

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition of New Hampshire Secretary of State

BLC 2006-6

ORDER

BACKGROUND

On September 1, 2006 the Secretary of State filed a request for hearing from New Hampshire Ballot Law Commission (the "Commission"). The Secretary of State requested a determination of "whether the eight identified candidates shall remain on the September 12, 2006 primary ballot." The eight candidates are as follows:

1. Fran Defeo
2. Robert Ordonez
3. Maureen Baxley
4. James W. Danforth
5. Matthew B. Preston
6. Greta M. Cocco
7. Ron Peddle
8. Matthew Covey

The Secretary of State alleged that the eight candidates did not meet the requirements to appear on the primary ballot for their respective races pursuant to RSA 665:7. RSA 665:7 states in relevant part 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 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.

FINDINGS OF FACT

A hearing was held on September 8, 2006. The following five candidates did not appear at the hearing: Robert Ordonez, Matthew Preston, Greta Cocco, Ron Peddle, and Matthew Covey. Fran Defeo did not appear, but Attorney and Senator Peter Burling appeared on his behalf. Maureen Baxley appeared at the hearing and was also represented by Mr. Burling. James Danforth appeared and represented himself at the hearing.

Attorney Burling presented an offer of proof on behalf of Fran Defeo. Attorney Burling represented that Mr. Defeo did not contest the documents submitted by the Secretary of State from the Town of Conway, Supervisor of the Checklist, Jack Zemla. Attorney Burling argued that the change of registration from democrat to undeclared was confusing, especially when read from right to left. In addition, Attorney Burling argued that Mr. Defeo completed a declaration of candidacy in which he stated he was a registered member of the democratic party and it was Mr. Defeo's understanding and belief that he was a member of the democratic party.

Next to testify was Maureen Baxley. Ms. Baxley testified that she has been active in the democratic party for many years. She formerly lived in Epsom, New Hampshire until moving to Andover about one and one half years ago. After moving to Andover, Ms. Baxley testified she went to the Town Clerk to register to vote and to register her car. At that time, the Town Clerk's office was crowded and the Town Clerk completed most of the voter registration form, using much of the information from Ms. Baxley's car registration. Ms. Baxley testified she told the Town Clerk that she would be registering as a democrat, but cannot explain why her party affiliation was described as "undeclared" on the voter registration form. Ms. Baxley testified she did not carefully review the voter registration card and signed it. She said she would have corrected it to the democratic party had she realized the Town Clerk had typed undeclared.

When Ms. Baxley completed the declaration of candidacy, she believed she was a registered member of the democratic party, and completed the affidavit as a member of the democratic party.

Next to testify was James Danforth. Mr. Danforth testified that he is currently a member of the House of Representatives. In 2004 when he first ran for office, he ran as a republican. In the 2004 primary, Mr. Danforth obtained an absentee ballot for the republican party. He later learned that after submitting the absentee ballot to the Town Clerk, the Town Clerk did not count his vote, nor did the Town Clerk submit the ballot to the Town Moderator. When Mr. Danforth went to the Town Clerk to declare his candidacy for the 2006 primary election, he asked the Town Clerk if he needed to do anything further to run as a republican. At that time, Mr. Danforth was told he did not and the he was "all set." In addition, Mr. Danforth submitted documentation he received after winning the election in 2004 in which the Secretary of State certified that on the 2nd day of November, 2004, James William Danforth was duly elected to represent the sixth district of Merrimack County. In addition, Mr. Danforth submitted a certificate of election for state representative signed by the Secretary of State on November 2, 2004 in which he was identified as the republican candidate having been elected to the House of Representatives. Mr. Danforth acknowledged that in his declaration of candidacy for state representative, he left blank the party registration information when he submitted on June 7, 2006.

Edward Becker who is the Moderator for the Town of Andover testified in support of the position of James Danforth that he should be placed upon the September 12, 2006 ballot. Mr. Becker testified that when Mr. Danforth was given a republican ballot in the September 2004 primary election, he could only receive that ballot if he were registered as a member of the

republican party. The voter registration sheet for the September 2004 primary indicates that Mr. Danforth's absentee ballot was collected, but not counted. In the case of a ballot that is not counted, Mr. Becker testified that he should have received the rejected ballot as Town Moderator. Had he received it, he would have contacted Mr. Danforth to inform him that his ballot would not be counted and the reason why the ballot would not be counted. Based upon the documents, it appears that his vote was not counted because he was not registered as a republican with the Town Clerk's office, but was in fact registered as a democrat. Mr. Becker testified that the Town Clerk did not follow proper procedures and had she, Mr. Danforth would have been notified in 2004 that he was not registered as a republican.

RULINGS OF LAW

RSA 655:14 allows a person to be printed as a candidate for a party only if that individual is a registered member of that party and meets all other qualifications at the time of filing. The Ballot Law Commission finds as follows:

Fran Defeo

By unanimous vote, the Ballot Law Commission finds that Fran Defeo is not qualified as a candidate for the office of state representative, first district, Carroll County, for the democratic party.

Robert Ordonez

By unanimous vote, the Ballot Law Commission finds that Robert Ordonez is not qualified as a candidate for the office of state representative, nineteenth district, Hillsborough County and fourteenth district, Rockingham County, for the democratic party.

Matthew B. Preston

By unanimous vote, the Ballot Law Commission finds that Matthew B. Preston is not qualified as a candidate for the office of state representative, for the democratic party.

Greta M. Cocco

By unanimous vote, the Ballot Law Commission finds that Greta M. Cocco is not qualified as a candidate for the office of state representative, second district, Strafford County, for the democratic party.

Ron Peddle

By unanimous vote, the Ballot Law Commission finds that Ron Peddle is not qualified as a candidate for the office of state representative, seventh district, Rockingham County for the republican party.

Matthew Covey

By unanimous vote, the Ballot Law Commission finds that Matthew Covey is not qualified as a candidate for the office of state representative, second district, Coos County for the republican party.

Maureen Baxley

By a 3-2 vote, the Ballot Law Commission finds that Maureen Baxley is not qualified as a candidate for the office of state representative, sixth district, Merrimack County, for the democratic party. The Commission notes that while the error appears to have been made by an office of the town, Ms. Baxley received the form that states she was registered as an undeclared voter.

James W. Danforth

By 3-2 vote, the Ballot Law Commission finds that James W. Danforth is not qualified as a candidate for the office of state representative, sixth district, Merrimack County, for the republican party. In this case, town officials appear to have made repeated mistakes, all to the disadvantage of Mr. Danforth. Nevertheless, the statute clearly states that no candidate can appear on the ballot if not a member of the party for which he seeks nomination. In effect that places an absolute requirement on the candidate that regardless of the errors of others, he or she is responsible for getting it right.

ORDER

The Commission orders that the following individuals be stricken from their respective ballots:


1. Fran DeFeo
2. Robert Ordonez
3. Maureen Baxley
4. James W. Danforth
5. Matthew B. Preston
6. Greta M. Cocco
7. Rod Peddle
8. Matthew Covey

The names shall be stricken in a manner as set by the New Hampshire Secretary of State.

SO ORDERED

New Hampshire Ballot Law Commission

Date: 3/27/07


Gary Francouer, Chairman
Christopher H.M. Carter
Charles Chandler
Paul McGuirk
Stephen Duprey