

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition

Of

Beth Rodd
(House District 34 – Recount)

ORDER

On December 3, 2002 pursuant to RSA 665:6, II and 665:7, the Ballot Law Commission (“The Commission”), held a public hearing on Beth Rodd’s (“The Petitioner”) petition that the Ballot Law Commission order a new recount in the District 34 House of Representatives' race.

Petitioner’s claim is that she was denied her RSA 660:5 statutory right to participate in her recount and to have her designated assistants present for the counting and protesting of ballots during the recount which occurred on November 27, 2002.

Prior to reaching the merits of the petition, the Commission first heard arguments on the Secretary of State’s Motion to Partially Dismiss the Petition¹. The Secretary of State argued that RSA 665:6, II only gave the Commission jurisdiction with respect to the eleven (11) protested ballots and that the Commission did not have the authority to rule on Petitioner’s request for a new recount.

The Commission disagrees. RSA 665:7 allows the Ballot Law Commission to hear and determine disputes “. . . involving alleged violations of New Hampshire election

¹ It should be noted that the Commission was first presented with this Motion just moments prior to the start of the hearing.

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laws of a non-criminal nature . . .” The Petitioner alleged a violation of RSA 660:5, which grants candidates the right to participate in their recounts and to challenge and protest ballots. RSA 660:5 is a non-criminal election law and as such, pursuant to RSA 665:7, the Commission has jurisdiction to hear and resolve this dispute. Therefore, the Commission denied the Motion.

Parties presenting testimony and argument were the Petitioner and her representatives; Richard Kennedy, the candidate who had been certified by the Secretary of State’s Office as the winner of the District 34 House final seat and his representatives; and the Secretary of State, members of his staff and their legal counsel.

During the lengthy hearing, the Commission heard testimony from numerous witnesses. The crux of the issue was whether on the afternoon of November 27, 2002 the Secretary of State’s Office suspended the recount of the House District 34 race. While, based on the evidence, it was clear to the Commission that the Secretary of State’s Office conducted an entirely appropriate recount on November 27, 2002, it was plainly evident that at the recount on November 27, 2002 there were serious miscommunications and misunderstandings that afternoon which led Ms. Rodd and certain of her chosen representatives to either leave the recount prematurely or to fail to return to see the recount through to completion. Although there did not appear to have been an announcement by the Secretary of State himself that the House District 34 recount was suspended, there was discussion among the Deputy Secretary of State and others about a suspension of the recount.

Notwithstanding the good faith continuation of the recount after the departure of Ms. Rodd and Messrs. Buckley and Colby, the ambiguity created an appearance of

unfairness which may have tainted the proceedings and made questionable whether Ms. Rodd was afforded her rights under RSA 660:5. It is the Commission's belief that this taint can easily be corrected by the grant of the appeal from recount, and the Commission therefore orders the Secretary of State to conduct a recount of all House District 34 ballots as expeditiously as possible.

NEW HAMPSHIRE BALLOT LAW COMMISSION

12/5/02
Date

Emily Gray Rice
Paul Donovan, Alternate Chairperson
Emily Gray Rice, Commissioner
Elizabeth W. Maiola, Alternate Commissioner