

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Appeal of Kristi St. Laurent

BLC 2020-7

BACKGROUND

By letter to Secretary of State William Gardner, Kristi St. Laurent, of Windham, New Hampshire appealed from a recount of votes for state representative, which recount was conducted by the Secretary of State on November 12, 2020. The town of Windham has four representatives to the New Hampshire House of Representatives, and in the general election held November 3, 2020, all four Republican candidates received more votes than the four Democratic candidates. The margin between the number of votes received by the Republican candidate with the lowest vote, Julius F. Soti, and the highest vote received by a Democrat, appellant St. Laurent, was 24 votes, 4480 to 4456. Ms. St. Laurent requested the recount.

At the recount, the results changed markedly, Soti receiving 4,777 votes, and St. Laurent receiving 4357. The other Republican candidates received similarly large increases, with the other three Democrats receiving slightly more votes than the election night totals.

As a result of the recount, Ms. St. Laurent appealed to the Ballot Law Commission, stating, "As you know, the results as reported in this race seem to be unique. The hand-count results from the recount were inconsistent with the results reported from the machine count that occurred on Election Day to an extent and in a manner that raise significant questions of potentially systemic import. Within a margin of 3 votes (which almost certainly reflect ballots that were unable to be read by the machines), each of the Republican candidates received counts that were 300 more than reported from the machines. I was the highest-ranking Democrat in the machine count and received 99 votes less in the hand count (again within a margin of 3 of a multiple of 100)." She posited that there were only two explanations, either a mistaken setting of the machines' counting mechanisms, or a double-counting of votes during the recount. Since one of the potential causes was a malfunction of the machine count, and the Ballot Law Commission has jurisdiction over voting machine selection, NHRSA 665:8, she asked that the Commission review the functioning of the machine and order that all such machines in the state be secured and their counting devices not reset, until an examination could take place. Further, she requested that the candidates be allowed to inspect rejected absentee ballots to see if there were further votes which should have been counted, and that the results of the election not be finalized until after all such actions occurred.

The Ballot Law Commission met, as required by statute, on November 23, 2020, and held a hearing on the appeal. Prior to hearing, the Republican State Committee, through counsel, filed a motion to dismiss the appeal, claiming lack of jurisdiction to provide the requested relief, and Ms. St. Laurent, through counsel, objected to the motion.

At the hearing, Ms. St. Laurent confirmed that the appeal concerned only the race between her and candidate Soti. When presented with the proposition that the Commission may

not have jurisdiction to order the action regarding all voting machines she requested, or the capacity or jurisdiction to conduct a general review of the election process to determine if there was improper conduct, she stated that her request was that the Ballot Law Commission request the Attorney General's Office to conduct a general review and investigation of the machines and conduct of the election. At the hearing, various officials of the town, and representatives of the Secretary of State's Office, testified as to the conduct of the election and the recount, with no witness alleging fraud or intentional misconduct on the part of anyone, but agreeing that the degree of variance from the machine count to the hand count was unusual.

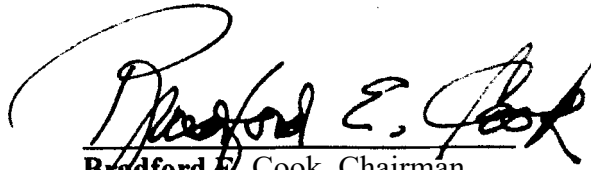
After hearing evidence, the Commission voted unanimously to review the rejected absentee ballots, to determine if they could possibly alter the outcome of the election, if Ms. St. Laurent were given the benefit of her highest vote count, that of the machine count, and Mr. Soti was given the lowest count, his machine count, with the difference being twenty-four votes. It was noted that the rejected absentee ballots had in fact been present and reviewed in Concord previously, with representatives of the parties present. The Commission reviewed each ballot, and segregated those which were questionable as to whether they should have been counted, but were not, for various reasons. The Commission did not view individual ballots, to avoid knowing for whom the voter voted, if there was a completed ballot in the envelope, but examined the outer envelopes and inner envelopes only. As a result, there were fifteen ballots which the Commission believed could require further inquiry, but even if all fifteen had voted for Ms. Laurent, and if the Commission were to hold that the machine count controlled, the result would not have changed. As a result of this review, all of the testimony, and advice to the Commission from its counsel that it did not have the statutory power to order another recount of the votes, the Commission voted unanimously to uphold the results of the recount.

The Commission also received a copy of a letter from counsel to the town, dated November 19, 2020, addressed to Attorney General Gordon J. MacDonald, asking that his office conduct a review and investigation into the election conduct and machine count, and the variance in question in the voting for state representative. As a result of the testimony received, and virtual unanimity of all those testifying, the Commission also voted unanimously to request the Attorney General to look into the functioning of the voting machines on election day, and to join in the request of the town for a general review and investigation of the circumstances involved.

DECISION

The Ballot Law Commission has only those powers granted to it by the Legislature. It has no general investigative power or authority to conduct general reviews of the conduct of elections, nor can it order a second recount of votes. Our authority over recounts is limited to a review of the recount of votes, and, in cases such as this, to determine if ballots not included in the count should have been included. In performing this duty, and reviewing the facts, especially in a matter in which there was no allegation of wrong-doing or fraud, the Commission finds there was no evidence on which to question the outcome of the recount, and there were no votes not counted which could change the result. Therefore, the results of the recount are upheld. Further, as noted, the Commission asks that the Attorney General be requested to review the operation of the voting machines in Windham, and conduct a general review of the conduct of the election, to see if it can determine the reasons for the unusual variation between the machine and hand counts.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Bradford E. Cook", written over a horizontal line. The signature is stylized and cursive.

Bradford E. Cook, Chairman

David Campbell

Michael R. Eaton

Kathleen Sullivan

Robert LeTourneau

11/25/2020