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Via Email

Ballot Law Commission
New Hampshire Department of State
State House
Room 204
107 North Main Street
Concord, NH 03301

RE: Candidacy of Nicholas Sarwark for Hillsborough County Attorney

Dear Sir/Madam:

I am challenging the candidacy of Nicholas Sarwark for Hillsborough County Attorney. Mr. Sarwark is not eligible because he does not appear to be an attorney licensed in the State of New Hampshire.

The New Hampshire Supreme Court has held that “the word ‘attorney’ in the title of offices like county attorney by necessary implication means an attorney at law.” *New Hampshire Bar Ass'n v. LaBelle*, 109 N.H. 184, 186 (N.H. 1968). Thus, “a county attorney must be an attorney.” *Id.* In *LaBelle*, the Court directed the Secretary of State to remove the name of a layman from the November 1968 general election ballot for the office of county attorney for Strafford County because he was not an attorney. *Id.*

Here, Mr. Sarwark is also not licensed attorney in New Hampshire. He declared his intent to run for Hillsborough County Attorney under the Libertarian Party. Thus, RSA 655:4, I applies to him. It states “[n]o nomination papers shall be accepted by the secretary of state unless the candidate shall have met the age and domicile qualifications for the office he or she seeks at the time of the general election and ***meets all the other qualifications at the time of filing.***” Among those qualifications, a county attorney must be a licensed New Hampshire attorney. *LaBelle*, 109 N.H. at 186; *see also* RSA 7:33 (“There shall be a county attorney for each county, who shall be a member of the New Hampshire bar, elected biennially by the voters of the county. If the county attorney is absent at any term of court or unable to discharge the duties of the office, the superior court, acting as a body, shall appoint a county attorney, who shall be a member of the New Hampshire bar, for the time being and allow said appointee such compensation for his or her services as set by the county delegation.”).

Although Mr. Sarwark may have practiced as a public defender in the past in Colorado, he does not appear in the New Hampshire Bar Member Directory. The Directory does not contain any attorney with the last name "Sarwark." A search for attorneys with the first name "Nicholas" yields 35 attorneys. None of them has the last name "Sarwark." Searches on his Facebook and LinkedIn pages also reveal no information indicating he is a New Hampshire attorney.

While he might wish to become a member of the New Hampshire Bar if he was elected, that is not guaranteed. Assuming he can bypass the bar exam and apply for admission without examination, New Hampshire does not have automatic reciprocity with other states. To be admitted to the New Hampshire Bar without examination, an individual must meet certain requirements, including admission by bar exam in another jurisdiction and having been primarily engaged in the active practice of law for five of the past seven years. N.H. Sup. Ct. R. 42(XI)(a). An applicant must also undergo a character and fitness background evaluation. There appears to be no indication in Mr. Sarwark's work history that he has been practicing law for five of the past seven years: indeed, according to his LinkedIn page, the last time he practiced as an attorney was August 2014, when he was a deputy public defender in Colorado.

In addition, in New Hampshire, lawyers must comply with the Rules of Professional Conduct. Rule 7.1 states "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." Mr. Sarwark is advertising his campaign for Hillsborough County Attorney as "County Attorney." Mr. Sarwark does not appear to be, as explained above, a licensed attorney in New Hampshire. The average person who reviews that advertisement will erroneously believe Mr. Sarwark is an attorney in this state.

Mr. Sarwark does not appear to be a lawyer admitted to practice in New Hampshire, and will likely not be one as of the date he submits his nomination papers. Thus, he does not meet the qualifications under applicable law. This Commission must reject his name from appearing on the ballot for the general election.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Fojo", is written over a horizontal line.

Robert M. Fojo

CC: New Hampshire Department of State