

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Appeal of Neil Misra**

**BLC 2020-1**

**BACKGROUND**

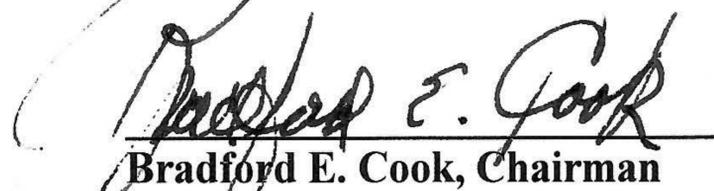
Neil Misra is a lifelong resident of Salem, New Hampshire. He currently is pursuing graduate studies at Oxford University, England. He decided to run in the Democratic Primary for state representative from Salem, and inquired about and received all of the forms to file as a candidate. In June, 2020, Great Britain was even more “locked down” due to the Corona-19 pandemic than the United States, and he found that he had trouble finding a notary to complete his filing forms, which needed to be received by the Salem Town Clerk by the end of the filing period, June 12, 2020. He knew of the requirement to file by mail so that the filing was received by the end of business on that day. This year, due to the pandemic, under Governor Christopher Sununu’s Emergency Executive Order 43, the provisions of NHRSA 655:16, which requires filing in person on the last day of the filing period, has been suspended, so such filing could be done by mail. Mr. Misra eventually obtained the notary signature and seal, completed the required filing fee, filing declaration and financial disclosure form, and took them to the United Parcel Service office, and determined that the most efficient delivery was two-day delivery. He paid for the UPS delivery, and was told the package would be delivered on June 10, two days ahead of the end of the filing period. Later, he received notice from UPS, that the delivery would be delayed by a day. Still later, her received notice there would be another day delay, resulting in the package not being delivered until the last day of the filing period. Each time, he notified the town clerk to watch for the delivery, so he would be sure it would be received in a timely manner. Unfortunately, the ultimate delivery was not made until June 15, the next business day after the end of the filing period. Mr. Misra, contending he had done nothing wrong, and, moreover, had done everything he could do to comply with the statute, appealed the decision of the Secretary of State, that the filing was not valid, since it was received after the end of the filing period. The Ballot Law Commission considered the case on a Zoom hearing call, on June 25.

**DECISION**

NHRSA 655:14 sets the filing period for office as “...between the first Wednesday in June and the Friday of the following week...” In 2020, that was June 3-12. NHRSA 655:15 requires that a filing for state representative be made with the town clerk. NHRSA 655:16, as noted, requires last day filings to be in person, but that requirement has been waived by the Governor’s Emergency Executive Order 43. The Order does not extend the filing period, or qualify a candidate whose mailing is postmarked or otherwise indicated to have been mailed or sent by overnight express prior to the close of the filing period. The members of the Commission are totally sympathetic with the petitioner’s plight. Having done everything

according to the rules, and having been frustrated by the unavailability of a notary and the delay in delivery, both ostensibly due to the Covid-19 pandemic, he still was unable to comply with the requirements of statute, in order to be placed on the ballot to run for the New Hampshire House of Representatives. The facts in this matter are not in dispute. No agency of New Hampshire government was unavailable or other made the filing impossible. The Secretary of State applied the law as the legislature has written it, as adjusted by Emergency Executive Order. The law says filing papers have to be received by the end of the last day of the filing period. There is no “intent” or “guilt or innocence” standard applicable if a candidate’s filings are not so received. This Commission has the power to find the facts and apply the law differently than those whose decisions are appealed. However, we are not entitled to amend the laws passed by the legislature. We cannot disagree that the law was properly applied by the Secretary of State in this case. Therefore, while we may wish it to be otherwise in this sympathetic case, the Commission finds that the filing of Neil Misra was untimely, and uphold the decision of the Secretary of State in denying him a place on the ballot in the September Democratic Primary in Salem.

**SO ORDERED.**

  
**Bradford E. Cook, Chairman**  
**Michael R. Eaton**  
**Bobby Stephen**  
**Robert LeTourneau**

June 25, 2020

Commission Member David Campbell dissented, in the following dissenting opinion:

The facts in this appeal are not in question. Both the Salem Town Clerk and Secretary of States’ Office acted properly. The Petitioner encountered an unfortunate set of circumstance that caused his late filing for State Representative, which were directly attributable to the Covid-19 pandemic negatively impacting the UK, where he is attending school, the US and the UPS international mailing service.

The question posed at the hearing was did the Ballot Law Commission (BLC) have the authority to rule in favor of the Petitioner. The majority ruled that it did not; based on a narrow, and granted, more time-honored interpretation of RSA 665:7, which states that the BLC shall “hear and determine...whether...[filing] disputes...conform with the law.” The same section goes on to state: “The decision of the ballot law commission in such cases shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.” The legislature in establishing the BLC under RSA: 665 included this phrase four other times, twice under RSA 665:6 General Duties.

The minority believes that the BLC had the authority to rule in favor of the Petitioner based on the fact that the legislature specifically and repeatedly conferred on the BLC the power to decide “questions of both law and fact, and no court shall have jurisdiction to review such decision.” The BLC is truly a “quasi-judicial’ entity. As such, the minority respectfully dissents and asserts that the BLC had the ability to reasonably extend a missed filing deadline because of

an extraordinary and non-precedent setting set of circumstances (a global pandemic) with no contributing negligence by the Petitioner.

The introduction of legislation to allow reasonable and non-negligent filing extensions made by mail due to certain circumstances on a case-by-case basis may be worth consideration