

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of Complaint by
Robert D. Russo, Southport

File No. 2010-079

FINDINGS AND CONCLUSIONS

Complainant Robert D. Russo brings this complaint pursuant to General Statutes § 9-7b alleging Mark Greenberg for Representative in Congress (hereinafter "Greenberg Campaign") violated General Statutes § 9-404b in that the campaign certified petitions for the August 10, 2010 Republican primary that were not properly circulated. Furthermore, that a circulator for the Greenberg Campaign, also violated that section in circulating a petition for the 2010 campaign of Peter Schiff for United States Senator (hereinafter "Schiff Campaign"), that he did not actually witness. After the investigation of the Complainant's allegations, the Commission makes the following findings and conclusions:

1. Complainant alleged that Mr. Arthur McNally (hereinafter "Respondent"), had "other individuals" collect signatures for the Greenberg Campaign petition pages that Respondent "certified" in violation of General Statutes § 9-404b. Furthermore that Respondent certified a primary petition signature for the Schiff Campaign, which he did not witness in violation of that section.
2. Mark Greenberg required 1,859 signatures to appear on the ballot at the August 10, 2010 Republican primary for Representative in Congress from the 5th District according to the Office of the Secretary of the State.
3. Mark Greenberg qualified and appeared on the ballot at the August 10, 2010 Republican primary.
4. Peter Schiff required 8,268 signatures from enrolled party members to appear on the ballot at the August 10, 2010 Republican primary for United States Senator according to the Office of the Secretary of the State.
5. Peter Schiff qualified and appeared on the ballot at the August 10, 2010 Republican primary.
6. Respondent admits that he certified the June 4, 2010 petition for the Schiff Campaign that is subject to this complaint, but denies that he failed to witness the signature of Mr. Edward Lee McTaggart as specifically alleged.

7. General Statutes § 9-404b, provides in pertinent part:

(d) Each circulator of a primary petition page shall be an enrolled party member of a municipality in this state. Each petition page shall contain a statement signed by the registrar of the municipality in which the circulator is an enrolled party member attesting that the circulator is an enrolled party member in the municipality. Unless such a statement by the registrar of voters appears on each page so submitted, the Secretary shall reject the page. ***Each separate page of the petition shall contain a statement as to the authenticity of the signatures on the page and the number of such signatures, and shall be signed under the penalties of false statement by the person who circulated the page,*** setting forth the circulator's address and the town in which the circulator is an enrolled party member and ***attesting that each person whose name appears on the page signed the petition in person in the presence of the circulator,*** that the circulator either knows each such signer or that the signer satisfactorily identified himself or herself to the circulator and that the ***spaces for candidates supported, offices sought and the political party involved were filled in prior to the obtaining of the signatures.*** Each separate page of the petition shall also be acknowledged before an appropriate person as provided in section 1-29. The ***Secretary shall reject any page*** of a petition filed with the Secretary which does not contain such a statement by the circulator as to the authenticity of the signatures on the page, ***or upon which the statement of the circulator is incomplete in any respect,*** or which does not contain the certification required under this section by the registrar of the town in which the circulator is an enrolled party member. Any individual proposed as a candidate in any primary petition may serve as a circulator of the pages of the petition, provided the individual's service as circulator does not violate any provision of this section.
[Emphasis added.]

8. General Statutes § 9-3, provides:

The ***Secretary of the State***, by virtue of the office, ***shall be the Commissioner of Elections of the state***, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, ***the secretary's*** regulations, declaratory rulings, ***instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title,*** except for chapter 155, provided nothing in

this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.
[Emphasis added.]

9. Pursuant to General Statutes § 9-3, the Secretary of the State is the Commissioner of Elections in the State of Connecticut and the Secretary's instructions and opinions, if in written form, shall be presumed as correctly interpreting elections and primaries in the state of Connecticut and respective statutes pertaining to the same.
10. Upon investigation, the Commission finds that the Office of the Secretary of the State as Commissioner of Elections, pursuant to its authority, issued a written legal opinion to the Schiff Campaign pertaining to the circulation of primary petitions on August 8, 2010. The aforementioned opinion advised as to the Secretary's interpretation of § 9-404b (d) and the rules pertaining to circulators of primary petitions, and the circulation of such petitions. Specifically, that opinion advised:

*"It [is] the opinion of this office that **the individual [circulator] who was actually collecting the signatures on the petition page and who was actually holding the petition pages while the signatures were collected was the circulator and thus required to be an enrolled party member.** We also advised you that allowing third party individuals to collect signatures on the petition pages who were not enrolled party members in the state and having a separate, enrolled party member, sign the page after all signatures were collected was not consistent with our interpretation of the of the General Statutes or the Instructions provide with each primary petition."*
[Emphasis added.]

11. General Statutes § 9-404b (d) requires that a circulator obtaining petition signatures, must attest that each individual who signs a petition signed before them, that is "*in his presence,*" and that each signatory was either known to the circulator or satisfactorily identified him or herself to the circulator.
12. The Commission concludes pursuant to General Statutes § 9-404b (d), and the Secretary's binding opinion regarding that section, as detailed in paragraphs 5 through 8 above, that "*in his presence,*" for purposes of a circulator receiving a signature from a signatory, means that the circulator personally holds or otherwise retains actual possession of the clip board or apparatus used to secure the petition page, and those pages thus secured and offered for signing.

13. Respondent claims that that he “*personally witnessed each person sign the petition in his presence*” and that each person was known to him or satisfactorily identified themselves to him. Respondent admits that he did not hold the clip board containing Greenberg Campaign primary petition pages as each signature was received from signatories. Furthermore, Respondent identified Mr. Robert Cummins and Mr. Robert Azzola, as individuals that assisted him in gathering primary petition signatures for the Schiff Campaign, and that the latter individual solicited and received Mr. McTaggart’s signature.
14. Respondent, as described in paragraph 6 above, denies that he failed to witness the signature of Mr. McTaggart on the June 4, 2010 Schiff Campaign petition page. Rather, Respondent asserted in response to this investigation that: *All signatures solicited by either Mr. Cummins or Mr. Azzola were witnessed by me as required by law. I was near both of them as they obtained the signatures. If he didn’t see me, I can’t help it.*
15. The Commission concludes, for the reasons detailed in paragraphs 6 through 14 above, that by relinquishing a clip board holding a petition page or the petition page, to another individual, but maintaining oral or visual contact with that individual, as the latter obtains a signature from a signatory *does not* satisfy the “presence” requirement of General Statutes of § 9-404b (d).
16. Upon investigation, the Commission finds that the evidence indicates that individuals *other than* Respondent actually possessed or held the clipboards used under these facts and circumstances to circulate petitions for the Greenberg Campaign and the Schiff Campaign, and therefore the Respondent should not have certified the same under these circumstances. Therefore, the Commission concludes that Respondent’s claim was *not accurate*, in that the pages were not signed in his “presence,” and therefore did *not* satisfy the requirements of § 9-404b (d) as they pertain to the circulation of petitions by a circulator.
17. Based on the Respondent’s mistaken understanding of the requirements of the aforementioned statutes under these limited circumstances, the Commission declines to take further action. Nevertheless, the Commission finds Respondent’s errors under these circumstances and in handling primary petitions for the Greenberg Campaign and the Schiff Campaign, to be a significant disregard for the requirements of General Statutes § 9-404b, which by their very purpose serve as a prophylactic for assuring the authenticity of signatures made by individuals signing such petitions.

18. Finally, the Commission deems the Respondent on notice of the requirements of General Statutes § 9-404b (d), as detailed herein, and will hold him strictly to these standards henceforth. The Commission dismisses this complaint for the reasons detailed herein.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That this complaint is dismissed.

Adopted this 22th day of August of 2012 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", written over a horizontal line.

Stephen F. Cashman
By Order of the Commission