

To: ~~Beth Rodd~~

December 02, 2002

Ballot Law Commission

Secretary of State William Gardner
Recording Officer & Clerk of the Ballot Law Commission
107 North Main Street
Concord, NH 03301

Dear Sir;

Under RSA 665:6,II, I am appealing to the Ballot Law Commission the result of the recount in the State Representative race in Merrimack County District 34.

Thank you.

Sincerely,



Representative Beth Rodd

NEW HAMPSHIRE BALLOT LAW COMMISSION

**PETITION OF BETH RODD REGARDING DISTRICT 34 RECOUNT
AND REQUEST FOR EXPEDITED HEARING**

NOW COMES Beth Rodd, of Marshall Hill Road, Bradford, New Hampshire, candidate for Representative, District 34, and, pursuant to N.H. RSA 665:6 and N.H. RSA 665:7, hereby requests this Commission to order an immediate new recount of all ballots cast in the 2002 District 34 Legislative election, and, in support thereof, respectfully states as follows:

1. Ms. Rodd was originally elected as a state representative in District 34; following a recount, the Secretary of State declared Richard E. Kennedy, of 1459 Maple Street, Contoocook, NH, as the winner instead of Ms. Rodd.

2. This Commission has jurisdiction over this matter pursuant to N.H. RSA 665:6, which gives the Ballot Law Commission jurisdiction to hear appeals for recounts in the case of an election recount. Pursuant to N.H. RSA 665:6,II, the Commission "shall forthwith meet, hear, and decide such appeal and shall, on such appeal, consider and review all the rulings of the Secretary of State on ballots protested during the recount."

3. This Commission also has jurisdiction pursuant to N.H. RSA 665:7, which conveys upon this commission jurisdiction to hear "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." Under N.H. RSA 660:5, candidates, their counsel and assistants have the right to inspect ballots and participate in a recount under such suitable rules as the Secretary of State may adopt. "Each candidate or his counsel shall have the right to protest the counting of or failure to count any ballot." As set forth herein, neither the Petitioner nor her counsel and assistants had the right to inspect all ballots, or to participate in the entire recount. There is no specific statutory appeal procedure of this violation of N.H. RSA 660:5.

4. An expedited hearing and an expedited recounting of all of the ballots in the District 34 election is required in this case because Legislators are to be sworn in on Wednesday, December 4, 2002. Justice requires that this matter be resolved prior to swearing in.

5. The factual allegations warranting the relief requested are as follows:

A. On November 27, 2002, the New Hampshire Secretary of State conducted a recount of the results of the 2002 New Hampshire House District 34 general election.

B. As set forth in the statement of Representative Raymond Buckley attached hereto, at approximately 3:20 p.m., the Secretary of State advised Michael Colby, an assistant to Beth Rodd, a District 34 Legislative candidate, that the District 34 recount was being suspended until Monday, December 2, 2002, in order to complete the recount for Hillsborough County Attorney.

C. Mr. Colby advised Representative Buckley, also an assistant to Ms. Rodd, of this information. Representative Buckley spoke with both Charlie Arlinghaus, a representative for Representative Kennedy, a Republican candidate in District 34, and Deputy Secretary of State David Scanlon, to confirm that the recount was halted until Monday, December 2, 2002.

D. Both Mr. Arlinghaus and Deputy Secretary of State Scanlon confirmed to Representative Buckley that the recount was being suspended until December 2, 2002.

E. Prior to departing the premises, Representative Buckley spoke with Assistant Secretary of State Karen Ladd, who was totaling the recount team sheets for the Town of Hopkinton in the District 34 election.

F. In totaling the Hopkinton numbers, Assistant Secretary of State Ladd found a drop of 100 votes in the election totals for Ms. Rodd.

G. Representative Buckley inquired whether he would have time on Monday to review the tally sheets, since the recount was being suspended until December 2, 2002, and was advised by Assistant Secretary of State Ladd "yes."

H. Unbeknownst to either Representative Buckley or Ms. Rodd, the Secretary of State recommenced and completed the District 34 recount on November 27, 2002.

6. N.H. RSA 660:5 specifically provides that, "The candidates, their counsel, and assistants shall have the right to inspect the ballots and participate in the recount." In addition, each candidate or his counsel shall have the right to protest the counting of or failure to count any ballot.

7. When the Secretary of State announced that the recount was being suspended, Ms. Rodd and all of her assistants reasonably relied upon that announcement.

8. When the Secretary of State recommenced the recount, without notifying the candidate, the Secretary of State deprived Ms. Rodd of her rights under N.H. RSA 660:5.

9. The Secretary of State erred in first suspending the recount until December 2, 2002, and then recommencing the recount on November 27, 2002.

10. Candidates and their assistants must be able to rely, in good faith, upon the statements of Representatives of the Secretary of State's office.

11. In this case, Ms. Rodd and her assistants reasonably relied upon the statements of Representatives of the Secretary of State's office.

WHEREFORE, the Petitioner respectfully requests as follows:

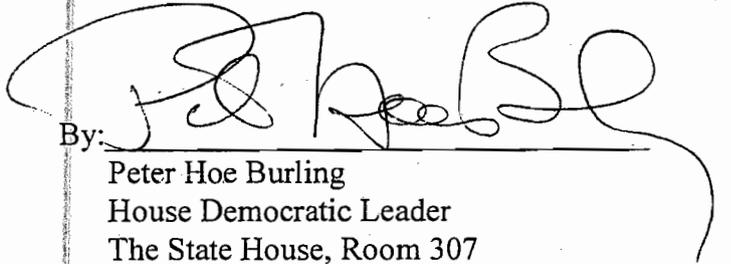
A. Schedule an expedited hearing and recount in District 34 prior to the swearing in on Wednesday, December 4, 2002.

B. To direct the Secretary of State to withdraw its certification of Representative Kennedy as the winner in District 34, pending a full recount at which Ms. Rodd and her

assistants have the full ability to review all ballots.

Respectfully submitted,

BETH RODD
By her attorney,

A handwritten signature in black ink, appearing to read "Peter Hoe Burling", written over a horizontal line. The signature is highly stylized and cursive.

By:

Peter Hoe Burling
House Democratic Leader
The State House, Room 307
Concord, N.H. 03301
271-2136 / FAX: 271-2016

Dated: December 2, 2002

My name is Raymond Buckley. I serve as the Democratic Whip in the NH House of Representatives and as Vice Chair of the NH Democratic Party. I have assisted the Democratic Party and Democratic candidates on recounts since the 1978 election. I am familiar with the procedures and past practices of the NH Secretary of State and the NH Ballot Law Commission. As an eight term member of the NH House I also have the added experience of serving three terms on the House Election Law Committee. I have led the efforts for the Democratic Candidates involved in recounts following the 2002 General Election.

The following is my recollection of what occurred between 3:20 PM and 3:45 PM Wednesday, November 27, 2002 during the recount of NH House District 34:

Michael Colby approached me at approximately 3:20 PM Wednesday, November 27th to tell me that he had been told by the Secretary of State that the District 34 House recount was being suspended until Monday, December 2, so that the Hillsborough County Attorney recount could be completed by the end of Wednesday if possible. Michael Colby has been present and performed a leading role for the Democratic Party for every recount following the November general election. Michael is familiar with recounts and the Secretary of State's office.

I personally spoke to both Charlie Arlinghaus, the lead Republican Party official, and Deputy Secretary of State Dave Scanlan to confirm that the House District 34 recount was been halted until Monday. They both confirmed to me what Michael had told me. I observed teams that had been counting District 34 ballots were now counting Hillsborough County Attorney ballots in the second recount room. I went down the Legislative Office Building hall to Room 300A to get my coat since I had an appointment at 4:15 PM in Derry.

I put on my coat and went back to the recount room to see if any town that comprises District 34 had been completed and totaled yet. I was told that Hopkinton had been completed and that Assistant Secretary of State Karen Ladd was in the process of adding the team sheets together. I went over to Karen and sat next to her while she continued her work. When it appeared that all of the separate team totals were now on her master sheet I asked her if she could total the results for Republican candidate Richard Kennedy and Democratic candidate Beth Rodd. The official results of the November 5, 2002 general election had Beth Rodd winning the sixth out of the six seats in District 34. Those results had Beth Rodd ahead of Richard Kennedy by 70 votes (Rodd with 3856 and Kennedy with 3786).

Karen added Kennedy's Hopkinton numbers first showing that the recount resulted in a two vote gain. She then totaled Rodd's which showed a one hundred vote loss. Karen exclaimed "Ut oh" and immediately started checking her math. She once again came up with 1109 for Rodd in Hopkinton. To see if there was some sort of pattern or quick resolution to the problem, I asked Karen to total another District 34 Democratic candidate's number to see if they also dropped by the same 100 votes. Karen totaled Derek Owen's numbers for Hopkinton which came out exactly the same as on election night - 1655.

It was now apparent that there would not be a quick resolution to the question of why Beth Rodd had mysteriously dropped by one hundred votes in the Town of Hopkinton. I specifically asked Karen "That since the recount is being suspended until Monday anyway, will I be able to spend more time going over the tally sheets on Monday to see if I can figure out the problem before the recount is finished?" Karen replied "yes" to my question.

I was now 3:45 PM. Since Hopkinton was the only town to be completed in the District 34 recount and that it was clear that to me that the recount was suspended until Monday, I left for my appointment feeling assured by the Secretary of State's office that the no other business regarding the recount of House District 34 would occur on Wednesday, November 27th. On my way to Derry I contacted Beth Rodd and Peter Burling to speak with them about the Hopkinton vote total anomaly and inform them that the recount would resume on Monday, December 2nd.

At about 7:00 PM Wednesday evening I received a call on my cell phone from Michael Rollo who has been assisting Democratic candidates with their recounts. I assumed he was making the call with the results of the Hillsborough County Attorney's recount totals. He informed me that Beth Rodd had lost the District 34 recount by five votes.

Statement by Michael Colby

Recount District 34 – Wednesday, November 27, 2002

2:30 PM

Bill Gardner came into the recount room to check on the status of the District 34 recount. Three of the seven towns were being counted by four teams. The three towns were Hopkinton, Henniker, & Warner.

Dave Scanlan told Bill Gardner that none of the seven towns had been completed and that Hopkinton was the closest to being finished. Gardner told Scanlan not to open any more towns and to try to get the District 34 teams to a stopping point so that the recount teams could shift back to the Hillsborough County Attorney recount so that the Hillsborough County recount would be completed before the Thanksgiving Holiday.

I told Gardner and Scanlan that it would be good to finish Hopkinton and Henniker before stopping for the day so that we would have a gage of where things stood and said I was hoping that Kennedy would call off the recount if the numbers did not change dramatically.

Scanlan agreed with me and said that we would finish Hopkinton and Henniker and finish the recount on Monday for the other towns.

Gardner said that made sense and that the District 34 recount would be postponed until Monday.

At this point the Vaillancourt/Dechane team finished their section of Hopkinton and was ready for another town. Scanlan decided to take the remainder of the Henniker ballots that needed to be counted from the Taylor team and brought them across the room to the Vaillancourt/Dechane team.

I became a ballot challenger with Fran Wendelboe with the Vaillancourt/Dechane team to count the remaining Henniker ballots. Scanlan told our team that when we finished with Henniker that the teams would shift to the Hillsborough County recount.

At 3:05 PM our team completed counting its section of Henniker ballots and the team shifted to the Hillsborough County race.

At the same time of this shift Raymond Buckley came into the recount room checking the status of District 34 recount and asking if we had any totals.

I told him that we had just finished our section of Henniker and that the recount team behind me (Chris Pappas Team) was just finishing the final section of Hopkinton and that we should have totals shortly.

The final section of Henniker was still being counted by Taylor's team and the Warner team was what I thought winding down for the day.

Around 3:20 PM the Chris Pappas team completed counting Hopkinton. The tally sheets were then brought to Karen Ladd in the other recount room. I followed the tally sheets into the other recount room and looked at the District 34 tally. Ladd said it would be a few minutes before we had a total for Hopkinton.

I left the room to get my jacket in preparation to leave for the day.

I came back to the recount room about 3:30 PM to check the numbers with Ladd. Raymond Buckley was sitting next to Ladd waiting for the Hopkinton total.

Once Karen had the various tally sheets totaled Buckley asked Ladd to total up Kennedy and Rodd first since he was late for a meeting and needed to leave. When Karen added the various tally sheets to get the grand total Kennedy had gained 2 votes and Rodd had lost 100 votes. Buckley asked Ladd to re-add the numbers and to check each of the tally sheets. The totals did not change.

Buckley then asked to have Derek Owen's numbers added to see if he was off in his totals. He was not. The other Democrats were then added and the individual totals for each candidate did not change dramatically.

Buckley told Ladd that something was not right and that we need to look into the disparity. Buckley expressed concern that he was late for a meeting and that he wanted to look at the tally sheets more and wanted to know if he could do it on Monday morning when the recount for District 34 resumed.

Ladd said yes and confirmed that the recount was being put off until Monday and that Buckley would have the chance to investigate and review the tallies further. Buckley said are you sure? Ladd said yes that since Gardner wanted to finish the Hillsborough County recount before the holiday the District 34 recount would wait until Monday.

At 3:45 Buckley and I left for the day with the understanding that the recount would continue on Monday.