of the Petitioner's political beliefs is not questioned, the Ballot Law Commission must consider the Petitioner's public communications regarding his party affiliation. In a letter dated June 11, 2004, the date on which the Petitioner filed for election as the Democratic Party nominee for the United States Senate, the Petitioner stated:

I am a Republican candidate for the US Senate

Exhibit G, Bosa letter to Secretary of State, dated June 11, 2004, postmarked June 9, 2004, and received June 14, 2004. Even were the Commission to conclude that the Petitioner was a legally registered voter in New Hampshire on June 11, 2004, it should recognize that the application for registration filed by the Petitioner on June

11, 2004 would in that circumstance be an untimely request for change of party affiliation. Voters may not change party affiliation and vote in the primary of the voter's new party after the session for correction of the checklist and party change held immediately before the filing period.

No person, who is already registered to vote, whether his party membership has been previously registered or not, shall affiliate with a party or disaffiliate from a party between the first Wednesday in June and the day before the state primary election.

RSA 654:34.

Even if the Petitioner were a legally registered voter in New Hampshire, any attempt by the Petitioner to change his party affiliation after Wednesday June 2, 2004 is prohibited by law. Therefore, even if the Commission were to conclude that the Petitioner continued to be a legally registered voter in New Hampshire, it must find that the application submitted to the City of Portsmouth on June 11, 2004 could not have entitled the Petitioner to file for nomination as a candidate in the Democratic Party. RSA 654:34-a provides that a party change request does not become effective until acted upon by the supervisors of the Checklist or Board of Registrars. RSA 654:34-a, VII. Even the Board of Registrars may not make a change effective between the first Wednesday in June and the day before the state primary election.

Id.

Even if the Commission were to find that the Petitioner was a registered voter in New Hampshire on June 11, 2004, he was registered as affiliated with the

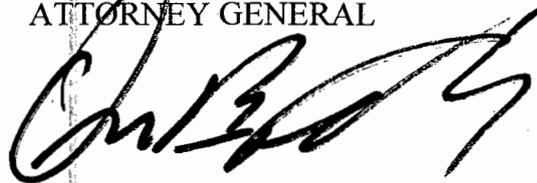
Republican Party and is not permitted by law to change party. Therefore, the Commission must deny the petition.

Respectfully submitted,

THE SECRETARY OF STATE

BY AND THROUGH HIS
HIS ATTORNEYS,

PETER W. HEED
ATTORNEY GENERAL

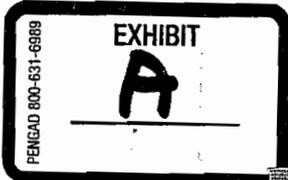
A handwritten signature in black ink, appearing to read "Orville B. Fitch II", is written over the typed name of Peter W. Heed.

June 25, 2004

Orville B. Fitch II
Assistant Attorney General
Civil Bureau
33 Capitol Street
Concord, New Hampshire 03301-
(603) 271-1238

Bosa, Richard P. 243
USS

NEW HAMPSHIRE STATE PRIMARY ELECTION



Declaration of Candidacy
(RSA 655:17)

UNITED STATES SENATOR
REPRESENTATIVE IN CONGRESS

I, Richard P. Bosa
(print name as it should appear on ballot)

declare that I am domiciled in Ward 5, in the City (or Town or Unincorporated place) of PORTSMOUTH, County of ROCKINGHAM

State of New Hampshire, and am a qualified voter herein; that I am a registered member of the Democratic party; that I am a candidate for nomination for the office of US SENATOR

to be made at the primary election to be held on the 14th day of September, 2004; and I hereby request that my name be printed on the official primary ballot of said DEMOCRATIC party as a candidate for such nomination. I declare that I am not a candidate for incompatible offices as defined in RSA 655:10, and that I am not a federal employee which makes me ineligible to file as a candidate for this office. I further declare that, if nominated as a candidate for said office, I will not withdraw; and that, if elected, I will be qualified for and will assume the duties of said office.

Candidate's signature:

Richard Peter Bosa
First Name Middle Last (Jr., Sr., etc.)

Mailing Address:

1465 Woodbury Ave #261
Portsmouth NH 03801

Fee: United States Senator - \$100
Representative in Congress - \$50

RECEIVED

JUN 11 2004

NEW HAMPSHIRE
SECRETARY OF STATE

Candidate must sign the affidavit of expenditure limitations found on the reverse side of this form



STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

RECEIVED

JUL 18 1996

NEW HAMPSHIRE
SECRETARY OF STATE

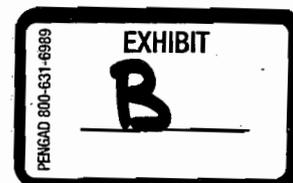
7/18/96
1:00 p.m.

John Rauh

v.

Bob Smith

No. 96-2



Charles G. Douglas, III

v.

Richard Swett

No. 96-4

PREAMBLE

For the last three weeks the Ballot Law Commission has had under consideration three challenges to the placement of candidates names on the primary ballot. In all three cases arguments have been made that the issues before us involve technical compliance with unduly burdensome ballot access rules. That is not the case. We have found that the ballot access rules are not unduly burdensome and that the violations of the election laws that have been proven in all three cases are substantive not just technical. In each of these cases we have found that campaign workers have engaged in gross negligence, misconduct and deceptive behavior. Although there has been no evidence that the candidates personally knew of or

condoned the actions of their staff, they should have known of the conduct and are ultimately responsible for it.

RSA 655:20 requires that anyone running for U.S. Senate must file 2,000 primary petitions signed by members of his party pursuant to RSA 655:22. This requirement is waived if the candidate voluntarily accepts the campaign spending limits of RSA 664:5-b. RSA 655:21 requires that each signatory certify under oath that the signatory is a registered member of the candidate's political party in the signatory's place of domicile. RSA 655:19 requires the candidate to file the requisite number of petitions with the Secretary of State unless the candidate agrees to limit campaign expenditures in accordance with RSA 664:5-a. For candidates who do agree to limit campaign expenditures, RSA 655:19-b provides for the waiver of the requirement of petitions.

It is the oath on the primary petition that gives the petition prima facie validity and is relied on by the Secretary of State when he accepts primary petitions. RSA 655:24, 26. It is because of this oath that it is not necessary for state officials to check the qualifications of each and every petition signer. The oath does not need to be overly formalistic but does require some indication by the

signor to the notary or justice that he or she is swearing to the truth of the contents of the petition.

In sum, our role in all three cases has not been to enforce technicalities, but to ensure that political campaigns are bound by the rule of law and that the integrity of the election process is respected and preserved. Only when the integrity of the process is preserved can we be sure that the will of the voters is carried out. This is the primary role of the Ballot Law Commission.

The Commission has considered the evidence in each of these cases separately and the Petitions have not been consolidated. However, because of the overlapping legal issues and the need for a prompt decision, the Commission is issuing a joint decision.

ORDERS

John Rauh v. Bob Smith

No. 96-2

This is a petition seeking an order that Respondent has failed to submit the necessary primary petitions required by RSA 655:20 and therefore his name should not be printed on the ballot. The Petitioner claims that a number of primary petitions submitted by Respondent were defective because they were signed by people who were not registered Republicans, were duplicate petitions signed by the same person twice, failed to show the residence of the signatory or were improperly acknowledged by a justice of the peace or notary public.

On June 10, 1996, Respondent filed a declaration of candidacy, a check in the amount of \$5,000, and 2,386 primary petitions with the Secretary of State. On July 5, 1996, N.H. Citizen Action filed a petition questioning whether the Respondent had filed a sufficient number of valid primary petitions. On July 11, 1996 John Rauh filed this petition and Citizen Action subsequently moved to change its status to that of an intervenor.

The Respondent filed a Response to the Petition. Essentially the Respondent argued that any deficiencies on the primary petitions were not substantive, that the respondent was entitled to rely on the acceptance of the primary petitions by the Secretary of State and that the intentions of the signers of the petitions should be carried out in spite of technical deficiencies in the execution of the petitions. The Commission held a two-day evidentiary hearing. Based on the evidence presented, the Commission makes the following factual findings:

1. The Commission finds the following substantive deficiencies in the Respondent's primary petitions:

| | |
|--|-------|
| Duplicate petitions (signed by 83 people) (Rauh Exhibit 6) | 166 |
| Triplicate petitions (signed by 4 people) (Rauh Exhibit 7) | 12 |
| No notarial signature (Rauh Exhibit 12) | 6 |
| Missing entire address (conceded by Respondent) | 13 |
| Not registered Republicans (conceded by Respondent) | 166 |
| Notarial seal or justice stamp do not match signatures (Rauh Exhibit 3) | 6 |
| Christina Worcester admission in 12-15 instances she did not witness signing | 12-15 |
| Hilary Wehner's stamp used by jurat signed by unknown third party | 6 |
| Missing city/town of residence | 9 |

2. Edward Shaughnessy is the Political Director of the Smith Campaign. He became a justice of the peace in order to take acknowledgments on Smith petitions. He appeared before the Commission with counsel and invoked testimonial privilege pursuant to RSA 665:12. Mr. Shaughnessy testified that he did not administer an oath to any signator. He claimed that he identified himself to the signator as a justice of the peace. Mr. Shaughnessy initially testified that he did not request identification from the signators because he knew most of them but admitted on cross-examination that he did not know the identity of a substantial percentage of the signators.

3. Hilary Wehner is the Finance Director for the Smith Campaign. Ms. Wehner appeared before the Commission to testify with her counsel and invoked testimonial privilege pursuant to RSA 665:12. Ms. Wehner executed 742 of the Respondent's primary petitions as a justice of the peace. She never administered an oath to the signatory. Ms. Wehner's justice of the peace stamp appears on 5 petitions that have been signed by another individual or individuals who Ms. Wehner was unable to identify.

4. Christine Worcester was a paid staff member for the Smith campaign. Ms. Worcester appeared before the Commission

with her counsel and invoked testimonial privilege pursuant to RSA 665:12. Ms. Worcester took the acknowledgment of approximately 395 signatories as a justice of the peace. Ms. Worcester became a justice of the peace in order to take acknowledgments on primary petitions for political candidates. In no case did she administer an oath or request identification from the signatory. Ms. Worcester testified that she did not know how to administer an oath "according to the state's terms". Significantly, Ms. Worcester admitted that she acknowledged signatures of 12-15 signatories who did not appear before her. Ms. Worcester admitted that when she signed her application to become a justice of the peace she had not been a registered voter for three years as stated in her affidavit. Ms. Worcester did not meet the qualifications to be a justice of the peace. RSA 455-A. We did not find Ms. Worcester's testimony to be credible and we find that she significantly minimized the extent of her misconduct. The Commission finds that Ms. Worcester failed to properly take any acknowledgments. The Commission finds that significantly more than 12-15 signatories did not appear before her.

5. Each of the three justices from the Smith Campaign signed acknowledgments that were untrue. Because of their

misrepresentations it is impossible to quantify the precise number of invalid petitions. We find that the number of valid petitions is significantly below the 2,000 required.

6. The Respondent's campaign workers were grossly negligent in their efforts to obtain signatures on the petitions and engaged in misconduct and deceptive behavior. Despite the fact that the Smith Campaign instructed its employees to become justices of the peace to collect petitions, no instructions or procedures were put in place to prevent the type of misconduct that occurred here.

7. Although there is no evidence that the Respondent personally knew of or condoned the actions by his campaign staff, he should have known of the conduct and is ultimately responsible for it.

8. The Respondent filed his declaration of candidacy on June 10, 1996. When the Respondent filed his declaration of candidacy he may have assumed that he had submitted in excess of 2,000 valid primary petitions.

Legal Issues

I. Jurisdiction. The Ballot Law Commission finds that it has jurisdiction pursuant to both RSA 665:5 and 665:7. RSA 665:5 grants the Commission jurisdiction over filing disputes

involving declarations of candidacy. The Respondent suggested at the pretrial structuring conference that the Ballot Law Commission has no jurisdiction over this matter because FECA preempts RSA 655:20. We disagree. No evidence or arguments were presented on this issue at the hearing on the merits. RSA 655:20 is a ballot access statute. The federal and state governments have shared authority over federal elections. It has long been recognized that when Congress exercises its authority to regulate federal elections, its enactments have the effect of superseding state law only so far as the two are inconsistent and no further. See Ex Parte Siebold, 100 U.S. 383 (1882). We do not need to address whether FECA preempts any of New Hampshire's election laws. We find that it does not preempt RSA 655:20 and does not deprive the Commission of jurisdiction.

II. Time Limit to Object. The Respondent contends that he was entitled to rely on the fact that the Secretary of State did not notify him that any of his primary petitions were rejected and that the Petition was untimely. The Commission interprets RSA 655:26 to require the Secretary of State to inspect primary petitions for facial irregularities. It is not reasonable to expect the Secretary of State to verify the

substance of the thousands of petitions that are submitted to him before every election. The Commission finds that the statute does not impose any time limit to challenge primary petitions on the basis of illegality or fraud. The Commission will review the equitable and due process claims related to timeliness on a case-by-case basis. In this case the Commission finds that the Respondent has been afforded the process that he is due. We find the laches argument unpersuasive in this case. Likewise the Commission finds that the Respondent is not entitled to rely on acceptance of his petitions when his own staff was responsible for submitting defective petitions.

III. Constitutional Right to be on the Ballot. The Respondent correctly points out that he has a constitutional right to seek elective office. N.H. Const. Pt. 1, Art. 11. However, his "right" to appear on the ballot is subject to compliance with reasonable statutory regulation. Wilkes v. Jackson, 101 N.H. 420 (1958). Having represented that he met those requirements, he cannot now complain when it appears that the representation was inaccurate.

IV. Cure. The Respondent points out that RSA 655:26 evidences a statutory policy to permit a candidate to cure a

filing of petitions found to be defective by the Secretary of State and argues that a candidate whose filing is found to be defective by an opposing candidate should be afforded the same protection. To the extent that the defects were found to be de minimis or technical, the argument would have some appeal. However, the defects here are substantive. To allow a candidate to cure petitions that were illegally executed is not permitted by the statute. Even if he had a chance to cure the facially defective petitions, Respondent still would not have filed a sufficient number of petitions.

Decision

The Ballot Law Commission finds that Respondent failed to file the requisite number of primary petitions required by RSA 655:22, and therefore pursuant to RSA 655:20 is not entitled to have his name printed on the ballot.

RSA 664:5-a requires a candidate who is willing to abide by campaign spending limits to file an affidavit to that effect "within 3 days after the date on which a candidate files his declaration of candidacy... ." The Respondent filed his declaration of candidacy on June 10, 1996. The Petition challenging the Respondent's primary petitions was filed with the Secretary of State on July 5, 1996 by Citizen Action and

July 11, 1996 by Petitioner. If the Respondent had known on June 11, 1996 that he did not have a sufficient number of valid petitions he could have chosen the alternate route to ballot access and voluntarily agreed to the campaign spending limit. We do not think that he should be deprived of that choice simply because the Petition was filed after the date for making that election. We have found that the filing of this Petition was not untimely despite the fact that it came after the date by which Respondent had to choose which ballot access route to take. At the same time we think that it would be unfair to deprive the candidate of that option simply because the Petition was not filed sooner. We believe that we have the equitable power to allow the Respondent a reasonable time to make that choice now. We exercised that power with respect to Candidate Zeliff. If the Respondent wishes to voluntarily so elect, the affidavit required by RSA 664:5-a shall be filed with the Secretary of State no later than 9:30 AM on Friday, July 19, 1996. If this affidavit is timely filed, then the Respondent's name shall be printed on the ballot. If the affidavit is not so filed, the Respondent's name shall not be printed on the ballot.

We understand that the Commission has no authority to order any candidate to comply with the campaign spending limits. Filing the affidavit is a waiver of certain rights. We simply find that the candidate should be given a second chance to make that election in light of our findings in this case.

The Secretary of State shall not begin printing the ballots until 24 hours after this decision is issued.

This is the unanimous decision of the Commission.

Charles G. Douglas, III v. Richard Swett

No. 96-4

This is a petition seeking an order that Respondent has failed to submit the necessary primary petitions required by RSA 655:20 and therefore his name should not be printed on the ballot. The Petitioner claims that a number of primary petitions submitted by Respondent were defective because they were signed by people who were not registered Democrats, were duplicate petitions signed by the same person twice, failed to show the residence of the signatory or were improperly acknowledged by a justice of the peace or notary public.

On June 11, 1996, Respondent filed a declaration of candidacy, a check in the amount of \$5,000, and 2,095 primary petitions with the Secretary of State. On June 14, 1996 the Respondent filed an additional 49 primary petitions. On July 9, 1996, the Petitioner filed the within challenge.

The Respondent filed a Motion to Dismiss the Petition and the Petitioner filed a Motion to Amend to Substitute Petitioner. The latter was orally amended to add rather than substitute the Republican State Committee of N.H. as a party

and to that extent the Motion is granted. The Motion to Dismiss is denied for the reasons set forth below.

1. The Respondent has stipulated that 219 primary petitions are invalid because they are duplicative or because the signatory is either a Republican, an independent, or not a registered voter. The Respondent has also stipulated that Mr. Pappas, a paid campaign worker, signed some petitions as a justice of the peace when signatories were not in his presence.

2. Matthew Pappas signed approximately 900 primary petitions as a justice of the peace. Of those, 337 were dated June 10, 1996 and 24 had dates changed to June 10, 1996. The acknowledgment of 337 petitions in one day represents close to one acknowledgment every 2 minutes for 12 hours without a break. Numerous attempts by the Petitioner to subpoena Mr. Pappas to appear before the Commission and efforts by counsel for the Respondent to contact Mr. Pappas were unsuccessful in spite of the fact that Mr. Pappas remains on the Respondent's payroll. We believe that Mr. Pappas intentionally evaded service of a subpoena to avoid testifying before the Commission.

3. Carl Makin, Michael Salce and William and Dorothy Emerson signed primary petitions which were acknowledged by Matthew Pappas on June 10, 1996. All four testified that they signed the petitions prior to June 10, 1996 and none of them had their acknowledgments taken by Matthew Pappas. On the Carl Makin and William and Dorothy Emerson petitions the original dates and counties were crossed out and replaced with June 10, 1996 and Merrimack County. Michael Salce testified that he signed his petition on June 2, 1996.

4. Based on the evidence and the reasonable inferences we draw therefrom, we find that the acknowledgments on a significant number of the Pappas petitions were not truthful and that a significant number of the signatories never appeared before Mr. Pappas.

5. The Petitioner presented credible evidence that a number of persons who signed primary petitions for the campaign were not registered Democrats or did not have their oath taken by a justice of the peace or notary public.

6. We find that the number of valid petitions is substantially less than 2,000.

7. The Respondent's campaign workers were grossly negligent in their efforts to obtain signatures on the petitions and engaged in misconduct and deceptive behavior.

8. Although there is no evidence that the Respondent personally knew of or condoned the actions by his campaign staff, he should have known of the conduct and is ultimately responsible for it.

9. The Respondent filed his declaration of candidacy on June 11, 1996. When Respondent filed his declaration of candidacy, he may have assumed that he had submitted in excess of 2,000 valid primary petitions.

Legal Issues

I. Jurisdiction. The Ballot Law Commission finds that it has jurisdiction pursuant to both RSA 665:5 and 665:7. RSA 665:5 grants the Commission jurisdiction over filing disputes involving declarations of candidacy. The Respondent has claimed that the Ballot Law Commission has no jurisdiction over this matter because FECA preempts RSA 655:20. We disagree. RSA 655:20 is a ballot access statute. The federal and state governments have shared authority over federal elections. It has long been recognized that when Congress exercises its authority to regulate federal elections, its

enactments have the effect of superseding state law only so far as the two are inconsistent and no further. See Ex Parte Siebold, 100 U.S. 383 (1882). We do not need to address whether FECA preempts any of New Hampshire's election laws. We find that it does not preempt RSA 655:20 and does not deprive the Commission of jurisdiction.

II. Time Limit to Object. The Respondent contends that he was entitled to rely on the fact that the Secretary of State did not notify him that any of his primary petitions were rejected and that the Petition was untimely. The Commission interprets RSA 655:26 to require the Secretary of State to inspect primary petitions for facial irregularities. It is not reasonable to expect the Secretary of State to verify the substance of the thousands of petitions that are submitted to him before every election. The Commission finds that the statute does not impose any time limit to challenge primary petitions on the basis of illegality or fraud. The Commission will review the equitable and due process claims related to timeliness on a case-by-case basis. In this case the Commission finds that the Respondent has been afforded the process that he is due. We find the laches argument unpersuasive in this case. Likewise the Commission finds that

the Respondent is not entitled to rely on acceptance of his petitions when his own staff was responsible for submitting defective petitions.

III. Constitutional Right to be on the Ballot. The Respondent correctly points out that he has a constitutional right to seek elective office. N.H. Const. Pt. 1, Art. 11. However, his "right" to appear on the ballot is subject to compliance with reasonable statutory regulation. Wilkes v. Jackson, 101 N.H. 420 (1958). Having represented that he met those requirements, he cannot now complain when it appears that the representation was inaccurate.

IV. Cure. The Respondent points out that RSA 655:26 evidences a statutory policy to permit a candidate to cure a filing of petitions found to be defective by the Secretary of State and argues that a candidate whose filing is found to be defective by an opposing candidate should be afforded the same protection. To the extent that the defects were found to be de minimis or technical, the argument would have some appeal. However, the defects here are substantive. To allow a candidate to cure petitions that were illegally executed is not permitted by the statute. Even if he had a chance to cure

the facially defective petitions, Respondent still would not have filed a sufficient number of petitions.

Decision

The Ballot Law Commission finds that Respondent failed to file the requisite number of primary petitions required by RSA 655:22, and therefore pursuant to RSA 655:20 is not entitled to have his name printed on the ballot.

RSA 664:5-a requires a candidate who is willing to abide by campaign spending limits to file an affidavit to that effect "within 3 days after the date on which a candidate files his declaration of candidacy... ." The Respondent filed his declaration of candidacy on June 11, 1996. The Petition challenging the Respondent's primary petitions was filed with the Secretary of State on July 9, 1996. If the Respondent had known on June 11, 1996 that he did not have a sufficient number of valid petitions he could have chosen the alternate route to ballot access and voluntarily agreed to the campaign spending limit. We do not think that he should be deprived of that choice simply because the Petition was filed after the date for making that election. We have found that the filing of this Petition was not untimely despite the fact that it came after the date by which Respondent had to choose which

ballot access route to take. At the same time we think that it would be unfair to deprive the candidate of that option simply because the Petition was not filed sooner. We believe that we have the equitable power to allow the Respondent a reasonable time to make that choice now. We exercised that power with respect to Candidate Zeliff. If the Respondent wishes to voluntarily so elect, the affidavit required by RSA 664:5-a shall be filed with the Secretary of State no later than 9:30 AM on Friday, July 19, 1996. If this affidavit is timely filed, then the Respondent's name shall be printed on the ballot. If the affidavit is not so filed, the Respondent's name shall not be printed on the ballot.

We understand that the Commission has no authority to order any candidate to comply with the campaign spending limits. Filing the affidavit is a waiver of certain rights. We simply find that the candidate should be given a second chance to make that election in light of our findings in this case.

The Secretary of State shall not begin printing the ballots until 24 hours after this decision is issued.

This is the unanimous decision of the Commission.

SO ORDERED.

Gary Richardson
Gary Richardson, Chairman

Hugh Gregg
Hugh Gregg

Richard V. Delay, Sr.
Richard Delay, Sr.

July 18, 1996



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TX ELECTION S 1.015
V.T.C.A., Election Code § 1.015
<KeyCite Citations >
VERNON'S TEXAS STATUTES AND CODES ANNOTATED
ELECTION CODE
TITLE 1. INTRODUCTORY PROVISIONS
CHAPTER 1. GENERAL PROVISIONS
§ 1.015. Residence

- (a) In this code, "residence" means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence.
- (b) Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by this code.
- (c) A person does not lose the person's residence by leaving the person's home to go to another place for temporary purposes only.
- (d) A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home.
- (e) A person who is an inmate in a penal institution or who is an involuntary inmate in a hospital or eleemosynary institution does not, while an inmate, acquire residence at the place where the institution is located.

CREDIT(S)

Acts 1985, 69th Leg., ch. 211, § 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, § 4, eff. Sept. 1, 1997.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

2003 Main Volume

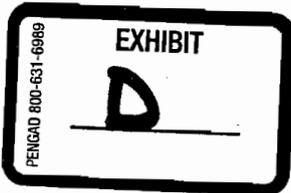
Prior Laws:

- Acts 1905, 29th Leg., 1st C.S., p. 528, ch. 11, § 4.
- Rev.Civ.St.1911, art. 2941.
- Vernon's Ann.Civ.St. art. 2958.
- Acts 1951, 52nd Leg., p. 1097, ch. 492, § 40.
- Acts 1963, 58th Leg., p. 1017, ch. 424, § 19.
- Acts 1967, 60th Leg., p. 1879, ch. 723, § 21.
- Acts 1971, 62nd Leg., p. 2528, ch. 827, § 25.
- V.A.T.S. Election Code, art. 5.08.

CONSTITUTIONAL PROVISIONS

2003 Main Volume

Article 16, § 9, provides:



Texas Voter Registration Application

www.sos.state.tx.us

Prescribed by the Office of the Secretary of State For Official Use Only 17.04 BPM 1.1-04

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Please complete sections by printing legibly. If you have any questions about how to fill out this application, please call the Secretary of State's Office toll free at 1-800-252-VOTE(8683), TDD 1-800-735-2989.

Este formulario para inscribirse para votar tambien está disponible en Español. Para conseguir la version en Español favor de llamar sin cargo 1-800-252-8683 a la oficina del Secretario de Estado.

Qualifications

- You must register to vote in the county in which you reside.
- You must be a citizen of the United States.
- You must be at least 17 years and 10 months old to register, and you must be 18 years of age by election day.
- You must not be finally convicted of a felony, or if you are a felon, you must have completed all of your punishment, including any term of incarceration, parole, supervision, period of probation, or you must have received a pardon.

Complete These Questions Before Proceeding

- Check one New Change Replacement
- Are you a United States Citizen? Yes No
- Will you be 18 years of age on or before election day? Yes No
- If you checked 'no' in response to either of these questions, do not complete this form.
- Have you ever voted in this county for a federal office? Yes No
- If you answered "no" to this question, be sure to see special instructions regarding identification requirements on the reverse side of the application.
- Continue below to complete application.

| | | | |
|--|---|---|-------------|
| Last Name BOSA | First Name RICHARD | Middle Name (if any) P. | Former Name |
| Residence Address: Street Address and Apartment Number, City, State, and ZIP. If none, describe where you live. (Do not include P.O. Box or Rural Rt.) Hilton Hotel 113 South University Park Over | | | |
| Mailing Address: Address, City, State and ZIP: If mail cannot be delivered to your residence address. 1465 Woodberry Ave #261 Portsmouth, VA 23804 | | | |
| Date of Birth: month, day, year MAY 19, 1942 | Gender (Optional) <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female | I understand that giving false information to procure a voter registration is perjury, and a crime under state and federal law. | |
| TX Driver's License No. or Personal ID (Issued by the Department of Public Safety) If none, give last 4 digits of your Social Security Number 8871 | FEB 05 2004 | I affirm that I <ul style="list-style-type: none"> • am a resident of this county; • have not been finally convicted of a felony or if a felon I have completed all of my punishment including any term of incarceration, parole, supervision, period of probation, or I have been pardoned; and • have not been declared mentally incompetent by final judgment of a court of law. FEB 04 2004 MCLENNAN COUNTY ELECTIONS 2/4/04 Date | |
| Telephone Number, Include Area Code (Optional) 603-334-6996 | City and County of Former Residence In Texas None | | |
| Signature of Applicant or Agent and Relationship to Applicant or Printed Name of Applicant if Signed by Witness and Date. X Richard P. Bosa | | | |

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Petition

Of

New Hampshire Republican State Committee
(State Senate Seat, District 14)

DECISION

On September 21, 2000, pursuant to RSA 655, the New Hampshire Republican State Committee through its Chairman Stephen Duprey, filed a complaint with the Ballot Law Commission ("the Commission") challenging the qualifications of State Senate District 14 candidate Leonard William Foy, III under Part II, Article 29 of the New Hampshire Constitution:

No person shall be capable of being elected a senator...who shall not have been an inhabitant of the State for seven years immediately preceding his election.

On September 27, 2000, the Commission held a public hearing on this matter, at which both Mr. Duprey and Mr. Foy testified. Chairman Duprey alleged both in his testimony and in his written complaint that Mr. Foy did not meet the constitutional residency requirement. Specifically, Mr. Duprey alleged that Mr. Foy did not meet the constitutional requirement because Mr. Foy lived, voted and obtained a driver's license outside the State of New Hampshire during the seven years immediately preceding the November 2000 general election. The claims were that Mr. Foy held a California driver's license from January 27, 1995, with an expiration date of March 7, 1998, and that Mr. Foy had a number of addresses in California. Mr. Duprey also stated that Mr. Foy had been previously registered to vote in

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NEW HAMPSHIRE
SECRETARY OF STATE

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Walnut Creek, California as noted in Mr. Foy's New Hampshire voter registration card.¹ Mr. Duprey also cited the fact that Mr. Foy was admitted to the California Bar on February 4, 1995 as being indicative that Mr. Foy was not domiciled in New Hampshire. Mr. Duprey argued that mere intent to return to New Hampshire is insufficient for Mr. Foy to maintain his domicile in the State of New Hampshire.

Mr. Foy appeared before the Commission and testified, under oath, that he never relinquished his New Hampshire domicile and has always considered the State of New Hampshire as his home. He testified that during the time that he was not physically present in New Hampshire, it was always his intent to return, as he in fact did in 1996. Mr. Foy took the Commission through a detailed history of his life, which included moving to Hudson, New Hampshire at the age of three, where he resided full-time until September of 1986, when he began college. Mr. Foy testified that while he had, in fact, moved to other states at various point between 1986 and 1996, he had done so only for school or employment purposes. Mr. Foy testified that his intent was always to return to New Hampshire, and that any actions that he took were taken with the expectation that he was not foregoing his domicile in the State of New Hampshire.

RSA 21:6-a states that "...residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence". Although Mr. Foy's voting in California does demonstrate some inconsistency with his intent to remain domiciled in the State of New Hampshire, the weight of contrary evidence presented by Mr. Foy on this issue was persuasive. Mr. Foy presented as Exhibit Y the State of California 1996 voter registration card, which he testified that he had signed. Of note is the fact that the affidavit requires the registrant to state that "the residence address shown on this affidavit is my true and correct residence address." Unlike

¹ During his testimony, Mr. Foy acknowledged he had previously voted in California and that his New Hampshire voter registration card should have listed Concord, California, not Walnut Creed, as the place in which he had previously been registered.

the State of New Hampshire voter registration card² and the 2000 California registration card³, there was no requirement on the 1996 form that the registrant, Mr. Foy, declare the State of California as his domicile in order to vote there.

In determining one's domicile, there are many factors which are relevant and which must be considered. Lundquist v. Precision Valley Aviation, Inc., 946 F2d 8 (1st Cir. 1991). Thus, a balancing test is required. The factors include a person's physical location, where they have voted, where they have obtained a driver's license, where they purchase property and pay taxes. Also to be factored into this balancing test is the intent of that individual. Mr. Foy made it very clear that his intent has always been to return to the State of New Hampshire and he has always regarded his domicile as being the State of New Hampshire. Although intent is not the only factor, it is one to be given considerable weight while also balancing the other factors.

In applying the balancing test in the specifics of this case, the Commission finds that Mr. Foy has maintained his intent to return to New Hampshire and has been domiciled in the State of New Hampshire since 1971. Therefore, he is a qualified candidate for the office of State Senate. Accordingly, the Commission hereby authorizes the retention of Mr. Foy's name on the ballot as the Democratic candidate for the District 14 State Senate seat.

In closing, the Commission wishes to make clear its decision is based solely on a legal analysis of the evidence presented. While the Commission recognizes the

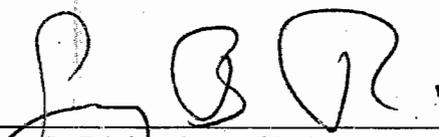
² Pursuant to N.H. RSA 654-7, the New Hampshire voter registration card requires the registrant to affirm that the registrant's permanent established domicile is in the State of New Hampshire.

³ The 2000 California voter registration form, (Foy Exhibit X), now requires an affirmative statement that California is the domicile of the registrant.

contentiousness of this challenge, it in no way factored into their decision. This was a close case, with well-presented, good faith arguments on both sides of the issue.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Dated: 9/29/00

By: 
Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Emily Gray Rice, Commissioner

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STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Roger Francoeur

v.

Secretary of State

Commissioner Emily Gray Rice recused herself from this appeal. All interested parties consented to proceed with only two commissioners.

This is an appeal of the ruling of the Secretary of State that Roger Francoeur was not a registered voter in Goffstown on the date that he filed his declaration of candidacy to the New Hampshire State Senate and therefore was ineligible to appear on the primary ballot as a Democratic candidate for State Senate. Mr. Francoeur did not appear at the hearing, but was represented by Michael B. King, legal counsel to the New Hampshire Democratic Party, and a campaign worker who did not testify. Attorney Paul Alfano, representing Senator Richard Danais, spoke in opposition to the appeal.

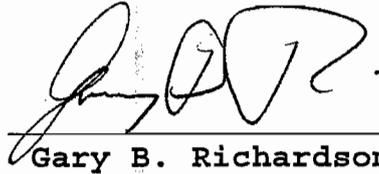
Part II, Article 29 of the New Hampshire Constitution sets forth the qualifications for the election of state senators and provides that "at the time thereof he shall be an inhabitant of the district for which he shall be chosen".

However, the criteria for a candidate to have his name printed on a primary ballot as opposed to being elected in a general election are set forth in RSA 655.

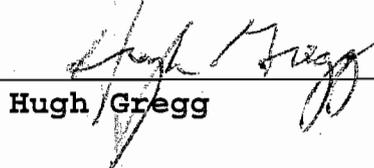
RSA 655:17 requires a candidate to sign a Declaration of Candidacy that certifies among other things that the candidate is "a qualified voter" in the town or district from which he seeks to be elected. Although Mr. Francoeur did not testify before the Commission, counsel for the Petitioner alleges that Mr. Francoeur became an inhabitant of the Town of Goffstown in May of 1996. However, Mr. Francoeur did not apply to become a registered voter in the Town of Goffstown until July 8, 1996 and the Supervisors of the Checklist have not met as of this date to act on his application.

Based on this information, the Commission finds that notwithstanding the certification contained therein, Mr. Francoeur was not a qualified voter in Senate District 20 when he filed his Declaration of Candidacy nor will he become a qualified voter therein until such time as the supervisors of the checklist have approved his application. Having failed to meet the statutory requirements to appear on the primary ballot, Mr. Francoeur's appeal is accordingly denied.

N.H. BALLOT LAW COMMISSION



Gary B. Richardson, Chairman



Hugh Gregg

DATE:

August 2,
~~July~~ __, 1996

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US Senate

2004 2004 2004

NEW HAMPSHIRE
SECRETARY OF STATE

• Richard P. Bosa • 1465 Woodbury Ave. #261 • Portsmouth, NH 03801

• Telephone: 603-334-6996

• fax 603-334-6997

• dickbosa@justicedemanded.org

Mr. William Gardner,
NH Secretary of State
Concord, NH 03301

June 11, 2004

Subject: Controlled Elections in New Hampshire

Dear Mr. Gardner,

I am a Republican candidate for the US Senate because my political issues were not part of the political dialogue in the 2004-First in the Nation primary. The whole process was a completely staged drama where the DemoRepublicans (two heads of the same snake) determined who were party bosses chose candidates to be featured and no one else need apply.

It appears to me that you have forgotten what are FREE, FAIR and OPEN elections. It is the process that is important. Candidates issues are suppose to be given an opportunity to be considered by the voters. It's the issues, not the candidates that are important. What will be the topics in the next legislative session?

Since 1988, I have been an active player in the election arena, battered, abused and bloodied by the media and the process. I have the history of the process in fact, not your perverted revisionist fables.

I hold you personally responsible for the demise of the NH election process, allowing the political parties to dominate the process, choosing the featured candidates and all others need not apply. You still choose to go on national television and boast about our fair elections....what baloney.

The history of the 1964 and 1974 Constitutional Convention and the "BAIT & SWITCH" changes to Article 72a, 73a and 41 part 2 to give the NH Supreme Court their now dictatorial powers never intended by our founding fathers. It was your finger prints that let the lawyers that dominated the process change the wording after the election. I sued you in 1993 on this matter and the court ruled the added wording that gave the court law making power was just redundant.

I am a candidate for the US Senate campaigning on economic issues and background as a former NH elected official, decorated veteran, native of NH and international businessman against the most powerful, connected and inherited royalty in this state.

My web site www.justicedemanded.org will be platform, since the state media is controlled and you allow it to continue silently, not even reporting the Bush disaster of 21%.

Hopefully, the NH Attorney General will really investigate and report the truth.

Richard P. Bosa

Richard P. Bosa

CC NH AG