

BRIEF BY NEW HAMPSHIRE DEMOCRATIC PARTY
IN SUPPORT OF APPEAL BY
CAROLYN A. VIRTUE FROM
RECOUNT OF MERRIMACK COUNTY,
DISTRICT 9, STATE REPRESENTATIVE ELECTION

NOW COMES, the New Hampshire Democratic Party, and, in support of the Appeal from recount by Carolyn A. Virtue in the Merrimack County, District 9, State Representative election, respectfully states as follows:

1. Certain irregularities took place during the November 7 election in Merrimack County, District 9, State Representative.

2. The irregularities took place in the Town of Loudon.

3. The irregularities include:

a. Violation of RSA 659:95. New Hampshire law requires that after the ballots cast to the state election have been tabulated, the Moderator or his designator, in the presence of the Selectmen, or his designee, in the presence of the Selectmen, or their designee, shall place the cast, canceled and uncast ballots, in a container and the container shall be sealed, and signed by the Moderator and the Selectmen or their designees. The Moderator did not sign the certificate. Rather, the certificate was signed by Raymond Cummings, a Selectman in the Town of Loudon, who was also a candidate for State Representative. In addition, the voided and uncast ballots were not placed in the sealed container.

b. RSA 659:58 and RSA 658:24. The election laws state that any election official who is also a candidate for office shall disqualify himself from election duties relating to the tabulation of votes (RSA 659:58), and, further, that any person whose name appears on the ballot is disqualified from acting as an election official. Mr. Cummings, as a candidate for State Representative, was therefore disqualified from acting as an election official and from any election duties relating to the tabulation of votes. Yet Mr. Cummings clearly acted as an election official by signing the certificate on the sealed container.

c. RSA 659:101. New Hampshire Statute requires that the affidavit envelopes and application forms for absentee ballots processed by the Moderator shall be preserved in the same manner as provided in RSA 659:95 through 100. In other words, these materials are to be put into a sealed container, signed by the Moderator and the Selectmen or their designees. The absentee ballot envelopes and applications were not deposited into the sealed containers delivered to the New Hampshire Secretary of State. Nor were these materials kept in a sealed container in the Town Hall.

4. The integrity of the election laws require that candidates not have control over cast or uncast ballots. In Loudon, however, the Town Moderator absented himself from the premises for dinner, and was not present for the sealing and signing of the containers. This absence put the ballots within the control of a candidate.

5. Under the circumstances, there is a fundamental issue as to whether the ballots were preserved so as to preclude a reasonable opportunity for tampering. Nickerson v. Aimo, 110 N.H. 348 (1970).

6. The failure of the Town of Loudon to comply with several of the provisions of New Hampshire laws governing election procedure cast a cloud over the results of the election.

7. While any one of these violations of the election laws may not have affected the outcome of the election, in the aggregate they at the very least constitute gross negligence in the manner in which the ballots were handled, which may have affected the outcome of the election.

NOW WHEREFORE, the New Hampshire Democratic Party hereby respectfully requests as follows:

A. That the Ballot Law Commission determine whether the failure of the Town of Loudon to comply with New Hampshire election laws should result in a certificate of change in the declaration of the Secretary of State in the election as Representatives from Merrimack County District 9;

B. That the Ballot Law Commission determine whether the actions of the Loudon election officials constituted violations of New Hampshire law; and

C. Such other and further relief as would be just.

NEW HAMPSHIRE DEMOCRATIC PARTY

DATED: November 30, 2000

by: 

Kathleen N. Sullivan, Chair