

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Britta Lerner, et. al., Weston

File No. 2015-136A

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Beth Gralnick, of the Town of Weston, County of Fairfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:¹

1. The instant Agreement concerns a Complaint in which it is alleged that the Weston Democratic Town Committee ("Weston DTC"), distributed unsolicited absentee ballot applications without properly registering with the Weston Town Clerk and also failed to include a sufficient warning pursuant to General Statutes § 9-140 (1).
2. General Statutes § 9-135 prescribes the eligibility requirements for voting by absentee ballot in Connecticut, and reads:²

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he is unable to appear at his polling place during the hours of voting for any of the following reasons: (1) His active service with the armed forces of the United States; (2) his absence from the town of his voting residence during all of the hours of voting; (3) his illness; (4) his physical disability; (5) the tenets of his religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his duties as a primary, election or referendum official at a polling place other than his own during all of the hours of voting at such primary, election or referendum.

¹ This Agreement Containing Consent Order addresses those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

² See also, Conn. Const., art. VI, § 7.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant.

3. General Statutes § 9-140 prescribes the procedures concerning, *inter alia*, obtaining and/or distributing absentee ballot applications for third parties. The pertinent portions of the statute read, as follows:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . . The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.

...

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant.

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such list with the town clerk prior to the date of the primary, election or referendum for which the applications were so distributed. Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

(l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties. As used in this

subsection, "agent" means any person authorized to act on behalf of another person.
(Emphasis added.)

4. The Respondent here is Beth Gralnick, who was at all times the vice-chair of the Weston DTC.
5. According to the Complainants, the Coventry Town Clerk Donna Anastasia received numerous unnumbered absentee ballot applications during the 2015 General Election.
6. According to the Complainants, included with one of the absentee ballot applications was a cover letter from Democratic Board of Selectman candidates Gayle Weinstein and Chris Spaulding, directed at Weston voters, and urging them to vote for Democratic candidates and to vote by absentee ballot, if eligible.
7. The Complainants allege that the Respondent took out approximately 30 unnumbered absentee ballot applications from the Weston Town Clerk, photocopied them, and distributed approximately 300 applications along with the aforementioned cover letter.
8. The Complainants further allege that the cover letter warned of the eligibility requirements for voting by absentee ballot, but failed to warn of the consequences of impermissibly voting by absentee ballot.
9. Finally, the Complainants allege that the Respondent failed to submit to the Town Clerk the required absentee ballot distribution list.
10. The investigation here revealed that the Respondent kept very good records of her efforts. The Respondent distributed 264 absentee ballot applications, along with the aforementioned cover letter with a partial warning.
11. No evidence was found of any effort to conceal her efforts from the public or from the Town Clerk.
12. The investigation also revealed that the Respondent took out approximately 30 absentee ballot applications from the Town Clerk's office and was given permission by the Weston Town Clerk to photocopy as many as she needed.
13. Moreover, the investigation revealed that the records of the Weston Town Clerk confirm that although the Town Clerk registered that 30 applications had been taken out, she failed to record the serial numbers of all 30 physical applications, nor did she register having

distributed any additional serial numbers to the Respondent, despite the evidence that she permitted her to make photocopies.³

14. As such, the Commission finds that the evidence supports a finding that the Weston Town Clerk failed to correctly distribute serialized absentee ballot applications and failed to inform the Respondent fully of her responsibility to individual serialize each absentee ballot application.
15. The Commission concludes that the evidence is inconclusive that the Respondent failed to register her distribution of five or more absentee ballot applications with the Weston Town Clerk. She took out her applications from the Town Clerk and the evidence supports her assertion that she was either misinformed by the Town Clerk or that the Town Clerk simply failed to meet her responsibilities under General Statutes § 9-140 (a) Accordingly, the Commission declines to conclude that the Respondent violated General Statutes § 9-140 (k) (1).
16. Further the investigation revealed that the Respondent did file the relevant list of names and addresses of individuals who received applications prior to the date of the General Election for which the applications were so distributed. As such, the Commission declines to conclude that the Respondent violated General Statutes § 9-140 (k) (2).
17. Finally, the Commission concludes, and the Respondent does not deny, that she violated General Statutes § 9-140 (l) (2) for failure to include the second half of the required written warning.
18. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

³ The Secretary of the State's Office has opined that photocopies are permissible so long as the Town Clerk gives the distributor individual serial numbers and so long as the distributor can affixes a unique number on the face of each application.

19. The Commission does not take lightly these types of omissions, especially where a respondent's failure to account for absentee ballot applications or include warnings could have resulted in violations of General Statutes § 9-135 by those electors who received the unsolicited absentee ballot applications without sufficient instruction and/or warning of the strict and limited eligibility criteria for voting by absentee ballot in Connecticut.
20. In past matters, the Commission has fined those respondents whose activity was egregious and widespread enough to warrant such discipline. In *In the Matter of a Complaint by Scott Veley, Berlin*, 2011-011 the Respondent Philip Apruzzese, as President of the Connecticut Education Association (CEA), sent a letter with an enclosed absentee ballot application to approximately 3,626 CEA members in 17 different towns without an enclosed written warning. A CEA employee printed the absentee ballot application from the website of the Office of the Secretary of the State and then photocopied it as needed. The Respondent paid a \$500 civil penalty in that matter.
21. However, here there does not appear to be any evidence suggesting that the Weston DTC and/or Respondent Gralnick failed in bad faith to include the second half written warning. The Respondent has no prior history of violations in this area and the Respondent and was cooperative with the Commission investigation of this matter.
22. In consideration of the aforesaid, the Commission will waive a civil penalty in exchange for the Respondent's agreement to henceforth strictly comply with the prescriptions of General Statutes § 9-140.
23. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
24. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.


ORDER

IT IS HEREBY ORDERED that Respondent Beth Gralnick shall henceforth strictly comply with the requirements of General Statutes § 9-140.

The Respondent:

For the State of Connecticut:

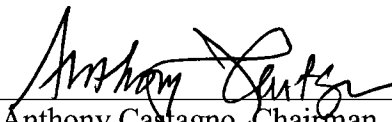
Beth Gralnick
Beth Gralnick

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 2/28/17

Dated: 3/3/17

Adopted this 22nd day of March of 2017 at Hartford, Connecticut


Anthony Castagno, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

MAR - 3 2017

ENFORCEMENT COMMISSION