

STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION

Appeal of John J. Babiarz

BLC 2017-1

**BACKGROUND:** At the 2016 general election, the Libertarian Party candidates obtained sufficient votes to allow that party to be recognized along with the Democratic and Republican Parties, as one of the officially recognized political parties in New Hampshire, for registration and ballot law purposes. On May 8, 2017, the Governor and Executive Council set a special election for Grafton District 9, when a vacancy was declared for the House of Representatives in that district, which is made up of the Town of Grafton and several adjoining municipalities. John J. Babiarz, a registered voter in the town of Grafton, registered as “undeclared” since the Libertarian Party of which he is a member was not a recognized party until after the November election, sought to run for the open seat in the special election, as a Libertarian. On May 22, he went to the town clerk of Grafton and sought to change his registration from undeclared to Libertarian, and was refused since the clerk informed him that this was not possible, notwithstanding the provisions of NHRSA 654:34-a, which provides that the town clerk shall accept applications for the change of party registration, later to be submitted by the clerk to the Supervisors of the Checklist.

On May 26, Mr. Babiarz went to the Secretary of State’s Office in order to file his declaration of candidacy, but did not file it when he realized that he had to sign an affidavit that he was a registered voter in the Libertarian Party, and, because of the actions of the town clerk, cited above, prohibited that from being true, and he did not want to commit perjury. The result was he was to go back to the town clerk and try to sort it out, which he did, but which was not successful, the town clerk continuing to refuse to accept his change of party registration.

On May 30, 2017, Mr. Babiarz appealed to the Ballot Law Commission for relief, seeking to be able to run.

The Ballot Law Commission held a hearing on the matter in Concord on June 13. At the hearing, Mr. Babiarz and Deputy Secretary of State David Scanlan, testified to the facts set forth above. There did not seem to be any dispute about the facts.

DECISION

The statutory design of the election process in New Hampshire contemplates that registered voters have the opportunity to change party affiliation in order to run for office in the party of their choice, and vote in the party primary of their choice, if they elect the party or change party affiliation in time periods set forth in the statute. This is clearly set forth with time periods keyed to primary and general elections which are held every two years for the New Hampshire House of Representatives. Supervisors of the checklist are required to meet in order to deal with requests for such changes, submitted directly or through town or city clerks.

Unfortunately, the statutory system does not require such meetings in connection with special elections. This appears to be an oversight in the statute. Because of this, Mr. Babiarz was not provided the same opportunity in connection with a special election he would have had if he sought to run in a regular primary election. Assumedly, also, he would have been registered as a Libertarian if that party had been officially recognized prior to the 2016 election. As it was not, however, he could not register. His first practical time to seek to register was when the special election opportunity arose. He was not allowed to do so, the result of which was he could not in good faith sign the declaration of candidacy form. He was in a "Catch-22" situation.

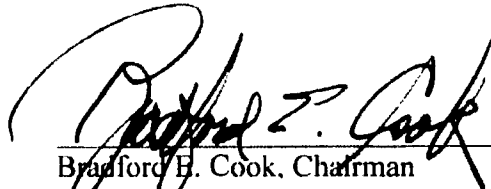
The Commission believes that the appropriate remedy in this situation is for the Secretary of State to accept the declaration of candidacy form from Mr. Babiarz, notwithstanding the fact that he is not technically registered as a Libertarian, and that he proceed with his town clerk and supervisors of the checklist, to change his party registration to Libertarian. The Commission has this authority under its power to rule on candidacy filings, RSA 665:7.

### ORDER

The Ballot Law Commission hereby orders the Secretary of State to accept the declaration of candidacy of John J. Babiarz as a candidate of the Libertarian Party in the special election in Grafton District 9, and directs Mr. Babiarz to proceed to change his party registration to Libertarian in the ordinary course.

SO ORDERED.

June 13, 2017



Bradford B. Cook, Chairman

Michael Eaton

Dean Eggert

Sheila Francoeur

Beverly Hollingworth