

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Tony Barr, Bridgeport

File No. 2018-003

FINDINGS AND CONCLUSIONS

The Complainant alleged that the Respondent Registrars of Voters improperly failed to return rejected primary petitions related to his campaign in the September 12, 2017 Democratic primary and allow him to cure the defects in the petitions and resubmit.

Allegation

1. Respondent, Santa Ayala was, at all times relevant hereto, the Democratic Registrar of Voters for the City of Bridgeport, Connecticut.
2. Complainant alleges that, on or about August 7, 2017, he and/or his agents submitted primary petition pages supporting his and Shaquanda Glover's candidacies for City Council in the 138th District and that on or about August 11, 2017 he was informed that the 14 pages submitted had all been rejected because the back pages of each petition page were not filled out, including the "Statement by Registrar of Voters as to Circulator's Status as Enrolled Party Member," "Circulator's Statement of Authenticity of Signatures" and "Certification of Acknowledging Officer."
3. Complainant further alleges that he attempted to retrieve the pages back from the Respondent Registrar, but was told that they could not be returned to him and re-submitted once they had been filed with the town and that he would have to re-collect the signatures and submit them with the correct certifications.
4. Complainant alleges that the Respondent Registrar should have returned the pages to him so that he could have all of the appropriate sections signed and/or notarized and that failing to do so was impermissible.

Law

5. General Statutes § 9-410 (c) provides, in pertinent part:

(c) Each circulator of a primary petition page shall be an enrolled party member of a municipality in this state who is entitled to vote. *Each petition page shall contain a statement signed by the registrar of the municipality in which such circulator is an enrolled party member attesting that the circulator is an enrolled party member in such municipality. Unless such a statement by the registrar appears on each page so submitted, the registrar shall reject such page.* No candidate for the nomination of a party for a municipal office or the position of town committee member shall circulate any petition for another candidate or another group of candidates contained in one primary petition for the nomination of such party for the same office or position, and any petition page circulated in violation of this provision shall be rejected by the registrar. No person shall circulate petitions for more than the maximum number of candidates to be nominated by a party for the same office or position, and any petition page circulated in violation of this provision shall be rejected by the registrar. Each separate sheet of such petition shall contain a statement as to the authenticity of the signatures thereon and the number of such signatures, and shall be signed under the penalties of false statement by the person who circulated the same, setting forth such circulator's address and the town in which such circulator is an enrolled party member and attesting that each person whose name appears on such sheet signed the same in person in the presence of such circulator, that the circulator either knows each such signer or that the signer satisfactorily identified the signer to the circulator and that the spaces for candidates supported, offices or positions sought and the political party involved were filled in prior to the obtaining of the signatures. *Each separate sheet of such petition shall also be acknowledged before an appropriate person as provided in section 1-29. Any sheet of a petition filed with the registrar which does not contain such a statement by the circulator as to the authenticity of the signatures thereon, or upon which the statement of the circulator is incomplete in any respect, or which does not contain the certification hereinbefore required by the registrar of the town in which the circulator is an enrolled party member, shall be rejected by the registrar.* Any individual proposed as a candidate in any primary petition may serve as a circulator of

the pages of such petition, provided such individual's service as circulator does not violate any provision of this section.

(Emphasis added)

6. General Statutes § 9-412 provides, in pertinent part:

Upon the receipt of any page of a petition proposing a candidacy for a municipal office or for member of a town committee, the registrar shall forthwith sign and give to the person submitting the petition a receipt in duplicate, stating the number of pages filed and the date and time of filing and shall forthwith certify on each such page the number of signers on the page who were enrolled on the last-completed enrollment list of such party in the municipality or political subdivision, as the case may be, and shall forthwith file such certified page in person or by mail, as described in section 9-140b, with the clerk of the municipality, together with the registrar's certificate as to the whole number of names on the last-completed enrollment list of such party in such municipality or political subdivision, as the case may be, not later than seven days after receipt of the page. If such page involves a municipal office to be voted upon at a state election, such registrar shall also file a certificate, on a form prescribed by the Secretary of the State, that includes the name and full street address of each candidate and the title and district of such office not later than seven days after receipt of such page. In checking signatures on primary petition pages, the registrar shall reject any name if such name does not appear on the last-completed enrollment list in the municipality or political subdivision, as the case may be. Such rejection shall be indicated by placing a mark in a manner prescribed by the Secretary before the name so rejected. The registrar may place a check mark before each name appearing on the enrollment list to indicate approval but shall place no other mark on the page except as provided in this chapter. The registrar shall not reject any name for which the street address on the petition is different from the street address on the enrollment list, if (1) such person is eligible to vote for the candidate or candidates named in the petition, and (2) the person's date of birth, as shown on the petition page, is the same as the date of birth on the person's registration record. *The registrar shall reject any page of a petition which does not contain the certifications provided in section*

9-410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410. Petitions filed with the municipal clerk shall be preserved for a period of three years and then may be destroyed.

(Emphasis added)

Factual Finding

7. Based upon the evidence reviewed in connection with this matter, the Commission finds:
 - a. August 9, 2017 was the deadline to submit primary petition pages.
 - b. All 14 of the primary petition pages submitted by or on behalf of the Complainant were stamped as received by the Registrars of Voters Office on August 7, 2017 at 11:15am
 - c. All 14 of the primary petition pages circulated are blank on the back, missing all of the required certifications, including: the registrar's certification regarding the circulator's enrollment status; the circulator's statement as to the authenticity of the signatures; and the acknowledgement (a.k.a., notarization) by an appropriate person per § 1-29 of the General Statutes.
 - d. Each one of the 14 primary petition pages were rejected by the Respondent Registrar by certifying in Section E, "Certification by Registrar of Voters of Number of Signers Who Are On Enrollment List" that zero signatures qualified. Each such certification is dated August 15, 2017 and contains the word "Disqualified" at the bottom of said primary petition page.

Analysis

8. The Complainant here does not deny the pertinent facts here and presents a discreet question of law for the Commission: Should the Respondent Registrar have returned the primary petition pages so as to allow the Complainant to complete the missing sections and resubmit without having to re-canvass for signatures?
9. Based on a review of the text of the statute, relevant Superior Court precedent, and the petition page forms promulgated by the Office of the Secretary of the State, the answer is overwhelmingly: no. The Respondent Registrar was not required to return the pages to the Complainant in order to repair the fatal flaws therein.

10. A similar question was raised before the Superior Court in *Kirkley-Bey v. Vasquez*, No. HHD-CV-106007952-S, 2010 WL 1224763 (Conn. Super. Ct. Mar. 1, 2010). In *Kirkley-Bey*, 19 town committee primary petition pages were submitted missing Part C (“Statement by Registrar of Voters as to Circulator’s Status as Enrolled Party Member,”). After the pages were submitted and stamped, the Registrars took it upon themselves to repair the defect in all 19 pages after the deadline for submitting pages had passed.
11. The Plaintiff in *Kirkley-Bey* argued that § 9-410 required that the pages be rejected and that that such rejection was permanent (i.e., no corrections could be made). The Court ruled that based on the text of the statute, the legislative history, the opinion of the Secretary of the State, and the instructions on the form itself, it was the responsibility of the *circulator* to fill out the name and address portions of Part C *before* the pages were submitted and that the law required that reject all pages missing such information.¹
12. Moreover, while the Court in *Kirkley-Bey* ruled that the registrar *could* have called in the circulator to repair the deficiencies in the pages, it declined to rule that any part of the law *required* the registrar to do so.

Conclusion

13. Here, the facts are undisputed. The Complainant submitted 14 petition pages with the entire back page blank.
14. Part C of each page reads: “Circulator must have Part C filled in by Party’s Registrar in town in which circulator is enrolled before submitting it to party’s Registrar in municipality in which the signers are enrolled.” (Emphasis in original.)
15. Part D of each page reads: “Part D must be completed by Circulator and acknowledging officer, after obtaining all signatures on this page and before filing it with party’s Registrar in which the signers of the page are enrolled.” (Emphasis in original.)
16. In the face of clear instructions, the Complainant unreservedly failed to meet his statutory obligations for making the primary ballot and accordingly, such pages were rejected by the Respondent Registrar, as they should have been.

¹ The Court did rule, alternately, that if just the registrar portion of Part C was missing, such section could be completed by the registrars even after the deadline for the submission of petition pages.

17. And, while it may have been factually possible per *Kirley-Bey* for the Respondent Registrar to call the Complainant back in to attempt to repair at least *some* of the errors, she was under no legal obligation to do so.

18. Accordingly, this matter should be dismissed.

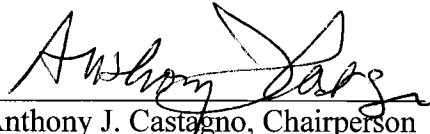
ORDER

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

That the matter is dismissed.

Adopted this 14th day of March, 2018 at Hartford, Connecticut.

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A handwritten signature in black ink, appearing to read "Anthony J. Castagno". The signature is written in a cursive style with a large, sweeping flourish at the end.

Anthony J. Castagno, Chairperson
By Order of the Commission