

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-5**

**Appeal of Benjamin Weir**

**BACKGROUND**

Benjamin Weir, of Pittsfield, New Hampshire, moved to New Hampshire earlier this year. Once here, he decided to run for sheriff of Merrimack County as an unaffiliated (Independent) candidate. In order to do so, he completed a voter registration form on June 9, 2022, and filed his declaration of candidacy, with supporting documentation, on June 10, 2022, with the Pittsfield Town Clerk. The filing deadline was that day. When his documentation was received by the Secretary of State's Office, the officials compared his filing with the list of registered voters, and, not finding him on the list, rejected his filing. He appealed that finding to the Ballot Law Commission. The Commission heard his case on August 24, 2022.

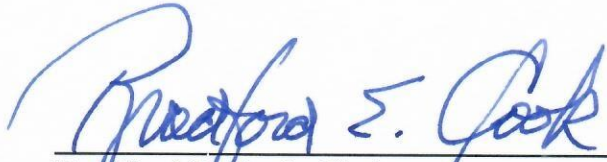
**DECISION**

From testimony received, it is clear that Mr. Weir did everything he needed to do to qualify for placement on the ballot in November as an independent candidate. There is no issue with his supporting documentation, or his declaration of candidacy. However, his status as a registered voter, which he is required to be, was the reason for his rejection. The Commission has considered his arguments, that he did all he was required to do, submitted his form, and his declaration of candidacy, and it is only due to the circumstances of when the Supervisors of the Checklist were to meet, which kept him from being on the list of registered voters. Indeed, later, the supervisors met, found him to be a qualified voter, added him to the voter list, and did so retroactively to the date of his filing (which apparently they cannot do). As his registration was pending, his candidacy was rejected.

This is a close case. A strict reading of the law would prohibit Mr. Weir from running from office, even though he did everything he could to qualify. The statutes relating to "registration" as a voter do not appear to prescribe that the applicant need do anything more than complete and submit his/her registration form to the Town Clerk in a timely manner, which Mr. Weir did. It is only the happenstance of when the Supervisors of the Checklist meet in his town which resulted in his being denied the opportunity to run. In the limited circumstances of his case, and not as precedent for future cases, each of which depends on its own facts, the equities of this situation dictate that he be allowed to be on the ballot. As can be seen from the vote on this case, two of the Commissioners believe that a strict reading of the law would prohibit Mr. Weir from running. While the majority disagrees with this analysis in this case, it is not an unreasonable reading of the law.

Benjamin Weir's request to be placed on the November ballot as an independent candidate for Merrimack County Sheriff is allowed and his name shall be placed on the ballot.

**So ordered.**

A handwritten signature in blue ink that reads "Bradford E. Cook". The signature is written in a cursive style with a large initial 'B'.

**Bradford E. Cook, Chairman**

**David Campbell**

**Eugene Van Loan, III**

8/26/22

**Dissenting: Robert LeTourneau and Michael Eaton**

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-6**

**Appeal of Hon. Jack Flannagan**

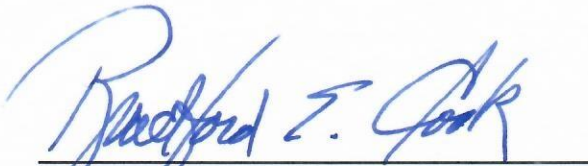
**BACKGROUND**

Jack Flannagan, of Mason, New Hampshire, declared his candidacy for the New Hampshire House of Representatives, in Hillsborough District 45, a so-called “floterial district” which contains four towns, and therefore four ballots on which his name would appear on the ballot. There is no issue with his filing or qualification for candidacy in his district. When the ballots were prepared by the Secretary of State, it was apparent that his name appeared second on each ballot, when the Secretary complied with law on placement of names, with the other candidate for nomination on the Republican ballot, appearing first on each of the four. This was done on the basis of the requirements of NHRSA 656:24 which required, “with the exception of the office of state representative” that candidates’ names be listed in alternating order so each candidate is in each position to the extent possible. Citing NHRSA 656:5-a and the general intent of the statutes, Mr. Flannagan appealed to the Ballot Law Commission, asking that his name be first on two of the four ballots in the four towns in which he is running, alleging that ballot position is known to influence results, the reason for the rotation requirement. The Ballot Law Commission heard his appeal on August 24, 2022.

**DECISION**

Mr. Flannagan, an experienced public servant, and candidate for office this year, argues the general policy of New Hampshire statute in favor of name rotation. Against his argument is the clear statements of statute, which exempt the office of state representative from the requirement of rotation of names on ballots. While this Commission might sympathize with Mr. Flannagan on what he wishes the legislature had specified in the law, it did not. The clear provisions of law set forth in NHRSA 656:24 and other statutes, exempt the office of state representative from the rotation requirement, so the action taking by the Secretary of State in setting up the ballot in Hillsborough District 45 is correct, and his appeal is denied.

**So ordered.**



**Bradford E. Cook, Chairman**

**David Campbell**

**Michael Eaton**

**Robert LeTourneau**

**Eugene Van Loan, III**

8/26/22

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-7**

**Appeal of Karen Steele**

**BACKGROUND**

Karen Steele submitted a request to the Ballot Law Commission, by e-mail to the Secretary of State on August 20, 2022, that those representatives to the General Court, who had sponsored or voted against a finding of “Inexpedient to Legislate” for CACR 32 in the 2022 session of the House of Representatives, which legislation proposed to submit a Constitutional Amendment seeking the secession of New Hampshire from the United States, be removed from the ballot under the provisions of the Fourteenth Amendment to the Constitution of the United States, Section 3. Seven representatives sponsored the legislation and thirteen voted against finding it Inexpedient to Legislate.

Section 3 of the Fourteenth Amendment, reads as follows: “No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.”

Ms. Steele presented testimony and materials from legal scholars on the meaning of the provision, and how it has been applied in the past, citing arguments that the provision was not limited to those in the Confederacy after the Civil War, which led to the Fourteenth Amendment. It was her contention that in proposing secession, and voting not to find such a proposal “Inexpedient to Legislate,” the representatives, now candidates, fit into Section 3, and forfeited their right to run for state office.

The Commission previously referred this question to its counsel in the Office of the Attorney General. Advice given the Commission in open hearing was that there was no precedent finding that either proposing or voting on legislation can constitute a violation of Section 3. Further, counsel advised that the jurisdiction of the Commission may not extend to deciding Federal Constitutional questions such as this. Members pointed out that the statutes governing the Commission’s jurisdiction and scope do not appear to extend to deciding questions such as presented in this case.

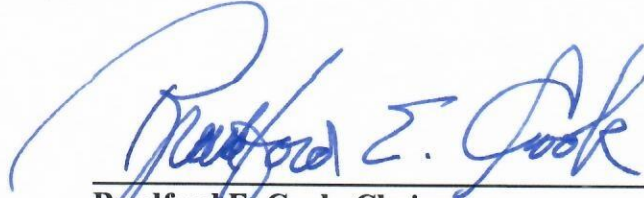
**DECISION**

The Ballot Law Commission finds that the actions about which the complaint is aimed, the sponsoring of a constitutional amendment and voting on it in the New Hampshire House of

Representatives, involve determining whether there is a violation Section 3 of the Fourteenth Amendment to the United States Constitution, and, further, that its jurisdiction to decide such matters is in question, so that it may not have the authority to decide such questions. Therefore, the request of Karen Steele that certain candidates for the office of representative to the General Court be removed from the ballot, is dismissed.

**So ordered.**

8/26/22

A handwritten signature in blue ink, reading "Bradford E. Cook". The signature is written in a cursive style with a large, looping initial "B".

**Bradford E. Cook, Chairman**

**David Campbell**

**Michael Eaton**

**Robert LeTourneau**

**Eugene Van Loan, III**

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-8**

**Appeal of Tara Faunce**

**BACKGROUND**

Tara Faunce, of Newbury, New Hampshire, who sought to run as an independent candidate for State Representative in Merrimack County District 7, appealed to the Ballot Law Commission when her supporting nomination forms signed by a sufficient number of assumed registered voters were rejected by the Supervisors of the Checklist in the Town of New London, denying her the right to run.

Ms. Faunce testified at the Ballot Law Commission hearing on August 24, 2022, that she collected supporting forms from voters in the towns of Newbury and New London, and had more than the required numbers which were submitted for verification by the Supervisors of the Checklist in both to in both towns in a timely manner, on July 28, well in advance of the August 11 deadline, so she could remedy any insufficiency in time, were any found. Her submission to Newbury was reviewed and she was informed that only four of them were rejected, on August 3. New London, due to vacations of officials, did not review her submission to it, until August 11, when she was informed that eleven of her supporting forms were rejected, leaving her two short of the one hundred fifty required. Upon inquiry, it appeared that New London had conducted a purge of its checklist, sending letters to voters who had not voted for four years, informing them they would have to confirm their intent to remain on the checklist, and some of her signers had not done so, and had been removed from the checklist, perhaps without their knowledge. Two of these subsequently reregistered to vote. Had they been registered voters, she would have had enough supporting forms.

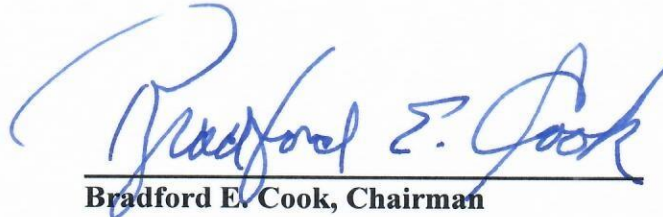
Ms. Faunce requested the Ballot Law Commission, under the circumstances, find that she had complied with the requirements, and should be placed on the November ballot as an independent candidate for office.

**DECISION**

The Ballot Law Commission finds that while Ms. Faunce tried diligently to comply with the somewhat onerous requirements to qualify as an independent candidate, she could have met the requirements for qualifying as a candidate by timely reviewing the checklists from Newbury and New London to determine whether her petition signatories were indeed registered voters, and she did not, and the burden was on her to meet the requirements set forth by the legislature in statute. As she did not meet these requirements as of the dates set forth in statute, her efforts failed, and her appeal is denied.

So ordered.

9/24/22

A handwritten signature in blue ink, reading "Bradford E. Cook". The signature is written in a cursive style with a large, looping initial "B".

**Bradford E. Cook, Chairman**

**David Campbell**

**Michael Eaton**

**Robert LeTourneau**

**Eugene Van Loan, III**

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-9**

**Appeal of Valerie Sarwark**

**BACKGROUND**

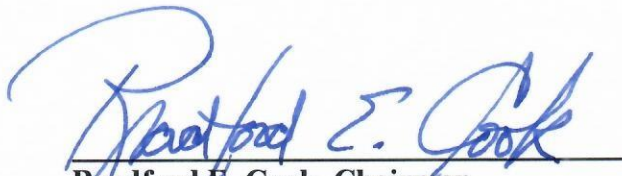
Valerie Sarwark, of Manchester, seeks to run an independent candidate for state representative from Manchester's Ward 2, Hillsborough County District 17. She collected supporting forms from people claiming to be registered voters, and submitted the forms to the Manchester City Clerk's Office. She testified to the Commission, that the review of the forms left her two short, but maintained that there had not been a sufficient review of the forms by the City Clerk to reach that conclusion. At the hearing, on August 24, 2022, Secretary of State David Scanlan offered to review the forms, and to contact the City Clerk to determine if the proper review had taken place, since the time for the submission to his office had not yet come. On the basis of this offer, the parties agreed to this process.

**DECISION**

The Ballot Law Commission, based on the proceedings described above, voted to table the request, pending the actions described, without prejudice to the right of the candidate to bring the matter before the Commission at a later date.

**So ordered.**

8/26/22



**Bradford E. Cook, Chairman**  
**David Campbell**  
**Michael Eaton**  
**Robert LeTourneau**  
**Eugene Van Loan, III**



**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Decision BLC 2022-10**

**Proposal of Secretary of State for Review of Ballot Counting Devices**

**BACKGROUND**

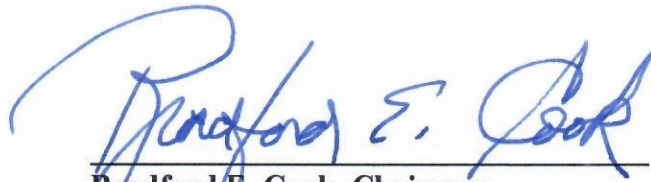
The Ballot Law Commission has authority to certify mechanical ballot counting devices for use in New Hampshire elections. It has been considering such new devices to add to the presently-authorized Accuvote devices, which have been in use for many years, and which are coming to the end of their useful life. Previously, two such additional devices have been reviewed by the Commission. The Secretary of State has proposed a process for the limited testing of these two devices in actual elections, which process also involves an audit of the results. (See proposed process submitted by Secretary of State David Scanlan, attached.)

The Ballot Law Commission heard the Secretary of State's proposed process at its meeting on August 24, 2022. Testimony also was given by Milford Town Moderator Pete Basiliere who had previously requested the right to use the Dominion device in Milford, which is one of the two under consideration, and requested at the present hearing that it be demonstrated as soon as possible, notwithstanding an issue of whether it can read the same ballot used by the Accuvote machine, which had been raised by the Secretary of State.

**DECISION**

The Ballot Law Commission, based on the proceedings described above, approves the process proposed by the Secretary of State for limited test use of the two mechanical ballot counting devices under consideration, with the revision that if a ballot can be prepared so both devices can be used in tests during in the 2022 general election, both devices can be tested at that time, as well as at municipal elections in 2023.

**So ordered.**



**Bradford E. Cook, Chairman**

**David Campbell**

**Michael Eaton**

**Robert LeTourneau**

**Eugene Van Loan, III**

8/26/22