

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Jason Bartlett, Bridgeport

File No. 2011-107

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Santa Ayala, of the City of Bridgeport, 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. The Complaint alleges here that Respondent Ayala, the Democratic Registrar of Voters in Bridgeport, improperly rejected primary petitions for a slate of candidates for the offices of Mayor, City Clerk, Town Clerk, Sheriff and Board of Education in the City Bridgeport and, alternately, that she knowingly prepared a petition that was deficient and failed to advise the slate of candidates of such deficiency before they collected signatures.
2. The Complainant concomitantly filed matters with both the Commission and the Connecticut Superior Court involving substantially the same allegations. See *Foster v. Ayala*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV116021487S, (September 2, 2011), 2011 WL 4424781.
3. The stipulated facts contained in Judge Bellis' Memorandum of Decision in the Superior Court matter, published September 2, 2011, are summarized in relevant part below and adopted by the Commission for the purposes of this Complaint:
 - a. Plaintiffs were a slate of candidates for the Bridgeport Democratic primary whose petitions were rejected by the Democratic Registrar of Voters. Plaintiffs were Mary-Jane Foster, listed on the petition as candidate for mayor, Marilyn Moore, listed as candidate for City Clerk, Roberto Ayala, listed as candidate for Town Clerk, Dwayne McBride and Andrew Fardy, both listed as Sheriff candidates, and Robert J. Walsh, George Pipkin, III, and Petrinea Cash-Deedon, all of whom were listed on the petition as board of education candidates.
 - b. The sole defendant was Santa I. Ayala, the Democratic Registrar of Voters for the City of Bridgeport ("the registrar").
 - c. Plaintiffs claimed that:
 - i. the registrar misconstrued the Bridgeport City Charter and/or C.G.S. § 9-410(c) in rejecting their primary petition, and

- ii. the registrar knowingly prepared the defective petition which included four board of education candidates, failed to disclose the defect to the plaintiffs, based her rejection on the defect in the petition that she herself prepared, and did not act upon the plaintiffs' primary petition in a timely manner.
- d. On July 5, 2011, the elected board of education had passed certain resolutions which essentially requested that the State Board of Education authorize the Commissioner of Education to reconstitute the Board of Education and appoint new members to the reconstituted board. On July 6, 2011, the State Board of Education authorized the Commissioner of Education to reconstitute the Bridgeport Board of Education. On July 14, 2011, the acting Commissioner of Education sent a letter to the President of the Bridgeport Board of Education and all its members, giving notice of his intention to reconstitute the board.
- e. Prior to being transferred to the Waterbury Complex Litigation docket, two lawsuits were filed in July at Bridgeport Superior Court, and one at Hartford Superior Court, all essentially involving the state take-over of the board and attempting to restore the elected board.
- f. On July 28, 2011, the plaintiffs presented a consent form to the Defendant/Respondent listing the ten individuals, including Foster, who consented to the placing of their name on Foster's nominating petition; this consent form, which included Walsh, Pipkin, Cash-Deedon and Coviello as four board of education candidates, was date-stamped at 12:53 p.m. by the registrar.
 - i. At this time, the registrar was aware of the state involvement with the Board of Education, and she was also aware that no major parties had nominated any Board of Education candidates.
 - ii. Exercising caution, the registrar voiced her concerns that the consent form included board of education candidates and initially appeared reluctant to accept the consent forms with the board of education candidates on it.
 - iii. The registrar advised Bartlett that she would not sign off on a consent form that had board of education candidates on it if he wasn't going to run them. Also, Bartlett had prepared a separate consent form, not listing board of education candidates that he did not want to give her at that time in the absence of a ruling. Bartlett did inform the registrar of the existence of that other consent form, indicating that he was prepared to submit that form if she gave him a ruling or something in writing stating that there would be no board of education candidates.
 - iv. At approximately 4:00 p.m. on July 28, the registrar presented the Foster campaign with approximately 250 copies of the petition form, having completed Section "A," the portion she was required to prepare.
- g. On July 28, 2011 the registrar composed emails to Secretary of State Staff Attorney Ted Bromley, stating that she was unclear as to the interplay between the state education laws and election statutes. She knew of the state involvement with the

Board of Education at that time. She asked for advice as to whether she should accept the consent forms with the board of education candidates and issue petitions for same.

- h. On July 28, 2011 at approximately 4:00 p.m., the registrar presented the Foster campaign with approximately 250 copies of the petition form, having completed Section "A," the portion she was required to prepare.
- i. After leaving the registrar's office, Bartlett noticed that the petitions contained only 3 Board of Education candidates. He called the registrar and was able to reach her on her cell phone. She told him that it must have been a clerical error and she drove back to her office, reprinted the petitions with four Board of Education candidates and gave them to Bartlett.
- j. On July 29, 2011, the registrar received an email from Ted Bromley in which he indicated, in part: "If the Board of Education is dissolved, no endorsement or primary petitions would be issued as the State Board of Education would appoint members to such Board." The registrar did not provide this information to the Foster campaign.
- k. Thus, the reasonable, diligent inquiries of the Foster campaign to determine whether they should include Board of Education candidates went unanswered, but they were in fact ultimately provided with the petition form prepared by the registrar, listing, inter alia, the four Board of Education candidates for a September 13, 2011 primary, despite the registrar's knowledge of the State's involvement with the Board of Education and that should there be a State appointed board, the need for a September primary or November election for the Board of Education would be obviated.
- l. From July 29 through August 10, the Foster slate collected signatures.
- m. On or about August 5, 2011 and August 8, 2011, two more cases were brought in relation to the Bridgeport Board of Education. All told, it appears that no less than thirty-seven parties were involved in the four lawsuits.¹
- n. On August 5, Bartlett emailed the registrar requesting an answer as to whether she would accept any properly signed petitions containing Board of Education Candidates.

¹ In *Walsh v. State Board of Education*, UWY CV11 6011099, Walsh, Coviello, Pipkin, and Cash-Deedon brought suit against 10 defendants, including the State Board of Education, the registrar, Bridgeport mayor Bill Finch, and members of the elected board who had voted in favor of the state takeover. On or about August 8, 2011, in *Walsh v. State Board of Education*, UWY CV11 6011098, the plaintiffs Robert Walsh, Charles Coviello, Charles Pipkin and Petrinea Cash-Deedon, all listed as Board of Education candidates on the petition at issue, brought suit against 20 parties, including the State Board of Education, the registrar, the mayor, individual members of the elected board who voted in favor of a state takeover, the Bridgeport City Clerk, Alma Maya, the Secretary of State, Denise Merrill, and individual members of the newly constituted State Board of Education. Additionally, both the Bridgeport Republican Town Committee and the Bridgeport Democratic Town Committee intervened in the action.

- o. Through corporation counsel, the registrar told Bartlett that she could not respond to the inquiry as the question was “about matters relating to pending lawsuits” in two of which she was a named defendant.
- p. On August 5, the mayor emailed, inter alia, the registrar and the clerk informing them that the Board of Education had been reconstituted by the state and new appointments had been made by the acting commissioner.
- q. Bartlett obtained a copy of the mayor's letter at approximately 5:00 p.m. that day, and based on that letter, reasonably believed there might be nine vacancies on the Board of Education if the plaintiffs in the Waterbury lawsuits prevailed.
- r. From August 5 through the deadline on August 10 the Foster slate handed in petitions.
- s. On August 18, the registrar submitted a letter to the town clerk stating while the registrar recognized that there was no elected Board of Education and as such no Board of Education election in 2011, she determined that the petitions as to the Board of Education candidates probably violated General Statutes § 9-410 because the slate had four such candidates rather than three. She advised that the town clerk seek advice of counsel as to what to next.
- t. From August 18 through August 21, the registrar was reluctant to disqualify the entire Foster slate, was researching the issue, and consulting with counsel in an attempt to obtain written advice from the Secretary of State.
- u. On August 20, the registrar informed Bartlett of the impending probable rejection, but that the registrar believed that a loophole could exist.
- v. On August 21, the registrar drafted a letter to the town clerk and the Secretary of State, with copies to the eight remaining Foster candidates, explaining that she was required to reject all 248 petition pages, and therefore disqualify the entire Foster slate, as the petitions circulated contained four candidates for the Board of Education while the Bridgeport City Charter allowed a maximum number of three, in violation of C.G.S. § 9-410(c).
- w. On the morning of Monday, August 22, the registrar received a letter from Deputy Secretary of the State, in response to an inquiry from the registrar's counsel, summarizing the law, based on the assumption that the City Charter allowed for only three Board of Education candidates, but noted that the office of the secretary of state was not able to issue a binding opinion, and stated that “[u]nder our Statutes, the decision to accept or reject petitions for municipal primaries rests with the local registrar of voters.”
- x. That same day, the registrar provided the Foster candidates with the disqualification letter she had prepared on August 21, 2011.

Count One: Failure to Reject Candidate Consent Forms

4. Turning to the first allegation, the Complainant here has alleged that under General Statutes § 9-409, the Respondent had both the authority and the duty to reject the candidate consent forms that she believed were flawed as to the Board of Education candidates and decline to draft the petition forms, but failed to do so.

5. General Statutes § 9-409 reads, in pertinent part:

Petition forms for candidacies for nomination to municipal office or for election as members of town committees shall be available from the registrar beginning on the day following the making of the party's endorsement of a candidate or candidates for such office or position, or beginning on the day following the final day for the making of such endorsement under the provisions of section 9-391, whichever comes first. Any person who requests a petition form shall give his name and address and the name, address and office or position sought of each candidate for whom the petition is being obtained, and shall file a statement signed by each such candidate that he consents to be a candidate for such office or position. In the case of the municipal offices of state senator and state representative, each such candidate shall include on the statement of consent his name as he authorizes it to appear on the ballot. *Upon receiving such information and statement, the registrar shall type or print on a petition form the name and address of each such candidate, the office sought and the political party holding the primary. The registrar shall give to any person requesting such form one or more petition pages, suitable for duplication, as the registrar deems necessary.* If the person is requesting the form on behalf of an indigent candidate or a group of indigent candidates listed on the same petition, the registrar shall give the person a number of petition pages determined by the registrar as at least two times the number needed to contain the required number of signatures for a candidacy for nomination to municipal office or a number of petition pages determined by the registrar as at least five times the number needed to contain the required number of signatures for a candidacy for election as a town committee member. An original petition page filled in by the registrar may be duplicated by or on behalf of the candidate or candidates listed on the page and signatures may be obtained on such duplicates. The duplicates may be filed in the same manner and shall be subject to the same requirements as original

petition pages. All information relative to primary petitions shall be a public record. (Emphasis added.)

6. Regarding the issue of registrars' authority and/or duty to reject candidate consent forms that they believe would result in flawed petition forms, the Superior Court ruled that there is no such authority or duty. In fact, the Court ruled that pursuant to General Statutes § 9-409, so long as the applicant provides the basic candidate information listed in the statute, the registrar *must* issue the petitions based on the information given:

There is no case law addressing the language of § 9-409. *Looking to the plain language of the statute, it is reasonable to conclude that the registrar does not have authority or a duty to reject consent forms at this stage of the election process, provided that the petitioner has complied with the statutory requirement of providing his name and address, the name, address and office or position sought by each candidate, and statement signed by each candidate that he consents to the candidacy. When that information is properly provided, the registrar is mandated to provide the petition forms.* “The word ‘shall’ in statutes is generally mandatory ‘[u]nless the text indicates otherwise . . .’ *State v. Cook*, 183 Conn. 520, 522, 441 A.2d 41 (1981).” *State v. Jevardjian*, 124 Conn. App. 331, 343, 4 A.3d 1231 (2010). Further, the statute does not refer to the rejection of such consent forms for any reason. This is in contrast to General Statutes § 9-412, which, as discussed above, provides in relevant 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 file such certified page in person or by mail . . . 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 . . . within seven days after receipt of the page . . . The registrar shall reject any page of a petition which does not contain the certifications provided in section 9410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410.” Where the legislature is silent on the matter of rejection, in relation to other statutes, it is reasonable to presume that no such option of the registrar was contemplated. (Emphasis added.)

7. The Commission agrees with the Court's analysis insofar as the holding that the registrar does not have authority or a duty to reject consent forms at this stage of the election process. The Commission's precedent is in line with the Court's finding that “[r]egistrars of voters are required to provide primary petition forms to those individuals who request and meet certain minimum requirements.” *Complaint of Adam Gutcheon, Windsor*, File No. 1999-206, ¶2.

8. Considering the aforesaid, the Commission concludes that the Respondent did not violate General Statutes § 9-409 by issuing the petition pages and was not under a duty to inform the Complainant about her concerns about them.
9. However, while there was no *statutory* responsibility to reject the candidate consent forms or at least to inform the Foster slate of a potential issue with their forms, the Commission supports the Court's equitable decision in *Foster v. Ayala*, holding that the petitioners reasonably relied, to their detriment, on the Respondent/Defendant's failure to inform them that she believed that the candidate consent forms could lead to a petition circulated in violation of General Statutes § 9-410. The Court ruled that the Defendant/Respondent was estopped from rejecting the petitions because her actions and omissions induced the Foster slate's reasonable reliance. We agree. Despite multiple opportunities to do so, Respondent failed to relay her reservations about the number of Board of Education candidates submitted in the certifications filed by the Foster slate. Moreover, she failed to relay clear advice from Attorney Bromley regarding the impact of the dissolution of the Board of Education. As a public servant, the Respondent had a duty, if not a specific legal requirement, to act in the best interest of the public that she serves. Here, she failed in that duty.

Count Two: Improper Rejection of Primary Petitions

10. Turning to the Complainant's second allegation, here he alleges that the Respondent's underlying basis for rejecting the ballots, that only three Board of Education candidates were allowed by the Bridgeport City Charter, was incorrect and in violation of General Statutes § 9-410 (a). He contends that four was the correct number.

11. General Statutes § 9-204 reads, in pertinent part:

(a) *Unless otherwise provided by special act or charter provision, including the charter provisions described in subsection (b) of this section, when the number of members to be elected to the board of education for the same term at any election is even, no elector shall vote for more than half that number and when the number of members to be elected to the board of education for the same term at any election is odd, no elector shall vote for more than a bare majority of that number.*

(b) Any charter which (1) provides for the election of the members of a board of education at one town election for the same term, (2) incorporates section 9-167a by reference to determine minority representation for such board of education and (3) makes no reference

to the number of candidates for which an elector may vote for such board of education shall be deemed to have set the number of candidates an elector may vote for and the number of candidates who may be endorsed by any political party at the maximum levels specified in the table contained in subdivision (1) of subsection (a) of section 9-167a.(Emphasis added.)

12. Chapter 15, Section 1 of the Bridgeport City Charter reads, as follows:

Section 1.

(a) The board of education of the city of Bridgeport shall consist of nine members who shall be electors of the city of Bridgeport and who shall be elected to serve for a term of four years, from the first day of December next succeeding their election.

(b) At the election to be held on the first Tuesday after the first Monday of November, 1993, and quadrennially thereafter there shall be elected five members of said board. Each political party entitled to nominate candidates for election to said board shall nominate three persons and the five persons receiving the highest number of votes at such election shall be elected. Each elector may vote for any three of the candidates nominated for such office.

(c) At the election to be held on the first Tuesday after the first Monday of November, 1995, and quadrennially thereafter there shall be elected four members of aid board. *Each political party entitled to nominate candidates for election to said board shall nominate three persons and the four persons receiving the highest number of votes at such election shall be elected.* Each elector may vote for any three of the candidates nominated for such office.

(d) If a vacancy arises for any reason in the membership of the Board of Education, the remaining members shall elect a new member to serve for the balance of the term vacated. The person so elected shall be a resident and elector and a member of the same political party as the member vacating such office. (Emphasis added.)

13. General Statutes § 9-410 reads, in pertinent part:

(a) The petition form for candidacies for nomination to municipal office or for election as members of town committees shall be prescribed by the Secretary of the State and provided by the registrar of the municipality in which the candidacy is to be filed or duplicate petition pages shall be produced in accordance with section 9-409, and signatures shall be obtained only on such forms or such duplicate petition pages. . . . *Only as many candidates may be proposed in any one primary petition for the same office or position as are to be nominated or chosen by such party for such office or position; but any one primary petition may propose as many candidates for different offices or positions as there are nominations to be made or positions to be filled.*

. . .
(c) . . . 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. . . .* (Emphasis added.)

14. General Statutes § 9-412 reads, 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, within seven days after receipt of the 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 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.)

15. The specific question posed by the Complainant here—was three or four the maximum number of Board of Education candidates that could appear on the petition—was never fully addressed by Court in *Foster*. The *Foster* Court had to decide whether petitions containing too many Board of Education candidates, but the correct amount for the other offices, must be rejected in full or only for the Board of Education candidates.
16. As to the issue of the Board of Education candidates, the Court ultimately concluded that the Board of Education candidates were correctly rejected. However, it did so on the grounds that the reconstitution of the Board of Education under the state obviated the need for a Board of Education election.
17. In making its determination as to the fate of the candidates for Clerk and Mayor, the Court did explore the numerical issue that the Complainant puts before the Commission on this Court. In its Memorandum of Decision, the Court concluded that it:

agrees with the registrar's analysis of the interplay between the City Charter and Connecticut General Statutes § 9-204, the minority representation statute applicable to boards of education, and that in this case, *because the charter specifically provides for how many votes may be cast by any elector, pursuant to the statute, the charter provision governs.* The issue then becomes the number of candidates that can appear on a petition. C.G.S. § 9-410 (a), *which states in*

pertinent part: “[o]nly as many candidates may be proposed in any one primary petition for the same office or position as are to be nominated or chosen by such party for such office of position” suggests that in this instance, since the number of candidates that may be nominated to the Board of Education is three, the primary petition can have only three candidates on it. (Emphasis added.)

Foster v. Ayala, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV116021487S, (September 2, 2011), p. 20, 2011 WL 4424781, *11 (Emphasis added)

18. Ultimately the court determined that “[d]eciding whether a petitioner could petition for three or four candidates under the city charter appears even to be unnecessary, in light of the fact that there were no longer any elected positions on the board of education and therefore no primary.” *Id.* at p. 25, *13. In its ruling, it concluded that “[i]nsofar as the Bridgeport Board of Education has been reconstituted by the state obviating the need for a Board of Education primary absent a ruling from a higher court, the court finds in favor of the defendant as to the claims of [the Board of Education candidates].” *Id.* at p. 33, *18.
19. However, the Court also had to address the question of whether the entire petition should have been rejected as it was here, including those offices that were not circulated in violation of General Statutes § 9-410. This involved an analysis of the interplay between General Statutes § 9-410 (a) & (c), a question which the Court found to be one of first impression. Moreover, the Court found that the statutes were inadequate—i.e., ambiguous—in answering the question of separate offices on the same petition.
20. As such, the Court first looked to the legislative history, but found it lacking sufficient guidance:

The interplay between C.G.S. § 9-410 (a) and (c) is confusing and ambiguous. The statute does not clearly state whether the registrar should reject “different offices” referred to in (a) that have the correct number of positions to be filled or only those offices or positions that may not. In this case, the registrar arguably should have rejected only the Board of Education candidates while allowing the “different offices” that had the correct number of candidates.

Id. at 21-22, *11.

21. It also considered that the legislative intent of § 9-410 (c) had been analyzed recently by the Connecticut Supreme Court in *Gonzalez v. Surgeon*, 284 Conn. 554, 565-66 (2007), which “found that the legislature’s focus when enacting this section was on prohibiting the

circulation by any one person of petitions for multiple candidates, on the presumption that the purpose and effect of such conduct is to siphon votes from the strongest rival candidate to one of the circulator's candidates.” *Foster v. Ayala*, supra, at p. 22, *12 (Internal quotes and citations omitted). However, the Court in *Foster* found that siphoning of votes was not an issue in the present matter and that ultimately Gonzalez failed to “address whether petitions with different offices that did not violate § 9-410 (a) should be rejected.”

22. Accordingly, lacking clear law, precedent or legislative history to guide it, the Court looked to the general principle that

[i]f the legislative history does not clarify the ambiguity, then the Supreme Court recognizes the principle of public policy that ambiguities in election laws are construed ‘to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day . . . This principle, however does not authorize the court to substitute its views for those of the legislature or to read into an election statute a limitation on its application that the legislature easily could have imposed but did not.’ (Citations omitted; internal quotation marks omitted.) *Quoting Gonzalez v. Surgeon*, 284 Conn. 554 at 569.

Foster v. Ayala, supra, at p. 21, *11.

23. In consideration of this principle, the court made the following findings and conclusions as to the question of the different offices:

Given the uncertainty surrounding the board of education and confusion that abounded at all levels regarding whether there would even be a primary for the Board of Education in the present case, the court finds that the plaintiffs were not engaged in conduct that abused the process or involved any siphoning of votes, but rather the plaintiffs were including candidates in the event an election on the board of education would be held. . . . The evidence . . . established that but for the issue with the Board of Education candidates, the petitions would otherwise have been certified, and the rest of the Foster slate would have qualified for the primary. Thus, the mandate to reject petitions for different offices under § 9-410 (c) should not apply here.

There is no case law interpreting the language of this section to clarify the ambiguity, and comparing the language to other portions of the

statute only confuses the matter. It does not appear that the legislative history of § 9-410 (c) contemplated this intersection between § 9-410(a) and § 9-410 (c). Therefore, because the statute is ambiguous, it should be construed to allow the greatest scope of public participation and to allow names to get on a ballot.

Id. at 23-24, *12-13.

24. In consideration of the above findings and conclusions, the Court found that General Statutes § 9-412 requires “the registrar of voters to review the petitions [submitted pursuant to] § 9-410 within seven days of receipt of the final petitions, which duty was not met here.” *Id.* at 25, *13.
25. As an initial matter, the Commission adopts the Court’s ruling on this issue, insofar as the Defendant/Respondent did not review the petitions submitted to her pursuant to § 9-410 within seven days of receipt thereof. The evidence is clear, and the Respondent admits, that she did not meet her statutory obligation under the General Statutes § 9-412. The petitions were submitted between August 5 and August 10, 2011 and should have been forward to the clerk by August 17, 2011. The Respondent forwarded the petitions on August 18, 2011. As such, the Commission concludes that the Respondent violated General Statutes § 9-412.
26. In consideration of the above conclusion, the Commission need not necessarily consider the question of whether it concurs with the Court on the specific question of whether the Respondent violated General Statutes § 9-412 by rejecting the entire ballot even though only the Board of Education line was flawed. Moreover, since *Foster v. Ayala* was not a direct appeal from an administrative determination by the Commission or an appellate matter, it is not binding here.
27. However, the Commission considers persuasive the Court’s holding that a registrar’s determination that a petition was circulated with a flaw violating General Statutes § 9-410 for one particular office does not necessarily require that the petition be thrown out for all other offices included thereon. There appears to be no strong language in either the statute or the legislative history supporting the notion that the baby should be thrown out with the bathwater where, as here, only one of many offices on a petition contains a material defect such as the dissolution of the elected office by the State.
28. Considering the aforesaid, the Commission adopts the Court’s conclusion and concludes that the Respondent also violated General Statutes § 9-412 by failing to certify petitions for the non-Board of Education candidates on the slate.

29. However, the Commission declines to issue a civil penalty on this ground. As was demonstrated by the Court's complicated decision of law, this case could easily have been decided differently. While the Commission would expect that all registrars going forward will adhere to the ruling, this Respondent need not be penalized where, as here, the legal issue was complicated and unprecedented.
30. Respondent disputes in good faith the Commission's legal conclusions regarding this issue, but for the purposes of avoiding further litigation, she agrees to settle the matter under the terms herein
31. As concerns the Respondent's *general* untimely review and referral of the petitions to the municipal clerk, the Commission also declines to issue a civil penalty under the facts of this case. The Court's findings showed that the petitions here were submitted between August 5, 2011 and August 10, 2011. The Respondent completed her review of the petitions and sent the municipal clerk notice of her determination via a letter on August 18, 2011. As such, the petitions were completed between 1-6 days after the 7-day statutory deadline. During this time the Respondent registrar was a named defendant and/or witness in multiple lawsuits concerning the dissolution and takeover of the Bridgeport Board of Education by the State. She had to appear as a defendant in Superior Court during the time in which she was trying to determine the correct legal action to take under General Statutes § 9-410, where, as here, the state takeover put into question the *very existence* of a race for Board of Education.
32. Finally, the Commission notes that there are no allegations or evidence in this matter that the late completion of the registrar's review of the petitions had any detrimental effect upon the Foster slate—that is, the Foster slate suffered no harm because of the Respondent's failure to meet the deadline under § 9-412. The untimely review had no effect on the Foster slate's ability to seek redress in the Superior Court; they had ample time before the scheduled September 13 primary to avail themselves of their rights under General Statutes § 9-329a to challenge the Respondent's decision.
33. In conclusion, Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars or twice the amount of the improper contribution or expenditure for a violation of Chapter 155 of the General Statutes. Pursuant to Regulations of Connecticut State Agencies §9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
- (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.


34. In consideration of the aforesaid, the Commission concludes that the specific facts of this matter are original and extraordinary and that they are mitigating of a penalty for this Respondent.
35. Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
36. 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.
37. 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.
38. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.


ORDER

IT IS FURTHER ORDERED THAT that both Respondents will henceforth strictly comply with the requirements of General Statutes §§ 9-410 & 9-412.

The Respondent:

For the State of Connecticut:



Santu Ayala, Registrar of Voters
City of Bridgeport
999 Broad Street
Bridgeport, CT

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

Dated: 7/24/12

Dated: 8/2/12

Adopted this 22nd day of August of 2012 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission