STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition of JR Hoell

BLC 2010-1

ORDER

BACKGROUND

On January 14, 2010, JR Hoell filed a request for hearing with the New Hampshire Ballot Law Commission (the "Commission"). Mr. Hoell requested a determination that his name be placed on the ballot as a candidate for state senator, District 16. Mr. Hoell sought ballot access by nomination papers pursuant to RSA 655:40.

RSA 655:40 allows:

> As an alternative to nomination by party primary, a candidate may have his or her name placed on the ballot for the state general election by submitting the requisite number of nomination papers. Such papers shall contain the name and domicile of the candidate, the office for which the candidate is nominated, and the political organization or principles the candidate represents. Nomination papers shall be signed by such persons only as are registered to vote at the state general election. No voter shall sign more than one nomination paper for each office to be voted for, and no nomination paper shall contain the names of more candidates than there are offices to be filled. Each voter shall sign and date an individual nomination paper. Nomination papers shall be dated in the year of the election.

In order to qualify for nomination for state senate by nomination papers, RSA 655:42, II requires nomination papers from 750 registered voters be filed with the Secretary of State.

Mr. Hoell acknowledged he did not have the requisite number of signatures under RSA 655:40 and 655:42, but he alleged his nomination papers should be considered on a proportional scale, based on a schedule of approximately five weeks for the District 16 special election, instead of the normal fourteen or more weeks for a regular election cycle. He alleged he was

entitled to such a proportional consideration under Part 1, Article 11 of the New Hampshire Constitution.

FINDINGS OF FACT

A hearing was held on January 22, 2009. Mr. Hoell testified at the hearing. He testified that he knew New Hampshire law required 750 signatures in order to qualify for the District 16 state senate race by nomination papers. He testified he had approximately 600 verified signatures. He testified that, even if he included unverified signatures, he had at most 650 signatures.

Mr. Hoell testified that the special election presented itself without any warning. As a result, he had only a limited period of time to obtain the requisite number of signatures. He testified he was further impacted by the timing of the special election because the Christmas and New Years holidays limited the number of days he could obtain signatures at the Hooksett transfer station, where a concentration of registered voters could be located. As a result of the holidays, the Hooksett transfer station was closed for two of the weekends during the five week period.

Mr. Hoell argued if the Secretary of State, or the Ballot Law Commission, were unable to reduce the required number of signatures to take into account the shorter allotment of time to obtain nomination signatures, the law was unconstitutional under Part 1, Article 11.

Deputy Attorney General Orville B. Fitch II appeared on behalf of the Secretary of State. He presented a Motion to Dismiss to the Commission on behalf of the Secretary of State. Deputy AG Fitch argued that the Commission does not have jurisdiction to address the question of whether RSA 655:40 and RSA 655:42 are sound public policy or whether the statutory

requirement of 750 nominating petitions is unconstitutional when applied to the circumstances of the special election.

Deputy AG Fitch argued that RSA 655:7 limits the Commission's jurisdiction. He also stated that Mr. Hoell did not dispute his nomination papers failed to comply with the requirements of the law. Instead, Mr. Hoell argued that the law, if strictly interpreted, is unfair as applied under the circumstances. In addition, Mr. Hoell alleged the law is unconstitutional. Deputy AG Fitch concluded that RSA 655:7 does not give the Commission the authority to modify statutes, nor does the Commission have the authority to render opinions on the constitutionality of a state statute.

RULINGS OF LAW

As it applies to this matter, the jurisdiction of the Commission is governed by RSA 655:7. The jurisdiction of the Commission is limited as follows:

> 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.

In order to qualify to be on the ballot for election as a state senator, Mr. Hoell was required to obtain the names of 750 voters registered in the district to nominate him by nomination papers. RSA 655:40, RSA 655:43, II. Mr. Hoell does not dispute he did not have 750 signatures. There are no exceptions to the law for special elections, and the law does not authorize the Commission to allow fewer than 750 nominations in order to qualify a candidate to appear on the ballot for the District 16 state senate race. In addition, the Commission is not authorized to render opinions on the constitutionality of a statute.

By unanimous vote, the Ballot Law Commission grants the Secretary of State's Motion to Dismiss, as the Petitioner's request for relief does not fall within the jurisdiction of the Commission.

ORDER

The Secretary of State's Motion to Dismiss is GRANTED, and J.R. Hoell's Petition is denied as not being within the jurisdiction of the Ballot Law Commission.

SO ORDERED

New Hampshire Ballot Law Commission

Date: 4/9/10

Gary Francouer, Chairman
Christopher H.M. Carter
Paul McGuirk
James St. Jean
Gregory T. Martin