State of New Hampshire
Ballot Law Commission

N. H. Republican State Committee

v.

Deborah Arnie Arnesen,

No. 96-8

N. H. Republican State Committee

v.

Joe Keefe,

No. 96-7

ORDER

These petitions seek orders that the Respondents have failed to submit the necessary primary petitions required by RSA 655:20 and therefore their names should not be printed on the ballot. These challenges were filed on July 25, 1996. The allegations in these cases are similar to those made in Lamontagne v. Zeliff, Douglas v. Swett and Rauh v. Smith. Hearings on these other cases have been held almost continuously since the filing of the Lamontagne v. Zeliff petition on June 19, 1996. The proceedings have been covered extensively in the press.

The statutes granting the Commission jurisdiction over these matters do not impose any time limit to challenge primary petitions on the basis of illegality or fraud. The Commission has stated that it will review claims of untimeliness on equitable and due process grounds on a case by case basis.

We have now heard three cases raising similar timeliness issues. In each of those cases we required either specific pleadings or offers of proof on the issue of fraud or illegality. In fact, in a previous matter filed against candidate Arnesen, we required that a specification be filed. None was filed and the case was withdrawn. In all of those cases, the issue of timeliness was raised. In particular, the deadlines for the printing and delivering the absentee ballots have been well known to all who have followed any of the previous three cases. The Petitioner has been an intervenor in one of those previous cases. Attorney Douglas, who was counsel for the New Hampshire Republican State Committee in the Swett matter appeared at the structuring conference for Petitioner Hammond in the previously withdrawn Arnesen matter. Attorney Hastings represented one of the witnesses in the Swett matter. We find that since at least June 19, 1996, the Petitioner has been aware of the potential challenge to the Keefe and Arnesen petitions, and has also been aware of the serious time constraints under which the Commisssion and the parties worked in the previous cases in order to assure that the absentee ballots would be printed in time. We do not find any improper motivation for the Petitioner's delay. The Petitioner has not, however, presented sufficient grounds to excuse the delay.

In reviewing the timeliness issue, we take into account not only the potential harm this delay might cause to Respondents, but also the harm to the public. As the Petitioner has pointed out, these cases raise complex issues and severe time constraints can make it difficult for the parties to adequately present their arguments. Although the schedules were tight in the previous cases, the Commission made efforts to ensure that the parties were given all the process due. While those cases were pending, we were able to slow down or rearrange the

ballot printing process in order to assure ample time for all parties to vindicate their rights. At this point, however, all of the Democratic absentee ballots have been printed and ballots have been delivered to 150 town clerks who must begin mailing them immediately (RSA 657:10). If the ballots are further delayed in order to give the parties an opportunity to fully argue all of the issues before the Commission and an opportunity to seek meaningful review in the New Hampshire Supreme Court, the ballots may not be sent to absentee voters, including overseas voters and military personnel, in time for them to exercise their rights to vote. If our decision necessitates alteration of the ballots, it is likely to disenfranchise some absentee voters. In order to outweigh the risk of disenfranchising voters, the allegations of fraud and illegality would need to be more compelling than the offer of proof and the allegation pled here that the conduct "may...constitute possible fraud". Moreover, prolonging this dispute would be an unwarranted additional financial burden on the taxpayers of this State.

For the reasons stated herein, we dismiss both cases and, accordingly, we do not address the other motions or the merits of the allegations.

This is the unanimous decision of the Commission.

SO ORDERED.

Gary B. Richardson, Chairman

Hugh Gregg, Commissioner

Emily Gray Rice, Commissioner

Date: July 29, 1996