

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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DEC 24 1998

NEW HAMPSHIRE
SECRETARY OF STATE

Petition

of

Roland E. Hemon

DECISION

On November 19, 1998, pursuant to RSA 665:7, Roland Hemon filed a complaint with the Ballot Law Commission ("the Commission") alleging that on election day the Moderators in Wards 1, 2 & 3 in the City of Dover prevented individuals from lawfully handing out sample ballots and other campaign literature regarding Mr. Hemon's write-in candidacy for State Representative.

One December 11, 1998, the Commission held a hearing on this matter.

The Commission heard testimony from Mr. Hemon and a number of his campaign workers who encountered problems with election officials. Specifically, it was alleged that election officials ordered Mr. Hemon's supporters not to hand out political leaflets to voters entering the polls. In several instances the campaign workers were threatened with criminal prosecution. Mr. Hemon also presented written affidavits from a number of individuals who could not be present at the hearing but who also encountered the same types of difficulty with the Moderators. Thomas Duffey, the Ward 2 Moderator also testified. No other moderators or city officials from Dover appeared for the hearing.

The right of free speech is a fundamental right under the N.H. Constitution that is to be inviolably preserved. (Pt. 1, Art. 22). The right is not absolute, but may be subject to reasonable time, place and manner regulations that are content-neutral and serve a significant governmental interest. State v. Comley, 130 NH 688 (1988). That regulation is found in RSA 659:43 which prohibits distribution of

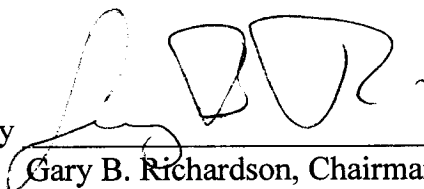
campaign material "within the building where the election is being held" or "within a corridor 10 feet wide and extending a distance from the entrance door of the building as determined by the moderator where the election is being held".

It is clear from the testimony that the Moderators in Wards 1 and 3 improperly enforced RSA 659:43 and, hence, violated Mr. Hemon's constitutional right to distribute or have distributed his campaign material to voters on election day.¹

All individuals have a Constitutional right to distribute campaign literature at polling places in State elections on election day providing they adhere to the distance requirements of RSA 659:43, II.²

All citizens have the right to have campaign material in their possession at a polling place and it was inappropriate for the Moderators to prohibit voters from doing so. Individuals cannot hand this material to anyone while in the actual polling place, they cannot leave the literature in the polling place, RSA 659:43, and they cannot electioneer at the polling place, RSA 659:44.

The Commission understands that it may be difficult for Moderators to police polling places on election day for literature that should not be in the voting booths or polling places. However, those administrative difficulties do not justify violating the rights of citizens.. Therefore, the Commission strongly warns election officials to refrain from this illegal conduct in the future.³

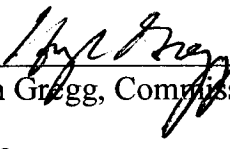
By 

Gary B. Richardson, Chairman

¹ Based on Thomas Duffy's testimony the Commission finds that as the Moderator in Ward 2 he did not violate the law.

² Based on the testimony received, it appears that neither Mr. Hemon or any of his workers violated RSA 659:43.

³ It should be noted that Mr. Hemon did not seek a specific remedy from the Commission and thus the Commission makes no finding as to whether the Moderators actions influenced the election results. The Commission remains, however, deeply concerned with the Moderators' conduct.

By 
Hugh Gregg, Commissioner

By 
Emily Rice, Commissioner

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