

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

In Re: Robert Forsythe

BLC 2020-6

BACKGROUND

By letter to the Ballot Law Commission dated September 15, 2020, Stephen Stepanek, Chairman of the New Hampshire Republican State Committee, and Scott Maltzie, Chairman of the Merrimack County Republican Committee, challenged the eligibility of Robert Forsythe of Boscowen, New Hampshire, to run for the New Hampshire House of Representatives from Merrimack House District 8. In support of their challenge, they alleged that Mr. Forsythe had, at the time of his filing for office, been the incumbent state representative from the district, but that subsequently, in August, 2020, he was arrested for domestic abuse, resigned his position as state representative, left New Hampshire to receive treatment, and sent an e-mail requesting that his name be removed from the ballot. The cited NHRSA 655:17, which requires that candidates declare that "If I have been convicted of a felony, I declare that I have completed my sentence as required in RSA 607-A:2." Further, they stated "The prospect of Mr. Forsythe's pending charges if convicted would disqualify him from serving in the New Hampshire House of Representatives." They provided news accounts of the charges and circumstances of Mr. Forsythe's resignation, and a copy of his e-mail requesting his name be removed.

The Ballot Law Commission considered the matter at its hearing on September 17, 2020. The complaining party was represented at the hearing by Merrimack County GOP Chairman Maltzie, and GOP State Executive Director Elliot Gault. Mr. Forsythe did not attend the hearing. At the hearing, the representatives of the Republican Party argued that since, if convicted and sentenced, Mr. Forsythe would not qualify for office, under the provisions cited in their challenge, and that he had requested his name be taken off the ballot, which should result in his name being removed. Further, they argued that it would not be fair to the voters or the party, to have the name of such a person on the ballot, and the party should be allowed to designate a replacement candidate. They stated that there was a qualified and interested candidate available, who had run a write-in campaign for the primary, but who had not received more votes than Mr. Forsythe, whose name had appeared on the primary ballot. In answer to questions, they stated that running a run-in campaign in the general election is a much harder effort than supporting someone whose name is on the ballot.

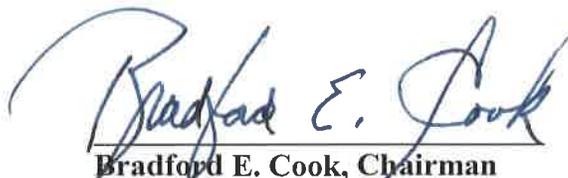
DECISION

New Hampshire law sets forth the bases on which a candidate's name can be removed from a ballot on which it has been placed after a legitimate filing which meets all requirements for office. If a candidate dies prior to the election, a substitute candidate can be named under the provisions of NHRSA 655:39. Otherwise, NHRSA 655:38 states the reasons a candidate can be

removed, which include not being of the requisite age, lack of required domicile in the district, or mental or physical disability, such an allegation requiring a supporting statement by a licensed doctor confirming the condition. In this case, it is admitted that Mr. Forsythe qualified for office when he filed his declaration of candidacy for re-election. The facts of his arrest, resignation and treatment are not contested. The fact that he has not been tried, has not pleaded guilty to the charges, and has not been sentenced are not contested. He has not established domicile outside his legislative district, and has not "made oath...that he...does not qualify for the public office which he...seeks because of age, domicile, incapacitating physical or mental disability acquired subsequent to the primary...accompanied by a letter from a licensed physician confirming such a condition." These all are required by NHRSA 655:38 if a candidate's name is to be removed from a ballot.

While Commission members may be sympathetic with the conclusion made by the Republican Party, that the candidate whose name is listed on the ballot should not be there, or should not be elected, and it might be preferable for a different candidate to be presented to the voters, the Commission and the Secretary of State are constrained by the provisions of the laws passed by the legislature. None of the statutory reasons for removal of the name from the ballot have been met in this case. The logic presented that since Mr. Forsythe may be convicted of a felony in the future, and if he is, his affidavit provided when he filed for office would somehow be contradicted retroactively, is creative, but fails as a matter of law to require his removal from the ballot. If any of the reasons stated by the statute are met in the future, to the satisfaction of the Secretary of State, his name can be removed and a substitute candidate named. However, that is not the case at present, so the Commission is not authorized, and therefore cannot, remove his name now. Unless the facts change, it will remain on the ballot.

SO ORDERED.



Bradford E. Cook, Chairman

David Campbell

Michael R. Eaton

Kathleen Sullivan

Robert LeTourneau

9-21-2020