

State of New Hampshire
Ballot Law Commission

Ovide Lamontagne

v.

Bill Zelif

No. 96-1

ORDER

This is a petition seeking an order that Respondent has failed to submit the necessary primary petitions required by RSA 655:20 and therefore his name should not be printed on the ballot. The Petitioner claims that a number of primary petitions submitted by Respondent were defective because they were signed by people who were not registered Republicans, were duplicate petitions signed by the same person twice, failed to show the residence of the signatory or were improperly acknowledged by a justice of the peace or notary public.

RSA 655:20 requires that anyone running for governor must file 2,000 primary petitions signed by members of his party pursuant to RSA 655:22. This requirement is waived if the candidate voluntarily accepts the campaign spending limits of RSA 664:5-b. RSA 655:21 requires that each signatory certify under oath that the signatory is a registered member of the candidate's political party in the signatory's place of domicile. RSA 655:19 requires the candidate to file the requisite number of petitions with the Secretary of State unless the candidate agrees to limit campaign expenditures in accordance with RSA 664:5-a. For candidates who do agree to limit campaign expenditures, RSA 655:19-b provides for the waiver of the requirement of petitions.

On June 13, 1996, Respondent filed a declaration of candidacy, a check in the amount of \$5,000, and 2,198 primary petitions with the Secretary of State. Pursuant to RSA 655:26 the Secretary of State examined the petitions and determined that 25 of the petitions were facially invalid. However, because the number of facially-valid petitions still exceeded 2,000, the Secretary of State did not return the rejected petitions to the candidate. RSA 655:26. On June 19, 1996, the Petitioner filed the within challenge.

The Respondent filed a Motion to Dismiss and a Motion for Immediate Ruling on Legal Issues. Essentially, the motions disputed the jurisdiction of the Commission, contended that the Petition was untimely, argued that the Respondent had a constitutional right to be on the ballot and urged the Commission to rule in the Respondent's favor as a matter of law. The Commission deferred ruling on the motions and held a two-day evidentiary hearing. Based on the evidence presented, the Commission makes the following factual findings:

1. The parties have stipulated that approximately 412 primary petitions are invalid because they are duplicative or because the signatory is either a Democrat, an independent, not a registered voter or the acknowledgment is otherwise defective.

2. Tanya Mayotte is an unpaid volunteer for the Zeliff campaign and a close friend of a paid employee of the Zeliff campaign. Ms. Mayotte appeared before the Commission to testify with her counsel. Ms. Mayotte executed 335 of the Respondent's primary petitions as a notary public. She never administered an

oath to the signatory and did not know that she was required as a notary to administer an oath. She also testified that she would not know how to administer an oath if asked. Ms. Mayotte did not always ask the signatory for identification. Ms. Mayotte would collect petitions at campaign events and sign them in her car on the way home from events "because it was more convenient." Only 70 of the petitions acknowledged by Ms. Mayotte are included in the 412 petitions that the parties have stipulated are defective.

3. Christine Worcester was an unpaid volunteer for the Zeliff campaign. Ms. Worcester appeared before the Commission with her counsel and invoked testimonial privilege pursuant to RSA 665:12. Ms. Worcester took the acknowledgment of approximately 262 signatories as a justice of the peace. Ms. Worcester became a justice of the peace in order to take acknowledgments on primary petitions for political candidates. In no case did she administer an oath or request identification from the signatory, and like Ms. Mayotte, Ms. Worcester testified that she would not know how to administer an oath if asked. Significantly, Ms. Worcester admitted that on some occasions members of the Zeliff campaign staff would bring her primary petitions and she acknowledged signatures of persons who did not appear before her. Only 39 of the 262 primary petitions acknowledged by Ms. Worcester are included in the 412 primary petitions that the parties have stipulated are invalid. Mr. McGee, a Zeliff staffer, worked closely with Ms. Worcester and was well aware of her activities.

4. The Petitioner presented credible evidence from other witnesses that a number of persons who signed primary petitions for the Zeliff campaign were not registered Republicans or did not have their oath taken by a justice of the peace or notary public.

5. Over 900 of the primary petitions submitted by the Respondent are invalid, which reduces the number of valid petitions well below the 2,000 required by RSA 655:22.

6. The within Petition was hand delivered to the Secretary of State in his capacity as Clerk of the Ballot Law Commission on June 19, 1996 at approximately 4:45 PM. Although the Petitioner claims to have delivered the Petition to the Secretary of State for a ruling by him, the Petition is addressed to the Ballot Law Commission. A copy of the Petition was not served on Bill Zeliff in accordance with Ballot Commission Rule 204.03(d). An offer of proof was made by the Petitioner that had the Petition been filed with the Secretary of State, the Secretary of State would have denied it and referred it to the Ballot Law Commission.

7. The Respondent's campaign workers were grossly negligent in their efforts to obtain signatures on the petitions and engaged in misconduct and deceptive behavior.

8. Although there is no evidence that the Respondent personally knew of or condoned the actions by his campaign staff, he is ultimately responsible for their actions.

9. The Respondent filed his declaration of candidacy on June 13, 1996. When Congressman Zeliff signed his affidavit refusing to limit his campaign spending pursuant to RSA 664:5-a,

he believed that he had submitted in excess of 2,000 valid primary petitions.

Legal Issues

I. Jurisdiction. The Ballot Law Commission finds that it has jurisdiction pursuant to both RSA 665:5 and 665:7. RSA 665:5 grants the Commission jurisdiction over filing disputes involving declarations of candidacy. The Respondent would limit the Commission's jurisdiction to disputes over the accuracy of the declaration of candidacy form. The Commission does not read the statute so narrowly and finds that this dispute arises over the filing of a declaration of candidacy which encompasses all of the necessary parts of declaring candidacy, including the payment of a filing fee and submission of primary petitions. The Commission also finds that it has jurisdiction under RSA 665:7 because the Secretary of State would have refused to rule on the Petition if it had been filed with him in his capacity as Secretary of State and the Petitioner would not have been afforded any administrative remedy.

II. Time Limit to Object. The Respondent contends that he was entitled to rely on the fact that the Secretary of State did not notify him that any of his primary petitions were rejected and that the Petition was untimely. The Commission interprets RSA 655:26 to require the Secretary of State to inspect primary petitions for facial irregularities. It is not reasonable to expect the Secretary of State to verify the substance of the thousands of petitions that are submitted to him before every

election. The Commission finds that the statute does not impose any time limit to challenge primary petitions on the basis of illegality or fraud. Likewise the Commission finds that the Respondent is not entitled to rely on acceptance of his petitions when his own staff and volunteers were responsible for submitting defective petitions.

III. Constitutional Right to be on the Ballot. The Respondent correctly points out that he has a constitutional right to seek elective office. N.H. Const. Pt. 1, Art. 11. However, his "right" to appear on the ballot is subject to compliance with reasonable statutory regulation. Wilkes v. Jackson, 101 N.H. 420 (1958). Having represented that he met those requirements, he cannot now complain when it appears that the representation was inaccurate.

IV. Cure. The Respondent points out that RSA 655:26 evidences a statutory policy to permit a candidate to cure a filing of petitions found to be defective by the Secretary of State and argues that a candidate whose filing is found to be defective by an opposing candidate should be afforded the same protection. To the extent that the defects were found to be de minimis or technical, the argument would have some appeal. However, the defects here are substantive. To allow a candidate to cure petitions that were illegally executed is not permitted by the statute. Even if he had a chance to cure the facially defective petitions, Respondent still would not have filed a sufficient number of petitions.

Decision

The Ballot Law Commission finds that Respondent failed to file the requisite number of primary petitions required by RSA 655:22, and therefore pursuant to RSA 655:20 is not entitled to have his name printed on the ballot.

RSA 664:5-a requires a candidate who is willing to abide by campaign spending limits to file an affidavit to that effect "within 3 days after the date on which a candidate files his declaration of candidacy... ." The Respondent filed his declaration of candidacy on June 13, 1996. The Petition challenging the Respondent's primary petitions was filed with the Secretary of State on June 19, 1996 and was not served on the Respondent in accordance with Ballot Law Commission Rule 204.03(d). Rule 204.03(d) requires that documents be served on persons reasonably believed to have interests adverse thereto on or before the day they are filed with the Commission. The Commission finds that the filing of the Petition tolls the time limit contained in RSA 664:5-a and therefore the Commission orders that the Respondent shall have the right, should he choose to do so, to agree to abide by the campaign spending limits of RSA 664:5-b. If the Respondent should so elect, the affidavit required by RSA 664:5-a shall be filed with the Secretary of State no later than 5 PM on Monday, July 8, 1996. If this affidavit is timely filed, then the Respondent's name shall be printed on the ballot.

This is the unanimous decision of the Commission.

SO ORDERED.



Gary Richardson, Chairman



Emily Gray Rice



Hugh Gregg

July 5, 1996