

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Thomas Swarr & Ann Goshdigian, Hartford File No. 2018-014

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Giselle Feliciano and Martin A. Jones, of the City of Hartford, County of Hartford, 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 Complainants allege that the Respondent Absentee Ballot Moderator and Democratic Registrar of Voters failed to allow the public to observe the central counting of absentee ballots during a Democratic Party Committee primary.
2. General Statutes § 9-147a reads, in pertinent part:
 - (a) At any election, primary or referendum all absentee ballots shall be counted in the respective polling places except when counted at a central location. Any election official serving in a polling place may observe the counting of absentee ballots at that polling place.
 - (b) At any election, primary or referendum, all absentee ballots may be counted at a central location designated by the registrars of voters in writing to the municipal clerk at least twenty days before the election, primary or referendum, which location shall be published in the warning for the election, primary or referendum. If unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, absentee ballots may not be counted at a central location unless both parties decide to have central counting and designate the same room for such central counting. If such designation of a central location has been made, the ballots shall not be counted in any polling place but all absentee ballots shall be separated, counted, tallied, placed in depository envelopes and returned by voting district. Any member of the public may observe the counting of absentee ballots at such central location. (Emphasis added.)

3. General Statutes § 9-148 reads, in pertinent part:

The appointment of absentee ballot counters shall be made by the registrars of voters. The presiding officer for the purpose of declaring the result of the vote of the whole municipality is the moderator. *Each person appointed to count absentee ballots shall participate in a training session at which the registrars of voters, absentee ballot moderator or moderator of the polling place, as the case may be, shall review and study the absentee counter's manual provided by the Secretary of the State under section 9-150a. Each elector so appointed shall be sworn to carry out faithfully the duties of his office and not to attempt to ascertain the manner in which any absentee elector has marked his absentee ballot. The registrars of voters shall ascertain the voting district in which each absentee elector is registered and shall apportion the envelopes according to voting districts among the appointed groups of electors, if there is more than one such group, in such manner that each group can conveniently count the votes apportioned to it. (Emphasis added.)*

Background

4. The facts of this Complaint concern the observation of absentee ballot counting during the March 6, 2018 Hartford Democratic Town Committee Primary. Complainant Swarr was the husband of challenge slate candidate Donna Swarr. Complainant Goshdigian was a candidate on the same slate as Ms. Swarr.

Allegation

5. Mr. Swarr and Ms. Goshdigian alleged that they attempted to observe the central counting of the absentee ballots at Hartford City Hall by Absentee Ballot Moderator Martin Allen Jones. The Complainants allege that at approximately 1:30pm, Respondent Jones asserted that Ms. Goshdigian could not be in the room and that all others needed to leave as well, including Mr. Jones. The Complainants allege that they requested proof in writing that they were not permitted to be in the room while the absentee ballots were being counted. They assert that Mr. Jones showed them the Moderator's Guide for Polling Places as proof of his assertion that they were not permitted to be there.
6. They asserted that Registrar Gisele Feliciano intervened and asserted that Ms. Goshdigian could not observe because she was a candidate and candidates could not be within a polling place during the hours of voting. They assert that Town Clerk John Bazzano was called

down and asked to opine whether the room in which the ABs were being counted was a polling place. They assert that Mr. Bazzano opined that it was not.

7. They asserted that upon Mr. Bazzano's intervention, Respondent Feliciano then "changed tact" and asserted that it was within her authority to remove anyone disrupting the counting process. They assert that Ms. Feliciano contacted the police and had them both removed from the room.
8. They asserted that Donna Swarr then called the Secretary of the State's office and spoke with Attorney Bernard Liu, who confirmed that they had a right to observe the counting of the absentee ballots. They assert that Ms. Feliciano herself spoke with the office of the Secretary of the State, at which point she allowed Mr. Swarr to observe, but not Ms. Goshdigian, the candidate.
9. Finally, the Complainants asserted that the Respondents were both angry and belligerent with them, despite Mr. Swarr remaining largely silent and Ms. Goshdigian being assertive but not aggressive.

Investigation

10. The investigation here was limited as the Respondents do not deny the gravamen of the allegations, that it was their understanding that the absentee ballot counting location was a polling place and that the Complainants were not permitted to observe until the intervention of the Secretary of the State's office. They dispute that they were in any way rude or aggressive and assert that it was Ms. Goshdigian who was being disruptive and aggressive. Moreover, they assert that Mr. Swarr was attempting to observe from directly behind the counting, which they assert could have risked being able to see how voters were casting their ballots.
11. The police report of Officer Barrett, the City Hall's assigned police officer on the date in question, largely restated the Complainant's allegations here.

Analysis

12. Liability for failing to allow the Complainants here, both of them, to observe the absentee ballot count is clear. General Statutes § 9-147a (b) is very clear that *any* member of the public, without exception, may observe the counting of the absentee ballots at a central counting location. Indeed, as if this was not clear enough, one need look no further than the prior subsection, which differentiates the counting of ballots at a polling place—in which

only polling place workers may observe—versus a central counting location, in which any member of the public may observe.

13. The Commission has clearly inveighed on the question. *In the Matter of a Complaint by Evelyn B. Louziotis, New London*, File No. 2011-152, the Commission stated:

While the number and type of individuals who may enter a polling place during the hours of voting are prescribed and limited pursuant to General Statutes § 9-236 (c), General Statutes § 9-147a specifically allows any member of the public to observe centrally counted absentee ballots. While the actual handling and the counting of the ballots is specifically limited to the appointed election officials, § 9-147a does not discriminate as to who may "observe" nor does it specifically delineate the boundaries of what constitutes observation. In that instance, it is up to the individual central counting moderator and alternate moderator to keep order in the counting room.

Id. at ¶ 6.

14. Considering the aforesaid, the Commission concludes that both Ms. Feliciano and Mr. Jones violated General Statutes § 9-147a (b) for initially closing the absentee ballot count to the public, including to the Complainants here.

Resolution

15. General Statutes § 9-7b (a) (2) (A) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145 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.

16. This is a case of first impression. While there are two matters—*Louziotis*, above, and one dating back to at 1995—involving allegations inadequate opportunity for the public to observe, no prior matter involve the facts that we have here with both an absentee ballot moderator and a registration of voters banning all access to the public. See also *In the*

Matter of a Complaint by Verne Fuerst, Terryville, File No. 1995-312 (Commission found that § 9-247a (b) responsibility to allow public to observe was met, even though area designated for observation of AB count was 25-30 away).

17. Objectively, this is a troubling fact pattern for the Commission. Even if the Commission sets aside whether or not (or which) parties were “aggressive” here, the fact that neither the absentee ballot moderator, nor the Registrar of Voters, whose job it is to train the moderator, had a sufficient understanding of this basic right of the public to observe is concerning.
18. Ms. Feliciano has been registrar since first getting elected in 2016 and was certified as a registrar through the mandatory training and certification program. In that program, one of the courses covers absentee ballots, including but not limited to the methods by which they are counted.
19. Moreover, this topic is covered in the official “Procedure Manual for Counting Absentee Ballots” which the parties were required to review pursuant to General Statutes § 9-148. The section Who May Observe Absentee Ballot Counting is appears on the *second* page of the manual.
20. If the Complainants are to be believed, the Respondents were determined to disallow at least Ms. Goshdigian from observing the count, by any means necessary, including by falsely declaring that they were causing a disturbance. The Commission believes that there is insufficient evidence to support that assertion.
21. However, the Commission does find a troubling lack of contrition and/or remorse in the Respondents’ statements in response to the allegations here. Their failure to acknowledge a material error of law in their answers to this matter weighs in the Commission’s decision here.
22. The Commission does note that these Respondents have no prior history in this area.
23. As discussed above, the two prior matters involving this issue ended up in dismissals, as no member of the public was shut out, as the Complainants were here. However, relevant here are the cases concerning the public’s right to observe during a recanvass, functionally similar to the right enumerated in General Statutes § 9-147a (b). See General Statutes §§ 9-309, 9-310, and 9-311.
24. One prior matter in the recanvass cases involves a civil penalty issued by the Commission. *In the Matter of a Complaint by Kenneth Gronback, Haddam*, File No. 2009-148 involved a

situation in which a close-vote recanvass was conducted by the town in a local election. A Regional School District seat was decided by only 1 vote, resulting in an automatic recanvass. The recanvass resulted in a flipping of the result due the loss of a vote by Candidate A and the gaining of a vote by Candidate B. After the recanvass, the moderator realized from her notes that they made a mistake in taking the vote away from Candidate A. She reached out to the registrar and the town clerk and the three of them went into the locked and impounded elections materials to verify their suspicion. Their concerns were indeed confirmed and the candidates had actually tied rather than the vote flipping. They noted everything on the amended returns, returned everything back and submitted the returns to the Secretary.

25. The Commission found that the respondents, while acting in good faith in trying to ascertain a possible error, essentially conducted a second recanvass, *out of view of the public*. This caused considerable consternation in the town and put the result unnecessarily in question. When assessing whether to issue a civil penalty in *Gronbach*, the Commission held:

29. Here, as stated above, there does not appear to be any evidence suggesting that the Respondents acted in bad faith. Moreover, the evidence appears to show that their acts, while in violation of General Statutes § 9-310, found an outcome-determinative discrepancy in the recanvass. They realized quickly that they had made a mistake and made efforts to make amends. They were publicly scolded by their peers and by the media.

30. However, while the above considerations mitigate, to a degree, the Commission's determination of a civil penalty in this matter, unlike in *Jurzynski*, they do not excuse the Respondents' failure here. Their breach of the § 9-311 protocols was grave and caused considerable consternation in the town of Haddam and cast the entire result in question. While the evidence appears to show that their acts were not fraudulent, the Commission agrees that "when you go by yourselves, just you two, it gives the appearance of impropriety" (quoting a Hartford Courant story in the matter

26. Two of the three respondents in *Gronbach*, who were very contrite and embarrassed by the matter, paid a civil penalty of \$150 (one of the respondents was very ill).

27. The Commission believes this matter to be similar to *Gronbach* insofar as elections officials were attempting to conduct elections business without the transparency explicitly called for in the law.
28. While the Commission does not believe that there was any untoward intent insofar as the handling of the absentee ballots themselves, it appears from the Respondents' statements here that if the Complainants had not intervened, they would have continued to disallow at least candidates from observing the count.
29. Unlike in *Gronbach*, the facts here are less complicated. Here, the question is merely: did they know that the law required them to open an absentee ballot count to all members of the public? By their own admission, they did not. They brought in the Town Clerk to resolve the question.
30. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes that a civil penalty of \$750 is necessary here to insure immediate and continued compliance.
31. The aforementioned civil penalty shall be reduced to \$500 if Respondent Feliciano repeats the "Absentee Voting & Supervised Absentee Voting" class conducted by the University of Connecticut pursuant to the certification program established by the Secretary of the State under General Statutes § 9-192. If Respondent Feliciano fails to furnish sufficient proof of attendance within six months of the adoption of this Agreement, the civil penalty shall revert back to \$750 and the balance will be due immediately.
32. The Respondents admit all jurisdictional facts and agree 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. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
33. 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.


34. 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.
35. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

That the Respondents will henceforth strictly comply with General Statutes § 9-147a and 9-148.

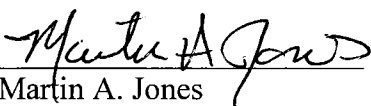
That the Respondents will pay a civil penalty of \$750 which shall be reduced to \$500 if Respondent Feliciano repeats the "Absentee Voting & Supervised Absentee Voting" class conducted by the University of Connecticut's through the certification program established by the Secretary of the State under General Statutes § 9-192 and Respondent Feliciano furnishes sufficient proof of attendance within six months of the adoption of this Agreement.

The Respondents:



Gisele Feliciano
Hartford, CT


Dated: 5/24/19



Martin A. Jones
Hartford, CT

Dated: 5/28/19


For the State of Connecticut:

BY: 

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

Dated: 6/7/19

Adopted this 19th day of June of 2019 at Hartford, Connecticut



~~Anthony J. Castagno, Chair~~ *Vice-Chair*
By Order of the Commission
Salvatore Bramante

RECEIVED
STATE ELECTIONS

JUN 19 2019

ENFORCEMENT COMMISSION