

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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MICHAEL A. DELANEY
ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
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SECTION 5 VOTING SUBMISSION

TO: Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

DATE: July 19, 2010

RE: Submissions Under Section 5 of the Voting Rights Act for: **RSA 655:47**, Presidential Nominations; Declarations of Candidacy as amended by Laws of 1983 Chapter 298:1, Laws of 1994 Chapter 4:9, Laws of 1999 Chapter 161:3, Laws of 2006 Chapter 72:1, and Laws of 2009 Chapter 33:1.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973(c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits three prior amendments to **RSA 655:47**, Presidential Nominations; Declarations of Candidacy for preclearance by the U.S. Department of Justice.

Submission: In accordance with 28 CFR §51.27 and 51.28, the submission is as follows:

(a) A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting (new law).

Laws of 2009, Chapter 33:1, amending RSA 655:47, I. See attached Exhibit RSA 655:47, #1

Laws of 2006, Chapter 72:1, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #2.

Laws of 1999, Chapter 161:3, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #3

Laws of 1994, Chapter 4:9, amending RSA 655:47. See Attached Exhibit RSA 655:47, #4.

Laws of 1983, Chapter 298:1, amending RSA 655:47. See Attached Exhibit RSA 655:47, #5.

(b) A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended or otherwise changed (prior law).

RSA 655:47 as enacted in 1979 which has been previously precleared. See Attached Exhibit RSA 655:47, #6.

(c) A clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

These changes are submitted as part of New Hampshire's ongoing effort to preclear previously un-submitted changes to New Hampshire's election laws. The changes will be described starting with the changes to 1979 version, Exhibit 4.

The 1983 change, Exhibit #5, changes the route of access to the Presidential Primary ballot for candidates for nomination to the offices of President of the United States and Vice-President of the United States from a solely petition process to one also allowing candidates to gain ballot access by filing a "Declaration of Candidacy" for office with the Secretary of State.

Paragraph II of RSA 655:47 established a filing period running from not more than 74 days to not more than 60 days before the presidential primary.

The 1994 change, Exhibit #4, amended only paragraph II of RSA 655:47, changing the filing period to the period running from the first Monday in December to the Friday of the following week.

The 1999 change, Exhibit #3, also amended only paragraph II of RSA 655:47, changing the filing period to the period running from the first Monday in November to the third Friday in November.

The 2006 change, Exhibit #2, also amended only paragraph II of RSA 655:47, changing the filing period to allow the Secretary of State to set an alternative filing period. New Hampshire law, RSA 653:9, requires that the Presidential Primary be held “7 days or more immediately preceding the date on which any other state shall hold a similar election” The volatility of the dates of other states presidential primary elections lead to the General Court (NH Legislature) hereby authorizing the Secretary of State to choose the filing period necessary based on his determination of when the New Hampshire Presidential Primary will be held.

The 2009 change, Exhibit #1, amended paragraph I of RSA 655:47 to eliminate the office of vice-president of the United States from the filing form and thereby from the Presidential Primary ballot. This change removes the opportunity for individuals to seek nomination through the New Hampshire Presidential Primary as the nominee of their political party for the office of vice-president. Presidential candidates typically have not identified their choice for their political party’s nomination as the party candidate for vice-president at the moment in time when the New Hampshire Presidential Primary is held. Vice-Presidential nominees are now chosen by the national political parties at convention. Existing practice resulted in voters receiving ballots suggesting a meaningful opportunity to express a preference by voting for the individuals who sought nomination as their political party’s vice-presidential candidate or by writing in a selection when practically such votes had virtually no effect on the selection process. The duty to count and report votes for stand alone nominees for vice-president, particularly where write-in candidates were numerous, was onerous for local and state election officials. As the practice yielded little or no benefit and required significant resources, these changes to New Hampshire’s election laws ends the practice.

(d) The name, title, address, and telephone number of the person making the submission.

Orville B. Fitch II, Deputy Attorney General
New Hampshire Attorney General’s Office
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-1238

Between 8/1/2010 and 8/31/2010 contact:

Richard Head, Associate Attorney General
New Hampshire Attorney General’s Office
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-1248

(e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

Attorney General Michael A. Delaney
State of New Hampshire

(f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

Not applicable

(g) Identification of person or body responsible for making the change and the mode of decision (e.g. act of state legislature, ordinance of city council, administrative decision by the registrar).

This change is an act of the New Hampshire General Court, New Hampshire's state legislature, with approval of the legislation by the Governor of the State of New Hampshire.

(h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

The New Hampshire Constitution Part Second, Article 2, grants supreme legislative power within the state to the House of Representatives and Senate, who with a right to negate each other are granted power to make law through Part Second, Article 5. The legislature, through a bicameral process passed each Chapter Law set forth above. Each bill was signed into law by the Governor or allowed to become law without signature, pursuant to New Hampshire Constitution Part Second, Article 44.

(i) The date of adoption of the change affecting voting.

Laws of 2009, Chapter 33:1, amending RSA 655:47, I. See attached Exhibit RSA 655:47, #1 – May 15, 2009.

Laws of 2006, Chapter 72:1, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #2 – April 27, 2006.

Laws of 1999, Chapter 161:3, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #3 – June 29, 1999.

Laws of 1994, Chapter 4:9, amending RSA 655:47. See Attached Exhibit RSA 655:47, #4 – March 28, 1994.

Laws of 1983, Chapter 298:1, amending RSA 655:47. See Attached Exhibit RSA 655:47, #5 – June 18, 1983.

(j) The date on which the change is to take effect.

Laws of 2009, Chapter 33:1, amending RSA 655:47, I. See attached Exhibit RSA 655:47, #1 – July 14, 2009.

Laws of 2006, Chapter 72:1, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #2 – June 26, 2006.

Laws of 1999, Chapter 161:3, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #3 – June 29, 1999.

Laws of 1994, Chapter 4:9, amending RSA 655:47. See Attached Exhibit RSA 655:47, #4 – May 27, 1994.

Laws of 1983, Chapter 298:1, amending RSA 655:47. See Attached Exhibit RSA 655:47, #5 – August 17, 1983.

(k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

Laws of 2009, Chapter 33:1, amending RSA 655:47, I. See attached Exhibit RSA 655:47, #1 has not been enforced or administered.

Prior changes to RSA 655:47 have been enforced and administered.

(l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

This change affects the entire State of New Hampshire.

(m) A statement of the reasons for the change.

Laws of 2009, Chapter 33:1, amending RSA 655:47, I. See attached Exhibit RSA 655:47, #1. This change removed the office of vice-president of the United

States as a stand alone office on filing forms and the ballot. The purpose of this change was to provide voters with a more meaningful and more easily understood ballot. It will also reduce the burden on local and state election officials by eliminating the need to count and report votes for this office.

Laws of 2006, Chapter 72:1, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #2. This change provided the Secretary of State with authority to set the filing period to a period different than the November dates established in 1999. This allows the Secretary of State with authority to set the filing period early enough to afford the time necessary for administration of the Presidential Primary election while potentially setting the date of the election at a later moment in time.

Laws of 1999, Chapter 161:3, amending RSA 655:47, II. See Attached Exhibit RSA 655:47, #3. This change moved the filing period back one month to provide a timely filing period in circumstances where the date of the Presidential Primary was occurring earlier and earlier due to other states moving their primaries to an earlier date.

Laws of 1994, Chapter 4:9, amending RSA 655:47. See Attached Exhibit RSA 655:47, #4. This change altered the dates of the filing period to reflect the volatility of the date of the Presidential Primary. It set a fixed date in December for the filing period to reduce uncertainty regarding when the filing period would occur. This allowed the Secretary of State the option to set the date of the Presidential Primary without the need to factor in holding the filing period a fixed number of days before the Primary.

Laws of 1983, Chapter 298:1, amending RSA 655:47. See Attached Exhibit RSA 655:47, #5. This change reflected a change in the ballot access process in New Hampshire for the Presidential Primary adding an alternative to nominating papers by allowing candidates to file a Declaration of Candidacy with the Secretary of State.

(n) A statement of the anticipated effect of the change on members of racial or language minority groups.

There is no anticipated adverse effect on members of racial or language minority groups.

(o) Identify any past or pending litigation concerning the change or related voting practice.

See *Libertarian Party of New Hampshire v. Gardner*, Order of the United States District Court For The District Of New Hampshire, Exhibit RSA 655:47, #7. This case is currently on appeal to the First Circuit.

(p1) A Statement that the prior practice has been precleared, with the date, or is not subject to the preclearance requirement and

RSA 655:47 was precleared for changes through 1979 on 6/22/2004 by Department of Justice non-objection letter 2004-2563, 2581, 2582. A change to this statute in 2010 is being submitted for preclearance simultaneously with this submission, see submission Laws of 2010, Chapter 50.

(p2) A statement that the procedure for the adoption of the change has been precleared, with the date, or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

New Hampshire's Constitution, in its current form, was adopted June 2, 1784, four years before the United States Constitution took effect upon its ratification by New Hampshire on June 21, 1788. No amendments to Part Second, article 2 or Part Second, article 44 have occurred since 1784, therefore the authority for adopting law changes predates New Hampshire's ten towns becoming subject to Preclearance on effective November 1, 1968.

(q) For redistrictings and annexations.

Not applicable.

(r) Supplemental

None.

§51.28 (g) Public notice that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection and invites comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

Exhibit A is a copy of a press release issued July 19, 2010 announcing the 2010 round of Preclearance submissions, the availability of copies at the New Hampshire Attorney General's Website and Office, and inviting comments to the United States Attorney General.

RSA 655:47

July 19, 2010

Page 8 of 8

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Deputy Attorney General
bud.fitch@doj.nh.gov
(603) 271-1238
OBF/psm

Attachments

CC: Secretary of State William M. Gardner

492674.doc



CHAPTER 33
HB 35 – FINAL VERSION
2009 SESSION

09-0018

03/09

HOUSE BILL 35

AN ACT eliminating the office of vice-president from the presidential primary ballot.

SPONSORS: Rep. Vaillancourt, Hills 15; Rep. Drisko, Hills 5; Rep. Jasper, Hills 27;
Sen. Barnes, Jr., Dist 17; Sen. Gatsas, Dist 16

COMMITTEE: Election Law

ANALYSIS

This bill eliminates the office of vice-president from the presidential primary ballot.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09-0018

03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT eliminating the office of vice-president from the presidential primary ballot.

Be it Enacted by the Senate and House of Representatives in General Court convened:

33:1 Declaration of Candidacy. Amend RSA 655:47, I to read as follows:

I. The names of any persons to be voted upon as candidates for president [~~and vice-president~~] at the presidential primary shall be printed on the ballots upon the filing of

declarations of candidacy with the secretary of state in the following form and signed by the candidate:

I, _____, declare that I am domiciled in _____, in the city (or town or unincorporated place) of _____, county of _____, state of _____, and meet the qualifications for the office [~~for which I am a candidate~~] **of president**; that I am a registered member of the _____ party; that I am a candidate for nomination for the office of [_____] **president** to be made at the primary election to be held on the _____ day of _____; and I hereby request that my name be printed on the official primary ballot of said _____ party as a candidate for such nomination.

~~33:2 Fees. Amend RSA 655:48 to read as follows:~~

~~655:48 Fees.~~

~~I. No candidate for the office of president [~~or vice-president~~] shall have his or her name placed on the ballot for the presidential primary unless the candidate shall pay to the secretary of state at the time of filing the declaration of candidacy a fee of \$1,000.~~

~~II. Any person otherwise qualified to run for president [~~or vice-president~~], who is unable to pay the filing fee as prescribed in paragraph I by reason of indigence may, after proving such indigence, have his or her name printed on the presidential primary ballot of any party by filing with the secretary of state 10 primary petitions from each county of the state signed by registered voters of the party, who are domiciled in New Hampshire, together with one written assent to candidacy pursuant to RSA 655:25. The primary petition shall be in substantially the following form:~~

State of New Hampshire

I do hereby join in a petition for the printing on the presidential primary ballot of the name of _____ whose domicile is in the city (town) of _____ (street and number and ward if in a city) _____, in the county of _____, state of _____, for the office of [_____] **president** to be voted for on Tuesday, the _____ day of _____, 20____, and certify that I am qualified to vote for a candidate for said office, that I am a registered member of the _____ party, and am not at this time a signer of any other similar petition for any other candidate for the above office.

Voter's Signature _____

Print Voter's Name _____

Voter's Domicile _____

street address

Town or City (Ward)

Voter's Mailing Address _____

street address

Town or City Zip Code

I certify that the signer above is a registered member of the _____ party and a registered voter in the town/city of _____.

Date of Filing _____

Signature of Town (City) Clerk _____

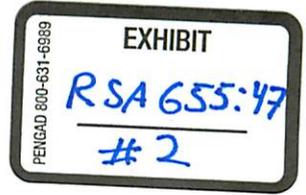
33:3 Voting Materials; Form. Amend RSA 656:31 to read as follows:

656:31 Form. On the presidential primary election ballot of each political party, there shall be one column for the office of president ~~[and one for the office of vice-president]~~. The ~~[columns]~~ **column** shall be headed "Candidate of the (insert name of party) Party for President ~~[(or Vice-President)]~~ of the United States." Underneath this heading there shall appear the words: "I hereby declare my preference for candidate for the office of President ~~[(or Vice-President)]~~ of the United States to be as follows." Below these words, there shall be printed "(VOTE FOR NOT MORE THAN ONE)" followed by the name, town or city, and state of each candidate with boxes directly to the right. There shall always be one blank space on the ballot below the candidates' names to allow for writing in the name of a candidate. ~~[If no one files for the office of vice-president, that office shall not be listed on the ballot.]~~

33:4 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 15, 2009

Effective Date: July 14, 2009



CHAPTER 72

HB 1125 – FINAL VERSION

15Feb2006... 0445h

2006 SESSION

06-2942

03/10

HOUSE BILL ***1125***

AN ACT relative to the filing period for candidates at the presidential primary.

SPONSORS: Rep. Splaine, Rock 16

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill permits the secretary of state to change the filing period for candidates at the presidential primary.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

15Feb2006... 0445h

06-2942

03/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT relative to the filing period for candidates at the presidential primary.

Be it Enacted by the Senate and House of Representatives in General Court convened:

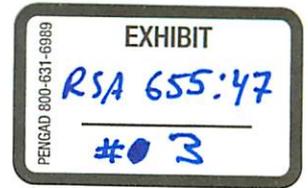
72:1 Presidential Nominations; Declaration of Candidacy; Filing Period. Amend RSA 655:47, II to read as follows:

II. Declarations of candidacy shall be filed between the first Monday in November and the third Friday in November, ***or during such other time period as the secretary of state shall announce.***

72:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: April 27, 2006

Effective: June 26, 2006



CHAPTER 161
 HB 399 - FINAL VERSION

9june99.....1304h

6/24/99 1786s

1999 SESSION

99-0347

03/02

HOUSE BILL 399

AN ACT allowing the secretary of state to have flexibility in moving the date of New Hampshire's presidential primary and changing the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary.

SPONSORS: Rep. Splaine, Rock 34; Rep. Flanagan, Rock 14

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill permits the secretary of state to select a date for the presidential primary which is on a Tuesday 7 days or more prior to a similar election in any other state and provides that the presidential primary may be held in the year prior to a presidential election year. This bill also changes the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary election from December to November.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

9june99.....1304h

6/24/99 1786s

99-0347

03/02

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT allowing the secretary of state to have flexibility in moving the date of New Hampshire's presidential primary and changing the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary.

Be it Enacted by the Senate and House of Representatives in General Court convened:

161:1 Findings and Purpose. The general court finds that it is imperative to support the tradition of the New Hampshire first-in-the-nation presidential primary and to encourage candidates to honor the law which requires that New Hampshire's primary precede any similar election by 7 days. New Hampshire has held its presidential primary 7 or more days before the primary of any other state since at least 1920, and has statutorily required such precedence since 1976. However, recent efforts by other states to usurp New Hampshire's first-in-the-nation primary status necessitate legislative action to preserve the history, integrity, and tradition of the New Hampshire primary. In lieu of substantial changes to the law of this state, however, the general court prefers to rely on the cooperation of candidates willing to declare their support for the first-in-the-nation primary tradition by pledging not to file or campaign in any state that holds its primary within 7 days of New Hampshire. It is therefore the intent of the general court to encourage candidates to honor the New Hampshire primary tradition, while establishing greater flexibility for the secretary of state in determining the presidential primary date.

161:2 Elections; Election of Officers and Delegates; Election Dates; Presidential Primary Election; Selection by Secretary of State. Amend RSA 653:9 to read as follows:

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on ~~the~~ *a Tuesday selected by the secretary of state which is [at least] 7 days or more immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected or the year previous.* Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose.

161:3 Elections; Nominations; Presidential Nominations; Declaration of Candidacy; Filing Period. Amend RSA 655:47, II to read as follows:

II. Declarations of candidacy shall be filed between the first Monday in ~~December and the Friday of the following week~~ *November and the third Friday in November.*

161:4 Effective Date. This act shall take effect upon its passage.

(Approved: June 29, 1999)

(Effective Date: June 29, 1999)

18feb93.....1374h

2/3/94.....3845s

3/17/94.....5659B-EBA

LAWS OF 1994
CHAPTER 4
- SEE: SECTION 9



HOUSE BILL - FINAL VERSION

1994 SESSION 0835B

93-0492

10

HOUSE BILL NO. 514

INTRODUCED BY: Rep. Gilmore of Straf 11; Rep. Flanagan of Rock 14

REFERRED TO: Constitutional and Statutory Revision

AN ACT amending the election laws relative to the political calendar and election ballots.

AMENDED ANALYSIS

This bill amends the statutory authorization for the secretary of state by specifying that the secretary of state's duties shall be those of both a legislative branch as well as an executive branch officer. The bill also changes the election laws by:

- (1) Amending the dates in the political calendar used by the secretary of state to administer the election laws.
- (2) Changing the number of state primary election ballots which must be furnished by the secretary of state to cities and towns.
- (3) Changing the time for placing and removing political advertising.
- (4) Changing certain penalty provisions for the violation of RSA 664.
- (5) Changing the fine which must be paid by candidates for the failure to file reports on political expenditures and contributions.
- (6) Clarifying which checklist shall be used at village district elections.
- (7) Changing the procedure for determining the qualifications of an applicant for voter registration.

EXPLANATION: Matter added appears in *bold italics*.

PP 1 70 2002

Matter removed appears in [brackets].

Matter which is repealed and reenacted or all new appears in regular type.

0835B

93-0492

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18feb93.....1374h

2/3/94....3845s

3/17/94.....5659B-EBA

CHAPTER 4

HOUSE BILL - FINAL VERSION

HB 514

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and ninety-four

AN ACT

amending the election laws relative to the political
calendar and election ballots.

Be it Enacted by the Senate and House of Represen-
tatives in General Court convened:

4:1 Duties of Secretary of State. Amend RSA 5:1, I to read as follows:

I. There is hereby established a department of state under the executive direction of the secretary of state. The secretary of state shall be chosen biennially in the manner directed in the constitution and in accordance with RSA 14:2-b and shall hold office until a successor is elected and assumes the duties of the office. ***The secretary of state's duties shall be those of both a legislative branch as well as an executive branch officer.*** The penal sum of his bond shall be \$10,000, and the sureties upon it must be satisfactory to the governor and council.

4:2 Computation of Time Period. Amend RSA 652:18 to read as follows:

~~652:18 Days Excluded. When a period or limit of time is to be reckoned~~

from a day or date, *using the formula "at least" or "within,"* that day or date and the day on which an act should occur shall be excluded from the computation of the period or limit of time.

4:3 Determining Qualifications of Person to Vote. Amend the introductory paragraph of RSA 654:12, I and RSA 654:12, I(a) to read as follows:

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, may require the applicant to present [any one of the following from each qualification category] **proof of citizenship, age, and domicile, as provided in the following categories:**

(a) Citizenship. *The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship:* the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Date:

CITIZENSHIP AFFIDAVIT

Name:

Name at birth if different:

Place of birth:

Date of birth:

I hereby swear, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.

.....

(Signature of applicant)

The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.

4:4 Time for Hearings on Alternations to Party Registration. Amend RSA 654:32 to read as follows:

654:32 Hearings on Alterations to Party Registration. Before each state or presidential primary election, the supervisors of the checklist shall be in session before each primary for the change of registration of legal voters as provided in RSA 654:34 or 654:34-a or both. Before the presidential primary, the session shall be on the [day] **Friday** preceding the first day of the filing period, between 7 p.m. and 9 p.m.

Before the state primary election, the session shall be on Tuesday before the first Wednesday in June between 7 p.m. and 9 p.m.

4:5 Time for Verification of Checklists. Amend the introductory paragraph of RSA 654:38 to read as follows:

On petition of 50 registered voters or 5 percent of the registered voters in any town or ward, whichever is less, or on petition of a majority of the board of supervisors of the checklist filed with the secretary of state [within 30 days] **no later than the fifth Friday** after a state election, the ballot law commission shall conduct an investigation to determine whether or not there should be a revision and verification of the checklist of said town or ward. At least one public hearing duly advertised in a newspaper of general circulation in said town or city shall be held by the commission at such time and place it may determine. In the event of an affirmative decision, the commission shall direct the supervisors to revise and verify such checklist. Thereupon the supervisors shall revise and verify such checklist in the following manner:

4:6 Time for Filing Petition; Straw Candidates. Amend RSA 655:31 to read as follows:

655:31 Straw Candidates. No person shall be a candidate for nomination at any primary unless his candidacy is bona fide and is filed for the actual purpose of personally seeking the nomination. Any candidate for nomination whose name is to be voted upon at primary election may, [within 3 days] **no later than the Wednesday** after the last day for filing declarations of candidacy and primary petitions, file a petition with the ballot law commission alleging that one or more candidates for the same nomination is not a bona fide candidate. Upon receipt of such a petition, the commission shall notify in writing all candidates of that party for the same nomination of the time and place for its hearing. After such hearing, the ballot law commission shall have the power and duty to order stricken forthwith from the primary ballot the name or names of any candidate or candidates for said nomination if the commission finds that such candidate or candidates is obviously not a bona fide candidate, obviously having filed not primarily for the purpose of seeking the nomination but primarily for the purpose of drawing votes which might otherwise be cast for some other candidate for the same nomination. The decision of the commission shall be final as to questions both of law and fact, and no court shall have jurisdiction to review such decision.

4:7 Time for Filling Office Vacancy on Party Ticket. Amend RSA 655:37 to read as follows:

655:37 Vacancy for Office on Party Ticket. If, after the holding of a state primary election, a vacancy exists for any office on a party ticket, such vacancy may be filled as provided in this section. The appropriate party committee shall notify the secretary of state in writing of a person

they designate to fill the vacancy. The person so designated shall, no later than [10 days] **the second Friday** following the primary election, file with

the secretary of state a declaration of candidacy as provided in RSA 655:17 with the understanding that, where the form says primary election, it shall be construed to mean general election. If the candidate is designated for the office of governor, **executive** councilor, state senator or state representative, he shall also file, [before the expiration of 10 days] **no later than the second Friday** following the primary, the appropriate affidavit as provided in RSA 655:29. Any candidate who has not filed all the forms required by this section within the required period of time shall not have his name printed on the state general election ballot for that office.

4:8 Time for Making Objection to Nomination Papers. Amend RSA 655:44 to read as follows:

655:44 Objections. Nomination papers made in accordance with the provisions of this chapter shall be regarded as valid and shall be received by the secretary of state unless objection thereto is made in writing [within 3 days of] **no later than the Monday following** the last day for the filing of such papers.

4:9 Time for Filing Declaration of Candidacy; Presidential Nominations. RSA 655:47, II is repealed and reenacted to read as follows:

II. Declarations of candidacy shall be filed between the first Monday in December and the Friday of the following week.

4:10 Time for Filing Names of Delegates and Alternates to National Party Conventions. Amend RSA 655:50 to read as follows:

655:50 Selection of Delegates. Each presidential candidate who has filed pursuant to RSA 655:47 shall file with the secretary of state [not

more than 74 nor less than 44 days] **between the first Monday in December and the first Monday after the first Wednesday in January** before the presidential primary the names and addresses in alphabetical order of the delegates and their alternates, one alternate per delegate, who shall represent him as his delegation to the national convention.

4:11 Time for Delivering Ballots to Town and City Clerks. Amend RSA 656:20, I to read as follows:

I. The secretary of state shall send the state general election ballots in a sealed package to the town and city clerks so they shall receive them [at least 6 days prior to] **no later than Tuesday immediately preceding** the day of the state general election. The package shall be marked on the outside to clearly designate the town or city for which it is intended and the number of ballots enclosed. The secretary of state shall keep a record of the time when and the manner in which the packages were sent to the clerks and a record of the number of ballots so forwarded. A town or city clerk shall sign a receipt for the ballots received.

4:12 Time for Preparing Primary Ballots. Amend RSA 656:22 to read as follows:

656:22 Preparation. The official state primary election ballots shall be prepared by the secretary of state and shall be delivered by him to town and city clerks so that the ballots shall be received not later than [6 days before] **the Tuesday immediately preceding** the state primary election. Each town and city clerk, in the presence of at least one other legal voter, shall verify the contents of the ballot package as provided under RSA 656:20 and reseal the ballots for use on election day.

4:13 Number of State Primary Election Ballots Which must be Furnished. RSA 656:26 is repealed and reenacted to read as follows:

656:26 Number. The secretary of state shall furnish to each town or ward clerk the state primary election ballots of each political party in a number which he shall deem sufficient for voting in the state primary.

4:14 Time for Delivering Presidential Primary Ballots to Town and City Clerks. Amend RSA 656:29 to read as follows:

656:29 Preparation. [At least 6 days before any presidential primary election is to be held, the official presidential primary election ballot for each political party shall be sent by the secretary of state to the city and town clerks.] **The official presidential primary election ballot for each political party shall be sent by the secretary of state so as to be received by the city and town clerks no later than the Tuesday immediately preceding the presidential primary.** Each town and city clerk, in the presence of at least one other legal voter, shall verify the contents of the ballot package as provided under RSA 656:20 and reseal the ballots for use on election day.

4:15 Time for Preparing Separate Checklist. Amend RSA 658:12 to read as follows:

658:12 Checklist. Immediately after the establishment of an additional polling place and the creation of the voting district to be served thereby, the supervisors of the checklist shall prepare a separate checklist of the voters entitled to vote at such a polling place. Such separate checklist shall thereafter be posted and revised along with the checklist for the central polling place as provided in RSA 654. [At least 14 days] **No later than the Tuesday 2 weeks** before any state election, the supervisors shall post at the town or city clerk's office or at the town hall a true and attested copy of such list and shall, before the election, [lodge] **file** with the town clerk 2 copies of such list.

4:16 Time for Determining Hours of Polling in Cities. Amend RSA 659:4 to read as follows:

659:4 Hours of Polling in Municipalities. At all state elections in towns and cities the polls shall open not later than 11 o'clock in the [forenoon] **morning** and shall close not earlier than 7 o'clock in the evening. In cities, the city council shall determine the polling hours [at least] **no later than** 30 days prior to a state election.

4:17 Time for Forwarding Election Returns. Amend RSA 659:75 to read as follows:

659:75 Forwarding; Retaining Copies of Return. One copy of the election return shall be forwarded by the town or ward clerk to the secretary of state [within 5 days after] **no later than the Monday following** a state election unless the secretary of state orders them sooner. The other shall be kept by the town or city clerk and shall be open to public inspection at reasonable times.

4:18 Time for Rejecting Nomination by Write-In Vote. Amend RSA 659:90 to read as follows:

659:90 Rejection of Nomination by Write-In Vote. Persons nominated by write-in vote who wish to reject the nomination shall reject their nominations as follows. A person notified in writing of his nomination by the secretary of state as required by RSA 659:89 shall advise the secretary of state in writing if he wishes to reject the nomination. If such rejection of nomination is not received by the secretary of state [within 10 days from] **by the second Friday following** the date of the primary, the person shall be deemed to have accepted the nomination; and his name shall appear on the official ballot as a candidate for the office. If for any reason the person cannot be contacted by the deadline for the printing of the ballots, the candidate's name shall be printed on the official state general election ballot.

4:19 Time for Accepting Nomination; Incompatible Offices. Amend RSA 659:91 to read as follows:

659:91 Nominations For Incompatible Offices. Any person who is nominated by the same political party for incompatible offices shall notify the secretary of state [within 5 days from] **no later than the Monday following** the date of the primary of which nomination he will accept. Thereupon the secretary of state shall declare a vacancy to exist in the nomination which such person declined. The vacancy shall be filled as provided in RSA 655:37 except that all the necessary declarations of candidacy and affidavits shall be filed no later than [10 days from] **the second Friday following** the date of the primary.

4:20 Time for Sending Checklists to State Archives. Amend RSA 659:102 to read as follows:

659:102 Preservation of Checklists. [Within 10 days of the closing of the polls for] **No later than the second Friday after** each regular state general election, and for each presidential primary election, the supervisors of the checklist in the towns, and the corresponding officers in the cities, shall send one of the marked checklists which were used in that election, certified by the officers, to the state archives. In addition, they shall send one of the unmarked checklists which were used in the state general election at which a president was elected to the clerk of the federal district court for the district of New Hampshire. One marked copy of every checklist used in any election shall be turned over to the town or city clerk by the supervisors. The clerk shall preserve such checklists in his custody for a public record.

for a period of no less than 5 years.

4:21 Time for Applying for Recount. Amend RSA 660:1 to read as follows:

660:1 Application. Any candidate for whom a vote was cast for any office at a state general election may apply for a recount. The application shall be made in writing to the secretary of state and shall be submitted [before the expiration of 5 days after] **no later than the Monday following** the election. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2. If the difference between the vote cast for the applying candidate and a candidate declared elected shall be greater than one percent of the total vote cast for that office, the applying candidate shall agree in writing with the secretary of state to pay the full expense of the recount. In such case,

the applying candidate shall deposit with the secretary of state an amount of money reasonably estimated to cover such expenses.

4:22 Time for Applying for Recount. Amend RSA 660:7 to read as follows:

660:7 Application. Any person for whom a vote was cast for any nomination of any party at a state or presidential primary may apply for a recount. The application shall be made in writing to the secretary of state and shall be submitted [not later than 5 days] **no later than the Monday** after the primary for a recount of all ballots cast for such nomination. Each candidate requesting a recount shall pay the secretary of state fees as provided in RSA 660:2. If the difference between the vote cast for the applying candidate and another candidate who was declared nominated or who qualified for at least one delegate under RSA 659:93 or who qualified for federal election funding shall be greater than one percent of the total vote cast for that office, the applying candidate shall agree in writing with the secretary of state to pay the full expense of the recount. In such case, the applying candidate shall deposit with the secretary of state an amount of money reasonably estimated to cover such expenses.

4:23 Time to Petition for Recount of Constitutional Amendment Ballots. Amend RSA 660:10 to read as follows:

660:10 Application. Upon receipt of petitions of 100 voters made [within 25 days of] **no later than the fourth Friday following** the date of the election, the secretary of state shall recount the ballots cast on any question to amend the constitution if the proposal was adopted or failed by no more than one percent of the vote cast. The recount shall take place at any suitable state facility in the city of Concord as may be

designated by the secretary of state and under such rules of procedure as he shall determine and at such time as he may appoint. [The secretary of state shall publish a notice of the time and place of the recount twice in a newspaper of general circulation throughout the state.]

4:24 Time for Holding Recount of County Referendum Ballots. Amend RSA

660:12 to read as follows:

660:12 County Referendum. The secretary of state shall recount the ballots cast on any question which may be submitted to the voters of a county at a state general election under the provisions hereinafter set forth. Application for such recount shall be by written petition signed by at least 50 legal voters of said county presented to the secretary of state [within 10 days after] **no later than the second Friday following** the state general election. The recount shall take place at any suitable state facility in the city of Concord as may be designated by the secretary of state at such time as the secretary of state may appoint and under such rules of procedure as he shall determine. The secretary of state shall publish notice of the time and place of the recount once in a paper of general circulation throughout the county. The fee for such a recount on a question voted on throughout a county shall be \$25 which shall be paid to the secretary of state by the person submitting the application. If, after the recount, it shall appear that the result of the voting on said question is other than that declared upon the original canvass of votes, the secretary of state shall declare the result found upon recount which shall be final unless the result is changed as a result of an appeal taken to the superior court.

4:25 Time for Petition for Recount of Votes Cast on Ballot Questions. Amend RSA 660:13 to read as follows:

660:13 Application. Five legal voters of any city or town which has voted on any question other than constitutional amendments printed on the ballot at any state election as provided in RSA 663 may, [within 10 days thereafter] **no later than the second Friday after the election**, petition the secretary of state for a recount of the votes cast upon said questions. Such application shall be accompanied by a fee of \$10 for each 1,000 ballots or fraction thereof cast at the election in said town; however, in no event, shall the fee exceed \$50. The secretary of state shall fix a time for recount and shall notify the petitioners and the selectmen, clerk and moderator of the town or the mayor and clerk of the city of the time and place so fixed. He shall request the clerk having custody of the ballots to forward them forthwith to the secretary of state, and the clerk shall immediately forward them.

4:26 Time to Petition for Questions to be Placed on Ballot. Amend the introductory paragraph of RSA 663:5, I to read as follows:

I. Upon petition of not less than 5 percent of the legal voters of any city or town filed with the secretary of state [not more than 90 days and not less than 60 days] **not earlier than the first Wednesday after the first Tuesday in August and no later than the first Friday in September** before a state general election, the following questions shall be submitted to the voters of such city or town on the usual ballot at such state election:

4:27 Time for Submitting Question on Sale of Sweepstakes Tickets to Voters. Amend RSA 663:7 to read as follows:

663:7 Question; Vote; Results. Upon the petition of 5 percent of the voters of any city or town filed with the secretary of state [not more than 90 days nor less than 60 days] **not earlier than the first Wednesday after the first Tuesday in August and no later than the first Friday in September** before a state general election, the appropriate version of the following question shall be submitted to the voters of such city or town at said election: "Shall sweepstakes tickets (continue to) be sold in this city or town?" If a majority of those voting vote "yes" on the question, tickets may be sold or continued to be sold by the commission in that city or town. If a majority of those voting vote "no" on the question, the commission shall not sell tickets in that city or town. No petition that the question prescribed in this section be printed on the ballot at a state general election shall be made within 2 years of a vote on such a question at a previous state general election.

4:28 Time for Placing and Removing Political Advertising. Amend RSA 664:17 to read as follows:

664:17 Placement and Removal of Political Advertising. No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. [Political advertising may not be so placed or affixed more than 45 days] **The earliest date on which political advertising may be placed or affixed shall be the last Friday in July** prior to a state primary. All political advertising shall be removed by the candidate no later than [10 days after] **the second Friday following** the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. No person shall remove, deface or knowingly destroy

any political advertising which is placed on or affixed to any private property except the owner of the property or a law enforcement officer removing improper advertising; provided, however, that, before a law enforcement officer removes any advertisement, he shall notify the candidate that it is improper, and allow the candidate 24 hours to remove the advertisement himself.

4:29 Daily Fine Reduced for Members of General Court. Amend RSA 664:21, IV to read as follows:

IV. In addition to the fines levied under paragraph I, any person who fails to file any report or statement on the date on which the report or statement is due under this chapter shall be subject to a daily fine of \$25 for every [day] **weekday** for which the report or statement is late and until the report or statement is actually filed, **except that candidates for the general court shall be subject to a daily fine of \$5 under this paragraph.**

4:30 Time for Making Complaint that Law against Bribery Violated. Amend RSA 666:9 to read as follows:

666:9 Examination on Complaint. [On the day of any election, or within 10 days thereafter] **No later than the second Friday after any election,**

any 5 voters may make written complaint to any judge of the district or municipal court, stating only that in their belief the law against bribery in elections has been violated in connection therewith, and asking for an inquiry concerning such violation and naming the witnesses whom they desire to have examined, and there upon such judge shall immediately proceed to make such inquiry; and for that purpose he may issue his subpoena, or compulsory process, if necessary, to the witnesses named

and to any others, and may examine them in the same manner as he might upon a complaint in a criminal proceeding before him; and the powers, duties and liabilities of the judge and witnesses shall be the same as in such case.

4:31 Time for Filing Period Under Non-Partisan Ballot System. Amend RSA 669:19 to read as follows:

669:19 Nominations; Non-Partisan Ballot System. In a town which has adopted the non-partisan ballot system as provided in RSA 669:13, all candidates shall file a declaration of candidacy with the town clerk during the filing period for town candidates. Such filing period shall [be 10 days in duration, beginning on the seventh Wednesday] **begin on the seventh Wednesday and end on the Friday of the following week** before the town election. Such declaration of candidacy shall be prepared by the town clerk in substantially the following form: I,, declare that I am domiciled in the town of, and that I am a registered voter therein; that I am a candidate for the office of and hereby request that my name be printed on the official non-partisan ballot of the town of At the time of said filing, each candidate shall pay to the town clerk a filing fee of \$1 for the use of the town, provided that a candidate for a town office which carries no salary or other compensation shall be entitled to file his declaration without the payment of a filing fee.

4:32 Time for Applying for Recount in Town Election. Amend RSA 669:30 to read as follows:

669:30 Recounts; Application. [If any] **Any** person for whom a vote was cast and recorded for any office at a town election [shall, before the expiration of 3 days from the date of the] **may, no later than the Friday following the** election, apply in writing to the town clerk for a recount of the ballots cast for such office, the clerk shall appoint a time for the recount not earlier than 5 days nor later than 10 days after the receipt of said application.

4:33 Checklist Used at Village District Elections. Amend RSA 670:3 to read as follows:

670:3 Voters and Checklists. Any person having his domicile within the village district and qualified to vote as provided in RSA 654:1, 654:2 and 654:4-654:6 and whose name is on the village district checklist shall be entitled to vote in any village district election. [Upon petition of 10 or more such voters to the supervisors of the town

checklist, acting as supervisors of the village district checklist, before any meeting, the supervisors shall prepare, post, and correct a checklist of the legal voters of the district, in the same manner as provided in RSA 654:25-654:31, except that the session required by RSA 654:27 to be held 3 weeks before the election shall not be required.] ***An updated checklist shall be used at all village district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5.*** Such checklist or checklists, if the district is located in more than one town, shall be used in the election of district officers.

4:34 Repeal. RSA 655:52, relative to filling vacancies among delegates of a presidential candidate, is repealed.

4:35 Effective Date. This act shall take effect 60 days after its passage.

Approved: March 28, 1994

Effective: May 27, 1994

230:66 Powers and Duties of Commission. The commission shall file a return of highway layout in the same manner as required of commissions in laying out class I or class II highways and, in all matters pertaining to such layout, shall have the same powers and duties as commissioners have in laying out class I or class II highways.

297:12 Acquiring by Eminent Domain. Amend RSA 4:30 by striking out said section and inserting in place thereof the following:

4:30 By Eminent Domain. The governor and council, for the purposes aforesaid, are empowered to take and appropriate any such real estate for the use of the state in accordance with RSA 498-A.

297:13 Repeal. The following are hereby repealed:

- I. RSA 4:31, relative to vesting of title.
- II. RSA 4:32, relative to notice.
- III. RSA 4:33, relative to hearing.
- IV. RSA 4:34, relative to assessment of damages.
- V. RSA 4:35, relative to jury trial.
- VI. RSA 4:36, relative to decree of damages.

297:14 Attorney General. Amend RSA 4:37 by striking out in line 1 the words "The petition" and inserting in place thereof the following (Any such takings and appropriations) so that said section as amended shall read as follows:

4:37 Attorney General to Act. Any such takings and appropriations shall be prosecuted or defended on the part of the state by the attorney general under the advice of the governor and council.

297:15 Effective Date. This act shall take effect 60 days after its passage.
[Approved June 18, 1983.]
[Effective Date August 17, 1983.]

CHAPTER 298 (HB 589)

AN ACT REQUIRING DECLARATIONS OF CANDIDACY FOR CANDIDATES FOR THE OFFICE OF PRESIDENT AND VICE-PRESIDENT.

Be it Enacted by the Senate and House of Representatives in General Court convened:

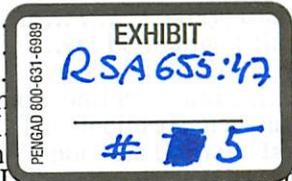
298:1 Method of Nominating Presidential Candidate. Amend RSA 655:47 (supp) as inserted by 1979, 436:1 by striking out said section and inserting in place thereof the following:

655:47 Declaration of Candidacy.

I. The names of any persons to be voted upon as candidates for president and vice-president at the presidential primary shall be printed on the ballots upon the filing of declarations of candidacy with the secretary of state in the following form and signed by the candidate:

I, _____, declare that I am domiciled in _____, in the city (or town or unincorporated place) of _____, county of _____, state of _____, and meet the qualifications for the office for which I am a candidate; that I am a registered member of the

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298:2 Fee for Declaration of inserted by 1979, 436:1 by strik thereof the following:

655:48 Fees. Notwithstanding the office of president or vice-pr ballot for the presidential primar at the time of filing his declarati

298:3 Repeal. RSA 655:49, rel presidential candidates, is hereby

298:4 Effective Date. This act [Approved June 18, 1983.] [Effective Date August 17, 1983.]

CHAPT

AN ACT RELATIVE TO THE E STATE-OWNED LAND IN T ALL FORMER GC

Be it Enacted by the Senate and convened:

299:1 New Chapter. Amend following new chapter:

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GOVERN

216-H:1 Declaration of Polic: population and the effects of the tial and other purposes, few large frontage, remain available in Ne training center, located in the c mately 3,500 feet on Lake Winnis state and is deemed to be a natur enjoyment and benefit of the citiz other states and countries who vis to be a major asset and a significa wonderful shoreline on the lake a the contiguous property immedia perpetually preserved as a state

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1. Amend RSA 4:30 by striking out
the following:

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4:37 by striking out in line 1 the
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HB 589)

CANDIDACY FOR CANDIDATES
AND VICE-PRESIDENT.

representatives in General Court

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....., declare that I am domiciled
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am a registered member of the

..... party; that I am a candidate for nomination for the office of
..... to be made at the primary election to be held on the day of
.....; and I hereby request that my name be printed on the official
primary ballot of said party as a candidate for such nomination.

II. The declaration of candidacy shall be filed by each candidate not more
than 74 nor less than 60 days before the presidential primary.

III. The decision of the secretary of state as to the regularity of declarations
of candidacy filed under this section shall be final.

~~298:2 Fee for Declaration of Candidacy. Amend RSA 655:48 (supp) as
inserted by 1979, 436:1 by striking out said section and inserting in place
thereof the following:~~

~~655:48 Fees. Notwithstanding any other provision of law, no candidate for
the office of president or vice-president shall have his name placed on the
ballot for the presidential primary unless he shall pay to the secretary of state
at the time of filing his declaration of candidacy a fee of \$1,000.~~

~~298:3 Repeal. RSA 655:49, relative to notification of presidential and vice-
presidential candidates, is hereby repealed.~~

~~298:4 Effective Date. This act shall take effect 60 days after its passage.~~

[Approved June 18, 1983.]

[Effective Date August 17, 1983.]

~~CHAPTER 299 (HB 598)~~

~~AN ACT RELATIVE TO THE ESTABLISHMENT OF A STATE PARK ON
STATE-OWNED LAND IN THE CITY OF LACONIA IN HONOR OF
ALL FORMER GOVERNORS OF THE STATE.~~

~~Be it Enacted by the Senate and House of Representatives in General Court
convened:~~

~~299:1 New Chapter. Amend RSA by inserting after chapter 216-G the
following new chapter:~~

~~CHAPTER 216-H~~

~~GOVERNORS STATE PARK~~

~~216-H:1 Declaration of Policy. Under the impact of a steadily increasing
population and the effects of the continuing development of land for residen-
tial and other purposes, few large tracts of forest land, particularly with a lake
frontage, remain available in New Hampshire. The Laconia state school and
training center, located in the city of Laconia, with a shoreline of approxi-
mately 3,500 feet on Lake Winnisquam, is one such tract which is owned by the
state and is deemed to be a natural resource that should be preserved for the
enjoyment and benefit of the citizens of this state and the many tourists from
other states and countries who visit here. The general court therefore deems it
to be a major asset and a significant benefit to the general public to retain this
wonderful shoreline on the lake and approximately 200 acres, more or less, of
the contiguous property immediately back from the shoreline of the lake, to be
perpetually preserved as a state park for the generations to come.~~



; if previously authorized by the same, the offices of United States senator, councilor and state senator. for county offices and state representatives containing more than one town, ward,

at party for state representative if the town or ward.

If, after the holding of a state primary election has been made for any office on a party provided in this section. The appropriate party of state in writing of a person they are so designated shall no later than 10 days with the secretary of state a declaration 655:17 with the understanding that it shall be construed to mean general election for the office of governor, councilor, shall also file, before the expiration of the appropriate affidavit as provided in RSA 655:17 all the forms required by this section and not have his name printed on the state

te. If a candidate to be voted for at the election on the date of his nomination and the day for the public office which he seeks is suffering physical disability acquired subsequent to the date of his nomination, the secretary of state may remove said person's name and substitute by the appropriate party of state. The name of the substitute as provided in RSA 656:21.

andidate to be voted for at the general election and the day of election, a new appropriate party committee by notifying the substitute candidate shall be placed on the ballot.

Nomination Papers

alternative to nomination by party election shall be placed on the ballot for the state in the appropriate number of nomination papers. The domicile of the candidate, the official party or principles he represents and the names of more than one nomination paper for each candidate shall contain the names of more than one nomination paper for each candidate. Each voter shall sign an individ-

on paper shall be submitted to the town or ward in which the signer is domiciled. The supervisors shall certify whether or not the candidate is a resident of the town or ward.

names of 1,000 legal voters to nomi-

nate by nomination papers a candidate for president, vice-president, United States senator or governor; 500 to nominate a candidate for United States representative; 250 to nominate a candidate for councilor, state senator or county officer; and 50 to nominate a candidate for state representative.

655:43 Filing Deadline. Nomination papers shall be filed with the secretary of state no later than 40 days prior to the day of the state general election. No nomination papers shall be accepted by the secretary of state unless the candidate will have met the age and domicile qualifications for the office he seeks at the time of the general election and meets all the other qualifications at the time of filing, and, if a candidate for the office of governor, councilor, state senator, or state representative, unless he shall file therewith an affidavit of qualifications as provided for in RSA 655:28 and 655:29.

655:44 Objections. Nomination papers made in accordance with the provisions of this chapter shall be regarded as valid and shall be received by the secretary of state unless objection thereto is made in writing within 3 days of the last day for the filing of such papers.

655:45 Nomination Papers Protected. No person shall falsely make or file or knowingly deface or destroy any nomination paper, or any part thereof, or sign any nomination paper contrary to the provisions of law knowing the same, or any part thereof, to be falsely made or suppress any nomination paper, or any part thereof, which has been duly filed. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or be guilty of a felony if any other person.

Withdrawal

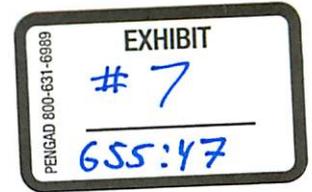
655:46 Withdrawal. Where a nomination has been made according to this chapter, no withdrawal or declination of a candidate shall be accepted by the secretary of state except as provided in RSA 655:38.

Presidential Nominations

655:47 Nomination Petition. The names of any persons to be voted upon for candidates for president and vice-president at the presidential primary shall be printed on the ballots solely on petition of New Hampshire voters of the same political party as the prospective candidates. A separate petition shall be presented from each United States congressional district in the state. Each must be signed by 500 qualified voters from the congressional district and filed with the secretary of state not more than 74 nor less than 60 days before the presidential primary. The petitions shall be in such form as may be prescribed by the secretary of state and shall contain an affirmation under the penalties for perjury that each signer is a qualified voter in his congressional district and is a member of the same political party as the proposed candidate. The decision of the secretary of state as to the regularity of petitions shall be final.

655:48 Fees. No candidate for the office of president or vice-president shall have his name placed on the ballot for the presidential primary unless he shall pay to the secretary of state at the time of filing his nomination petitions a fee of \$500.

655:49 Notification of Candidate. Whenever the secretary of state shall receive petitions which appear to qualify the name of a candidate for president or vice-president to be placed on such ballot, he shall forthwith send notice to the prospective candidate and shall advise the candidate that, unless he withdraws his name from the ballot within 10 days after receipt of such



UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Libertarian Party of
New Hampshire, et al.

v.

Civil No. 08-cv-367-JM

William M. Gardner, in his
official capacity as Secretary
of State of New Hampshire

O R D E R

Plaintiffs, the Libertarian Party of New Hampshire ("LPNH") its chairman Brendan Kelly, Libertarian Party supporter Hardy Macia, and Libertarian candidates for the 2008 presidential election "Bob" Barr and his running mate, Wayne A. Root, brought this 42 U.S.C. § 1983 action contending New Hampshire's statutory scheme for placing names of candidates on the general election ballot violates their First and Fourteenth Amendment rights. They initially sought both injunctive and declaratory relief but now seek only a declaration that the challenged statutes are unconstitutional restrictions on their rights to freedom of association, of speech in the form of voting, and to due process and equal protection. Before the court are cross motions for

summary judgment. For the reasons set forth below, defendant's motion (document no. 12) is granted and plaintiffs' motion (document no. 19) is denied.

Background

New Hampshire's ballot for the 2008 general election was divided into a grid of five columns, with the far left column labeled "Offices" and listing the public offices to be filled, and then the next four columns designating the candidates competing to fill the respective positions. See Def.'s Mot. for Summ. J. ("Def.'s Mot."), Ex. B (November 4, 2008 General Election ballot for Nashua, New Hampshire, Ward 1). The columns were labeled, in order from left to right across the ballot, first "Republican Candidates," then "Other Candidates," next "Democratic Candidates," and lastly "Write-In Candidates." See id. Pursuant to New Hampshire law, the ballot was arranged so that the names of candidates nominated for the various offices were in successive party columns, so that each party's candidates were presented in a separate column. See New Hampshire Rev. Stat. Ann. ("RSA") 656:5 (2008).

To secure a distinct "party column" on the ballot, a political organization must either satisfy the definition of a

"party" under New Hampshire law by having received at least four percent of the votes at the preceding state general election for governor or United States senator, see RSA 652:11 (2008), or it must petition to be placed on the ballot by submitting a sufficient number of signatures in support of its nomination to the ballot. See RSA 655:40-a (2008) (allowing a political organization ballot access if nominating papers are signed by 3% of registered voters from the previous general election).¹ In 2008, the Libertarian Party was not entitled to its own column on the ballot because it failed to satisfy either the statutory definition for a party or the statutory process for nomination to the ballot. See RSA 652:11 & 655:40-a; see also Def.'s Mot., Ex. A, ¶¶ 4-6. As a result, in the 2008 presidential election, candidates representing the Libertarian Party appeared on the New Hampshire ballot in the "Other Candidates" column.

In the "Other Candidates" column, several names appeared. Running for the offices of President and Vice President of the United States in that column were three sets of candidates: (1)

¹A political organization with a column on the ballot then places its nominated candidates in that column. See RSA 655:14, 655:17, 655:43, I, & 656:5 (providing how parties place their nominated candidates on the ballot); RSA 655:40-b, 655:17-c, 655:43, III, & 656:5 (providing how political organizations nominated to the ballot get their candidates' names on it).

Ralph Nader and his running mate, Matt Gonzalez, ran as Independent candidates; (2) George Phillies and his running mate, Christopher Bennett, ran as Libertarian candidates; and (3) plaintiffs Barr and his running mate Root also ran as Libertarian candidates. These candidates appeared on the New Hampshire ballot pursuant to the statutory provisions for a candidate "who intends to have his name placed on the ballot for the state general election by means other than nomination by party primary." RSA 655:14-a (2008).² Since the LPNH was not a recognized party under New Hampshire law in 2008, its candidates had to access the ballot by means other than nomination by party. See Def.'s Mot., Ex. A, ¶¶ 5 & 6, and Ex. C, ¶ 3. In fact, both Phillies and Barr got onto the ballot by filing the requisite number of signatures from New Hampshire supporters. See RSA 655:40 & 655:42, I (requiring 3,000 registered voters sign nomination papers to nominate a candidate for president); see

²New Hampshire law enables anyone to access the ballot even if the person is not nominated by a political organization, provided certain statutory requirements are met. See RSA 655:14-a; see also RSA 655:40 (2009 Supp.) (allowing a candidate access to the ballot by submitting the requisite number of nomination papers); RSA 655:17-a (2008) (providing for a nonparty or other candidate to declare an intent to run for public office in the general election) & 655:17-b (providing same specifically for the offices of president and vice president).

also Def.'s Mot., Ex. C, ¶¶ 4 & 5.

Yet Barr also was nominated as the Libertarian candidate for president at the Libertarian Party convention on May 22-26, 2008. See Pl.'s Mot. for Summ. J. ("Pl.s Mot."), Ex. 2 (Aff. of Bill Redpath), ¶ 3. Because the Libertarian Party nominated Barr and Root as its presidential and vice presidential candidates at its convention, plaintiffs believed Barr and Root alone should have appeared on the New Hampshire 2008 general election ballot as the Libertarian Party candidates for president and vice president. Plaintiffs asked defendant New Hampshire Secretary of State William Gardner to remove Phillies and Bennett from the ballot, but he refused to do so. Plaintiffs brought this action claiming they have a constitutional right to have Barr and Root be the sole nominees on the ballot and to have had the names of Phillies and Bennett, who were defeated at the Libertarian Party convention, removed from the New Hampshire general election ballot.

Discussion

1. Mootness

Defendant argues this action should be dismissed as moot, because plaintiffs no longer seek a preliminary injunction and

there is no evidentiary basis to conclude that Phillies and Barr will be competing in future presidential elections, obviating the need for a permanent injunction to remove from the ballot Phillies/Bennett as Libertarian candidates. Plaintiffs' challenge is to New Hampshire's statutory scheme for enabling candidates for the presidency and vice presidency to get on the general election ballot and to designate their party affiliation, even if the political organization does not support those candidates. Plaintiffs' challenge to that process, regardless of who the individual candidates may be, is "capable of repetition yet evading review" and is not, therefore, moot. See Storer v. Brown, 415 U.S. 724, 737 n.8 (1974); Ramirez v. Ramos, 438 F.3d 92, 100 (1st Cir. 2006) (citing authority to explain this exception to the mootness doctrine).

2. Summary Judgment Standard of Review

The parties agree that there are no genuine issues of material fact, rendering the matter appropriate for summary disposition. See Fed. R. Civ. P. 56(c) (allowing for summary judgment when the record is undisputed); see also Quinn v. City of Boston, 325 F.3d 18, 28 (1st Cir. 2003). Summary judgment provides the means to "pierce the boilerplate of the pleadings"

and "dispos[e] of cases in which no trialworthy issue exists."

Id. The party moving for summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact, Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986), with the court construing the evidence and all inferences reasonably drawn therefrom in the light most favorable to the nonmovant. See Navarro v. Pfizer Corp., 261 F.3d 90, 94 (1st Cir. 2001). Once the moving party has met its burden, the burden shifts to the nonmovant to "produce evidence on which a reasonable finder of fact, under the appropriate proof burden, could base a verdict for it; if that party cannot produce such evidence, the motion must be granted." Ayala-Gerena v. Bristol Myers-Squibb Co., 95 F.3d 86, 94 (1st Cir. 1996) (citations omitted). Neither conclusory allegations, improbable inferences, nor unsupported speculation are sufficient to defeat summary judgment. See Carroll v. Xerox Corp., 294 F.3d 231, 236-37 (1st Cir. 2002); see also Price v. Canadian Airlines, 429 F. Supp. 2d 459, 461 (D.N.H. 2006). On cross motions for summary judgment, the standard of review is applied to each motion separately. See Am. Home Assur. Co. v. AGM Marine Contrs., 467 F.3d 810, 812 (1st Cir. 2006); see also Mandel v. Boston Phoenix, Inc., 456 F.3d

198, 205 (1st Cir. 2006) ("The presence of cross-motions for summary judgment neither dilutes nor distorts this standard of review.").

3. Test for Constitutionality

Plaintiffs contend New Hampshire's statutory scheme for placing candidates' names and party affiliations on the general election ballot is unconstitutional. Although several statutes regulate the election process in New Hampshire, plaintiffs have not clearly identified which statutes unconstitutionally preclude them from effectively exercising their claimed "right to substitute" Barr and Root for Phillies and Bennett. Plaintiffs challenge generally the provisions that enable statutorily recognized parties to control which names appear on the ballot, arguing they should be allowed to control which Libertarian candidates appear on the ballot just like those political organizations which have secured a party column on the ballot do.³ Though plaintiffs challenge the provisions that give a "party" different treatment on the ballot than the Libertarian Party received, they concede that the statutory definition of

³See RSA 652:11 & 655:40-a (providing access to the ballot for political organizations) and RSA 656:5 (allowing recognized parties their own column on the ballot to list their candidates).

"party" is constitutional and that they were not a statutorily recognized party in 2008. See Pl.'s Reply to Def.'s Mot. (document no. 24) ("Pl.'s Reply") at 2.⁴

Despite this concession, plaintiffs argue the Libertarian Party has a "right to substitute candidacies in appropriate situations and to control use of the 'Libertarian' designation by candidates for public office in situations where the party nominates or otherwise endorses candidates." Id. Plaintiffs assert that defendant's refusal to let them modify the ballot as they wanted impeded their right to vote effectively and "to associate for the advancement of political ideas" for no legitimate reason, and rendered the ballot, with its candidates' names and party affiliations, unconstitutional.

Though plaintiffs contend that the severe burdens on their

⁴Had they not made this concession, plaintiffs would have been collaterally estopped from litigating the constitutionality of the definition here, because that issue and New Hampshire's ballot access statutory scheme have already been found to be constitutional. See Libertarian Party N.H. v. State, 154 N.H. 376, 383-86, 910 A.2d 1276, 1282-84 (2006); see also Werme v. Merrill, 84 F.3d 479, 484 (1st Cir. 1996) (finding definition of party constitutional in the context of selecting ballot clerks because it depends on the neutral criterion of success at the polls); Geiger v. Foley Hoag LLP Ret. Plan, 521 F.3d 60, 66 (1st Cir. 2008) (discussing preclusive effect of state court judgments); In re Zachary G., 159 N.H. 146, 151, 982 A.2d 367, 371-72 (2009) (explaining collateral estoppel under New Hampshire law).

First and Fourteenth Amendment rights require strict scrutiny of New Hampshire's ballot access provisions, the level of scrutiny in ballot access cases depends on "the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process." Anderson v. Celebrezze, 460 U.S. 780, 793 (1983). The test for whether or not election regulations are constitutional depends on a variety of factors which the Supreme Court has described as a "flexible framework." See Werme, 84 F.3d at 483 (citing Burdick v. Takushi, 504 U.S. 428, 432-34 (1992) and Anderson, 460 U.S. at 789). That framework balances the state's constitutional duty to execute fair elections, see U.S. Const. Art. I, § 4, cl. 1, with individuals' First Amendment rights to associate and vote in a politically effective manner. See Werme, 84 F.3d at 483 (citing authority).

The test for constitutionality measures the burden imposed by the challenged regulation against the state's asserted need for that regulation, as follows:

The level of scrutiny to be applied corresponds roughly to the degree to which a challenged regulation encumbers First and Fourteenth Amendment rights. Consequently, a court weighing a challenge to a state election law must start by assessing "the character and magnitude of the asserted injury"

to the plaintiff's constitutionally protected rights and then "evaluate the precise interests put forward by the State as justifications for the burden imposed by the rule."

Id. (quoting Anderson, 460 U.S. at 789). If plaintiffs' rights are severely restricted, then the regulation must be narrowly drawn to advance a compelling state interest, but if the rights are only reasonably restricted in a nondiscriminatory manner, then the state's important regulatory interests are enough for the regulation to pass constitutional muster. See id. (citing Burdick, 504 U.S. at 434); see also McClure v. Galvin, 386 F.3d 36, 41 (1st Cir. 2004) (applying the "sliding scale approach" to assess a state's election law).

4. Analysis

a. Plaintiffs' Asserted Injuries

Plaintiffs claim that by denying them "exclusive access to the ballot" defendant has diluted their voting strength, impaired their freedom of political speech and association, and denied them equal protection of the law because the major parties' rights are not similarly restricted. See Pl.'s Mot. at 9. As set forth below, I do not find the challenged regulations to severely burden either plaintiffs' First or Fourteenth Amendment rights.

(i) Right to Substitute

As an initial matter, plaintiffs' alleged "right to substitute" is really a euphemism for a purported "right to remove" the names of candidates from the ballot who were legally entitled to be on the ballot. There is no constitutional right to substitute one candidate's name for another. To the contrary, under New Hampshire law, individuals have an explicit constitutional right to run for public office. See N.H. Const. Part I, Art. 11 (providing that "[e]very inhabitant in the state, having the proper qualifications, has an equal right to be elected into office."). Based on this provision, it would have been unconstitutional for defendant to have removed Phillies and Bennett from the general election ballot because they were qualified to be there and had cleared the statutory hurdles to get there. See id.; see also RSA 655:40 & 655:42, I. Barr and Root accessed the ballot the same way that Phillies and Bennett did, and there is no basis under New Hampshire law to justify removing Phillies and Bennett while keeping Barr and Root.

Plaintiffs argue that most states recognize a right to substitute presidential and vice presidential candidates under appropriate circumstances, so New Hampshire should conform to

this general rule. See Pl.'s Mot. at 11-12. New Hampshire law in fact does allow for substitution of candidates in appropriate circumstances. See RSA 655:37-39 (providing party the right to fill in names on a ticket in the event of a vacancy following a primary, or the disqualification or death of a candidate). None of those circumstances applied in 2008 to justify substituting Root/Barr in place of Phillies/Bennett.

The cases plaintiffs cite in support of their claim that the right to substitute names has been upheld by many jurisdictions are neither controlling nor apposite to the instant matter. See Pl.'s Mot. at 11-12.⁵ In these cases, the candidates who sought to be removed from the ballot were voluntarily ceding their

⁵See e.g. Barr v. Galvin, 584 F. Supp. 2d 316 (D. Mass. 2008), and id., ___ F. Supp. 2d ___, No. 08-11340-NMG, 2009 WL 3062317 (D. Mass. Sept. 17, 2009) (enjoining enforcement of substitution statute found to be void for vagueness because it did not clearly provide for presidential nominees); Anderson v. Firestone, 499 F. Supp. 1027 (N.D. Fla. 1980) (requiring independent candidates to name running mate months before major party candidates do is discriminatory, so unconstitutional to prevent surrogate running mate from voluntarily substituting his name for chosen running mate's name); In re: the Substitution of Bob Barr, 956 A.2d 1083 (Commw. Ct. Pa. 2008), aff'd 598 Pa. 558, 958 A.2d 1045 (2008) (allowing substitution where nominee voluntarily withdraws); cf. El-Amin v. State Bd. of Elections, 721 F. Supp. 770 (E.D. Va. 1989) (finding unconstitutional statutory scheme that gave major party candidates but not independent candidates a second chance to qualify for placement on the ballot).

position. Nothing in the record supports the inference that Phillies and Bennett wanted to be taken off the general election ballot, yet defendant would not remove them. I decline to express an opinion or supposition about the legal consequences of such a possible exchange since those facts are not before me.

To find that plaintiffs have a right to remove Phillies and Bennett from the ballot requires a finding that the New Hampshire statutes that enable "other candidates" to access the ballot are unconstitutional. The crux of plaintiffs' complaint is that they wanted Root and Barr to be the only Libertarian candidates listed on New Hampshire's 2008 ballot because they were nominated at the Libertarian Party's convention. Plaintiffs repeatedly state what they want, but fail to justify the relief sought by demonstrating how the statutory scheme that got both Phillies/Bennett and Root/Barr on the ballot as Libertarian Party candidates is unconstitutional. Though plaintiffs speak in sweeping terms that this denial of their "right to substitute" deprives them of equal protection of the law and deprives them of the First Amendment rights to vote effectively and associate for the advancement of political ideas, see Pl.'s Mot. at 9, they have failed to connect the dots to show how New Hampshire's general election ballot is

unconstitutional.

(ii) Right to Vote

Nothing in the ballot format violates plaintiffs' right to cast an effective or meaningful vote. Though the right to vote is fundamental to our system of democracy, it is well-settled that the right to vote in any manner is not absolute. See Burdick, 504 U.S. at 433 (citing Ill. Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979) and Munro v. Socialist Workers Party, 479 U.S. 189, 193 (1986)). Ironically, rather than creating a barrier that precluded plaintiffs' choice and thereby blunted their right to cast a meaningful vote, see id. (discussing when regulatory barriers may be constitutional), New Hampshire's 2008 general election ballot expanded the choice of candidates beyond what plaintiffs wanted. Plaintiffs present no evidence that they were unable to vote for the candidate of their choice. They also fail to support their claim of voter confusion with any evidence that even suggests voters mistakenly cast their vote for Phillies/Bennett when they intended to vote for Root/Barr. The ballot clearly designated the choices, enabling voters to cast their votes for the Libertarian candidate they preferred, much like what happens in a primary election.

Further, I do not see how New Hampshire's general election ballot scheme for "other candidates" hinders the cumulative voting strength of either the Libertarian Party or any other minor party. The system appears to potentially strengthen the voting power of minor parties and their supporters. As occurred in 2008, the choice of Root/Barr and Phillies/Bennet presumably prompted supporters of each set of candidates to vote, yet it is the aggregate number of votes for the Libertarian Party, not the individual candidates, that determines whether the 4% threshold has been crossed to be a recognized party in the next election. See RSA 652:11. Based on the record before me, I find that plaintiffs have failed to demonstrate how New Hampshire's ballot or its ballot access statutory scheme have burdened their First Amendment right to vote.

(iii) Right to Political Association

Plaintiffs next assert that their freedom of association rights entitle them to control the use of their party name. They argue this control is necessary to prevent voter confusion about who the party endorses and to prevent dilution of their political power, which allegedly occurred when both Phillies/Bennett and Barr/Root were listed on New Hampshire's ballot as Libertarian

candidates. They take particular issue with the fact that listing both sets of candidates did not convey that the Libertarian Party had nominated Root and Barr as its candidates for president and vice president, rather than Phillies and Bennett. Plaintiffs now contend that the ballot's "Other Candidate" column, which allows any candidate to designate his or her party affiliation regardless of whether the party endorses the candidate, infringes on the freedom of political association.

Plaintiffs are correct that the Libertarian Party has a First Amendment right to determine who best represents the party and to elect that standard bearer as the party's nominee for president and vice president. See Timmons v. Twin Cities Area New Party, 520 U.S. 351, 357 (1997) (explaining how the First Amendment protects political freedom); see also id. at 371 (Stevens, J. dissenting) (stating that recognized political parties "unquestionably have a constitutional right" to select their nominees and to communicate that choice to the voting public); Colo. Republican Fed. Campaign Comm'n v. FEC, 518 U.S. 604, 616 (1996) ("The independent expression of a political party's views is 'core' First Amendment activity. . ."). The right to nominate candidates, however, does not translate into a

right to control whose name appears, or how the name appears, on an election ballot. Further, the right to nominate is not a right to exclude other candidates, who legitimately get onto the ballot by representing voters who happen to be affiliated with a party that may have nominated another candidate. It is the state, or defendant here, not plaintiffs, that has the right to regulate the ballot to ensure fair elections. See Timmons, 520 U.S. at 357 (citing authority).

Plaintiffs' complaint is really that the ballot prevents them from communicating a campaign message, which in 2008 was that Root and Barr, not Phillies and Bennett, were the better leaders for the Libertarian movement. But the ballot is not the party's platform to advertise its political position. See Burdick, 504 U.S. at 438 (upholding Hawaii's ban on write-in ballots because "the election process is . . . not to provide a means of giving vent to short-range political goals, pique, or personal quarrels. Attributing to elections a more generalized expressive function would undermine the ability of States to operate elections fairly and efficiently" (internal quotation omitted)). As the Supreme Court has explained:

We are unpersuaded, however, by the party's contention that it has a right to use the ballot

itself to send a particularized message, to its candidates and to the voters, about the nature of its support for the candidate. Ballots serve primarily to elect candidates, not as forums for political expression.

Timmons, 520 U.S. at 362-63. The fact that New Hampshire's ballot hindered plaintiffs' ability to send the message of who the Libertarian Party's nominees were in 2008 does not mean it severely burdened their associational rights as plaintiffs claim, because the ballot is not a platform for campaigning. See id. at 363 (upholding Minnesota's fusion ban even though it prevented plaintiffs' from selecting as their nominee a candidate already representing another party).

New Hampshire's ballot "does not restrict the ability of the [Libertarian] Party and its members to endorse, support, or vote for anyone they like." Id. Nothing in New Hampshire's election code infringed upon the Libertarian Party's right to elect Root and Barr as its 2008 presidential candidates. And nothing in New Hampshire's election code denied them access to the ballot; they were on the 2008 general election ballot. Had the Libertarian Party satisfied the statutory requirements to acquire its own column on the New Hampshire ballot in 2008, New Hampshire's election laws would have enabled them to designate Root and Barr

in that column as their sole nominees.

Plaintiffs, however, were not on the ballot as a recognized party entitled to its own column. Instead they, like Phillies and Bennett, appeared as "Other Candidates," chosen by the supporters who selected them as the best representatives of those voters. In such circumstances, the rights of the voters to associate for political purposes were protected and advanced by New Hampshire's ballot and its equal recognition of both the Phillies/Bennett and the Root/Barr tickets. See Burdick, 504 U.S. at 44 n.10 ("It seems to us that limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable."). Plaintiffs' associational rights are not greater than the associational rights of Phillies and Bennett or their supporters, whose numbers were substantial enough to hoist those candidates onto the ballot as well. Plaintiffs have not demonstrated any constitutional or statutory basis to justify removing Phillies and Bennett from the ballot while keeping themselves on it.

Plaintiffs' First Amendment right to freedom of political association does not give rise to a corresponding right to remove

other candidates from the ballot who had sufficient electoral support to be nominated to it. In 2008, plaintiffs exercised their right to select their "standard bearer" and succeeded in getting their nominee on New Hampshire's ballot. Cf. Timmons, 520 U.S. at 359 (explaining how the right to chose a nominee is not an absolute right to have that choice appear on the ballot). I find that the challenged ballot, with its "Other Candidates" column, imposes only a very minimal burden on plaintiffs' right to associate politically. See Burdick, 504 U.S. at 438 (upholding Hawaii's ban on write-in votes because its election laws provided adequate access to the ballot).

(iv) Right to Equal Protection

Finally, plaintiffs contend that New Hampshire's ballot, with its two sets of Libertarian Party candidates in the "Other" column, discriminated against them by interfering with their right to control whose names were affiliated with their party, while parties with their own column on the ballot can control which candidates appear as their nominees. Plaintiffs' argument appears to be that since the major parties are allowed to designate their candidates for the respective public offices on the ballot, they also should be allowed to do so. The fallacy of

plaintiffs' argument is twofold.

First, as plaintiffs concede, they were not a recognized party under New Hampshire law in 2008 and therefore, as discussed supra, they were not entitled to avail themselves of the statutory provisions that enable parties to designate their nominees in their own column. Nothing in New Hampshire's ballot access statutory scheme distinguishes between major and minor parties in a way that unconstitutionally burdens the rights of minor parties. See Libertarian Party NH, 154 N.H. at 382-83, 910 A.2d at 1281-82 (holding ballot access statutes RSA 652:11, 655:40, and 655:40-a constitutional). Plaintiffs do not challenge any of these statutes and, in fact, availed themselves of these provisions to get their names onto the 2008 general election ballot. See RSA 655:40. Minor parties like the Libertarian Party certainly can have a party column and control the names of candidates in it by garnering sufficient electoral support from registered voters. See RSA 652:11 & 655:40-a.

Simply because plaintiffs did not take advantage of either provision to obtain their own column on the ballot does not mean that the statutes discriminate against them or other minor parties. Like the Republican and Democratic parties, they have

the opportunity to meet, and in the past have met, the statutory requirements to obtain their own column on the general election ballot. See RSA 652:11 & 655-40-a; see also Def.'s Mot, Exs. A & C (stating Libertarian Party's history of being on the New Hampshire ballot). "Equality of opportunity exists, and equality of opportunity - not equality of outcomes - is the linchpin of what the Constitution requires in this type of situation." Werme, 84 F.3d at 485.

Second, the "Other Candidate" provision, RSA 655:40, which Root and Barr used to get onto the ballot, does not differentiate between party affiliations and requires all "other candidates" to file nomination papers at the same time and in the same manner as the major party candidates. See RSA 655:14-a (requiring other candidates to file declarations of intent during the same time period in which party candidates must file) & 655:43 (providing filing deadlines). My reading of RSA 655:40 indicates that plaintiffs construe its provisions too narrowly. Nothing in the plain language of the statute would prevent a disgruntled member of the Democratic or Republican party from acquiring the requisite voter support and getting on the ballot as an "other candidate" pursuant to the provisions of RSA 655:40, like both

Barr and Phillies did here.⁶ In that event, the major parties are susceptible to the exact, same alleged potential voter confusion and vote dilution as plaintiffs claim they suffer. The statutory scheme applies equally to all parties and all potential candidates, including the requirement that all candidates declare their party affiliations. See RSA 656:4 (providing that every state general election ballot shall contain the names of the candidates and their party appellations). There is no distinction between major and minor parties in the "Other Candidates" column to support the conclusion that the ballot violates plaintiffs' equal protection rights.

Plaintiffs have not identified any basis for them, unlike any other party, to trump New Hampshire's nondiscriminatory ballot access scheme and control what the general election ballot looks like. The statutory scheme does not unfairly discriminate against minor parties simply because they, like plaintiffs, may not have their own column and must then appear in the "other candidates" column on the general election ballot.

⁶The statutes do prevent someone who ran unsuccessfully in the primary from then filing nomination papers as an other candidate. See RSA 655:43, IV (precluding someone who ran as a candidate in the primary from also running in the general election by submitting nomination papers) & 655:47 (declaration of candidacy for primary).

b. State's Interests

As the foregoing analysis demonstrates, New Hampshire's ballot and the statutory scheme supporting it do not violate plaintiffs' rights to vote or to equal protection and only very minimally burden their right to political association. "Because . . . the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction." Burdick, 504 U.S. at 438. Accordingly, New Hampshire's election regulations will be upheld as long as they reasonably advance important state interests. See id. at 434 ("when a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions." (internal quotation omitted)); see also McClure, 386 F.3d at 45 (declining to speculate "as to all of the other conceivable ways in which the state could have set up its framework").

To justify New Hampshire's election regulations, defendant has identified the state's interest in administering its elections, including controlling the number of candidates and parties on the ballot, and maintaining stability in the

democratic process. Both of these interests have long been recognized as reasonable justifications for regulating the "Times, Places and Manner of holding Elections," U.S. Const., Art. I, § 4, cl. 1, even though the regulations may infringe on First Amendment rights. See Timmons, 520 U.S. at 364 ("States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials."); see also Tashjian v. Republican Party, 479 U.S. 208, 217 (1986) (explaining state's broad power over elections).

Plaintiffs primarily challenge the state's refusal to give them their own column on the ballot, and the corresponding control over their party name, like the major parties have. A state's interest in maintaining the stability of its political system, however, can justify imposing regulations that, while not banning competition from minor or third party candidates, may erect hurdles that they must clear before gaining access to the ballot. See id. at 367 (discussing how broad-based political stability is a legitimate state interest that can justify regulations that favor a two-party system). New Hampshire's requirements for a distinct party column on the ballot erect such

a hurdle. These type of regulations, that require candidates or the parties they represent to have a sufficient level of support before allowing them onto the ballot, are fair and reasonable limits on First Amendment freedoms, "because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates." Anderson, 460 U.S. at 788-89 n.9; see also Am. Party of Tex. v. White, 415 U.S. 767, 789 (1974) (legitimate to require a party to show "a significant modicum of support" before getting on the ballot). New Hampshire's statutory scheme, that placed plaintiffs in the "Other Candidates" column because they had not consolidated the electoral support needed to get their own column, advances the state's interest in maintaining political stability by ensuring the ballot properly reflects the voting public.

Plaintiffs' related challenge is to the state's refusal to remove Phillies and Bennett from the ballot. Plaintiffs take considerable issue with New Hampshire's law that enables competing candidates to each appear on the ballot as representing a single party when that party has only endorsed one of the candidates. Without repeating the lengthy analysis of New Hampshire's "Other Candidate" column set forth above, suffice

here to say that there was nothing unconstitutionally burdensome about having both the Barr/Root and the Phillies/Bennett tickets on the 2008 ballot. Whatever minimal burden the ballot's dual presentation of these candidacies may have had on plaintiffs' associational rights was offset by the state's valid and important interest in protecting equally the rights of plaintiffs and of the Phillies/Bennett supporters to associate politically and to have equal access to the ballot.⁷ The state's interest in administering elections fairly is advanced by this election code, which provides equal access to New Hampshire's ballot.

Finally, plaintiffs argue unpersuasively that the State's decision to keep Phillies and Bennett on the ballot resulted in the "unauthorized use" of their party name. As discussed above, Phillies and Bennett had as much right as Root and Barr to appear on New Hampshire's 2008 ballot as Libertarian candidates because they got onto the ballot as "Other Candidates" by representing

⁷Although not explicitly identified by defendant, states also have a legitimate interest in ensuring that intra-party competition is resolved in a democratic fashion. See Cal. Democratic Party v. Jones, 530 U.S. 567, 572 (2000) (discussing state's right to regulate primaries). While such competition is usually resolved before the general election, when it is not, as occurred in 2008 with the Libertarian Party, New Hampshire's general election ballot fairly and democratically provides the mechanism for voters to choose their preferred candidate in a manner much like that employed in a primary election.

voters who were affiliated with the Libertarian Party. New Hampshire's requirement that all candidates declare their party affiliation furthers the state's interest in administering fair elections as well, because "[t]o the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise." Timmons, 520 U.S. at 375 (Stevens, J., dissenting (internal quotation omitted)).

The function of elections is to elect candidates, and the Supreme Court has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls." Burdick, 504 U.S. at 438. New Hampshire's general election ballot and its ballot access statutory scheme are politically neutral regulations that advance its interests in administering fair, honest and efficient elections and maintaining political stability. The state's interests advanced by its ballot access statutory framework outweigh the very minimal infringement on plaintiffs' political associational rights.

Conclusion

I find, based on the undisputed record before me, that neither plaintiffs' First nor Fourteenth Amendment rights were violated by defendant's refusing to remove Phillies and Bennett and to list Barr and Root as the sole Libertarian Party candidates on the 2008 general election ballot. The statutory scheme that effected that result is constitutional. Accordingly, plaintiffs' motion for summary judgment (document no. 19) is denied, and defendant's motion for summary judgment (document no. 12) is granted.

SO ORDERED.

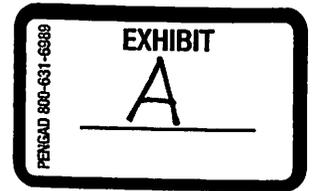

James R. Muirhead
United States Magistrate Judge

Date: February 17, 2010

cc: Evan Feit Nappen, Esq.
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News Release

RELEASED BY: Attorney General Michael A. Delaney

SUBJECT: Voting Rights Act – Submission of a request for preclearance of 2010 changes to New Hampshire Voting laws and procedures

DATE: July 19, 2010

RELEASE TIME: Immediate

Contact: Deputy Attorney General Bud Fitch (603) 271-1238

Attorney General Michael A. Delaney announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance. Submissions will be made over the next several weeks until all 2010 changes to New Hampshire's election laws have been submitted.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Delaney and the federal Department of Justice We invite persons interested in pending submissions to submit comments and information, in writing or by telephone, to the Voting Section of the Civil Rights Division at the earliest possible date to assure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7254 - NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington D.C. 20530 (the envelope and first page should be marked "Comment under Section 5"). Further information on the federal Department of Justice's Voting Rights Section can be found at:

<http://www.justice.gov/crt/voting/>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov

A Letter describing the historical circumstances of the ten New Hampshire towns becoming subject to the Voting Rights Act preclearance requirements, originally sent to the federal Department of Justice in 2004, is available at:

<http://www.doj.nh.gov/elections/>

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