

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

Petition

Of

The Libertarian Party

**DECISION**

On September 27, 2000, pursuant to RSA 665, the Ballot Law Commission (“the Commission”) held a public hearing on the Libertarian Party’s challenge of the Attorney General’s determination pursuant to RSA 655:40-a that the Libertarians have gained “party” status and are therefore subject to the provisions of RSA 659:91-a.

The crux of the Attorney General’s Opinion is that the Libertarian organization, by virtue of complying with RSA 655:40-a, became certified as a political party and gained party status by submitting to the Secretary of State’s Office the requisite nomination papers. By so doing, the Opinion states that RSA 659:91-a, known as the “sore loser statute,” is applicable to the Libertarian organization due to its new “party status.” With this interpretation, any candidate who ran in the September 2000 primary as either a Democrat or a Republican cannot now have their name placed on the ballot as a Libertarian Party candidate in the upcoming general election.

At the heart of the argument is the fact that, although the word “party” has many different meanings under New Hampshire law, “party” is used interchangeably within a number of election law statutes. RSA 652:11 defines a “party” as “any political organization which, at the preceding state general election, received at least four percent of the total number of votes cast for governor or U.S. Senators”. RSA 655:40-a permits

“a political party” to have its name placed on the ballot by submitting nomination papers signed by legal voters, equaling three percent of the total votes cast (RSA 655:42). The Libertarian organization failed to receive four percent of the total number of votes cast, but submitted nomination papers signed by three percent of the number of votes cast in the last state election. Therefore, the issue before the Commission is whether a political organization that failed to receive at least four percent of the number of votes cast in the last election, but has submitted petitions signed by three percent of the number of votes cast, is a political party for purposes of RSA 659:91-a. The Commission finds that the definition of party contained in RSA 652:11 is controlling, and that the Libertarian organization is not subject to the provisions of RSA 659:91-a.

It is undisputed that <sup>the</sup> Libertarian organization did not receive at least four percent of the total number of votes cast in the last gubernatorial election. Therefore, under a strict reading of RSA 652:11, the Libertarian organization is not, in fact, recognized as a party under New Hampshire election laws. The fact that it complied with RSA 655:40-a, and found an alternative method for having candidates names placed on the ballot with the Libertarian heading, does not vault them into status as a political party as contemplated by RSA 652:11. It merely places their collective candidates on the ballot with their organization name, in this case, Libertarian. *See* RSA 655:40.


It is the Commission’s ruling that complying with RSA 655:40-a does not, on its own, give a political party, or organization, “party” status as defined at RSA 652:11. Therefore, RSA 659:91-a does not apply to these candidates because 659:91-a specifically refers to candidates who previously have run as a candidate for a “party,” as defined in RSA 652:11.

Accordingly, the Commission finds that the Libertarians are not a political party within the statutory definition and therefore are not bound by RSA 659:91-a, the "sore loser statute." The Secretary of State's Office is hereby authorized to include on the ballot for the general election any Libertarian candidate otherwise qualified.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 9/29/00

By: \_\_\_\_\_

  
Gary B. Richardson, Chairman  
Hugh Gregg, Commissioner  
Emily Gray Rice, Commissioner

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

In re: The Manchester Republican City Committee  
and Toni Pappas

v.

Leona Dykstra

**DECISION**

**RECEIVED**

OCT 20 2000

**NEW HAMPSHIRE  
SECRETARY OF STATE**

On October 16, 2000, pursuant to RSA 665, the Ballot Law Commission (“the Commission”) held a public hearing on the Petition to remove Leona Dykstra as Libertarian candidate for Hillsborough County Commissioner District 1 for failure to comply with RSA 655.

On September 29, 2000, the Ballot Law Commission held that Libertarians are not a political party within the context of RSA 652:11, as they did not receive at least four percent of the total number of votes cast in the last gubernatorial election. Therefore, the Commission held that RSA 659:91-a, the “sore loser statute,” did not preclude candidates who ran in the 2000 primary election as either a Republican or Democrat from having their names placed on the ballot for the 2000 general election as a Libertarian “party” candidate. Accordingly, the Commission found that the Secretary of State was authorized to include on the ballot for the general election any Libertarian candidate otherwise qualified.

The Petitioners in this matter contend that Leona Dykstra is not otherwise qualified, asserting that RSA 655:43, III precludes her from having her name placed on

the ballot for the general election as a Libertarian, as she filed as a Republican candidate in the state primary election. RSA 655:43, III provides that, “No person who filed as a candidate in the state primary election shall be eligible to have his name placed on the ballot for the state general election by submitting nomination papers as provided in this subdivision.”

Historically, there were two ways by which a candidate could be listed on the ballot for the general election: nomination through the primary process and nomination through a candidate’s filing of nomination papers with the Secretary of State. This latter provision, contained at RSA 655:43, III, was enacted in 1981. Laws of 1981, Ch. 531:5. Subsequently, in 1996, the Legislature developed another mechanism by which a candidate’s name might be listed on the ballot for the state general election, RSA 655:40-a and RSA 655:40-b. Under RSA 655:40-a, “[a] political party may have its name placed on the ballot for the state general election by submitting the requisite number of nomination papers, in the form prescribed by the secretary of state, pursuant to RSA 655:42, III.” The Libertarians have satisfied this provision. RSA 655:40-b provides that “[t]he names of the candidates to be listed on the state general election ballot under the political party nominated pursuant to RSA 655:40-a shall be submitted to the secretary of state...” and requires that “[w]hen the list of candidates is filed, it shall be accompanied by a declaration of candidacy signed by each of the candidates ... in the form prescribed by RSA 655:17.” These requirements were also satisfied.

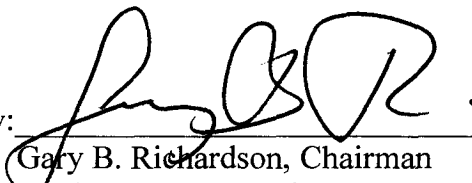
The Commission finds that RSA 655:43, III does not relate to the nomination process created by the Legislature under RSA 655:40-a and RSA 655:40-b. Ms. Dykstra

did not seek to be listed on the ballot under RSA 655:43, III. She did not submit nomination papers as provided in that subdivision. Rather, Ms. Dykstra's nomination was submitted by the Libertarian party to the Secretary of State through the process laid out in RSA 655:40-a and RSA 655:40-b.

Accordingly, the Commission finds that Leona Dykstra's name may remain on the ballot for the general election.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 10/20/00

By:   
\_\_\_\_\_  
Gary B. Richardson, Chairman  
Hugh Gregg, Commissioner  
Emily Gray Rice, Commissioner

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**RECEIVED**

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

OCT 25 2000

**NEW HAMPSHIRE  
SECRETARY OF STATE**

In Re: The Libertarian Party of New Hampshire

v.

Secretary of State William Gardner

**DECISION**

On October 20, 2000, pursuant to RSA 665, the Ballot Law Commission (“the Commission”) held a public hearing on the Libertarian Party’s Petition to Instruct the Secretary of State to comply with RSA 656:10 and provide “straight ticket” voting for the Libertarian Party on the 2000 general election ballot.

The Petitioner contends, essentially, that as it is considered a political party under RSA 655:40-a, it should also be considered a political party within the meaning of RSA 656:10. RSA 656:10 provides that “[t]he secretary of state shall prepare voting instructions for straight ticket voting for each of the political parties listed on the ballot . . .” Thus, the Petitioner asserts, it is entitled to a straight ticket voting instruction on the 2000 general election ballot.

The Petitioner agrees that it does not fall within the definition of a “party” as defined by RSA 652:11. Under that statute, “‘Party’ shall mean any political organization which at the preceding general election received at least 4% of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators.” The Libertarians did not receive 4% of the votes at that election.

The Petitioner availed itself of the nomination process, enacted by the Legislature in 1996, RSA 655:40-a, to become listed on the ballot as a party. Under RSA 655:40-a, “[a] political *party* may have its name placed on the ballot for the state general election by submitting the requisite

number of nomination papers, in the form prescribed by the secretary of state, pursuant to RSA 655:42, III” (italics added). The Petitioner submitted the requisite nomination papers and satisfied this requirement.

Subsequently, the Petitioner submitted the names of candidates to be listed on the state general election ballot under the Libertarian Party’s name, pursuant to RSA 655:40-b. Thereafter, the Petitioner’s ability to list on the general election ballot the names of candidates who had previously run as candidates for the Republican or Democratic Party at the state primary election was questioned under RSA 659:91-a, “the sore loser law.” RSA 659:91-a prohibits “[a]ny person who is a candidate on any party’s state primary election ballot [from running] as the nominee of a different *party* in the state general election unless he is successful in securing the nomination of his own party in the primary.” (Italics added.) The issue raised was whether this restriction applied to the Libertarian Party, thereby precluding anyone who had run and lost in the 2000 state primary election as a Republican or Democratic candidate from running in the 2000 state general election as a nominee of the Libertarian Party.

In its decision of September 29, 2000, the Ballot Law Commission found that the Libertarian political organization was not a “party” as defined by RSA 652:11. Although it had met the requirements of RSA 655:40-a in order to achieve the status of having its name and candidates listed on the general election ballot, it had, nevertheless, not become a party within the meaning of “party” as contained in the general provisions of the elections laws at Chapter 652. Because the Libertarian political organization was not a “party” under the general provisions, (RSA 652:11), the Commission determined that the Libertarian organization was not constrained by the restrictions of 659:91-a. The Commission explained that the Petitioner’s compliance with RSA 655:40-a “merely places its collective candidates on the ballot with their organization name,

in this case, Libertarian.” Ballot Law Commission Decision, Petition of Libertarian Party, dated September 29, 2000, at 2.

The same logic applies to the issue raised in the present Petition. As the Libertarian organization is not a “party” under the definition contained in the general provisions of the election laws in Chapter 652 (RSA 652:11), similarly, the terms of RSA 656:10 do not apply to it. Consistent with this interpretation, the Commission notes that RSA 652:11 and 656:10 were both enacted in 1979 as part of the general codification of the election laws. Laws of 1979, Ch. 436. Thus, these provisions may reasonably be considered as using the same meaning of the term “party,” whereas RSA 655-40-a, enacted in 1996, created an alternative method by which a political organization that did not meet the requirements of RSA 652:11 could be listed on the ballot. Thus, the word “party” in RSA 655:40-a necessarily has a different meaning than that contained in the general provisions. While recognizing that there are ambiguities within the language of the election laws, the Commission finds that RSA 655:40-a does not alter the general meaning of “party” within the election laws and does not give a political organization the same status as a “party” as defined in RSA 652:11.

For these reasons, the Commission rules that the Secretary of State need not include an instruction for straight ticket voting for the Libertarian Party on the 2000 general election ballot.<sup>1</sup>

NEW HAMPSHIRE BALLOT LAW COMMISSION

Dated: 10/25/00

By: Emily G. Rice

Gary B. Richardson, Chairman

*hw* Hugh Gregg, Commissioner

Emily Gray Rice, Commissioner

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<sup>1</sup> It is worth noting that the designation of “Libertarian” will still appear on the ballot following the individual Libertarian candidate’s name.