

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Steven Taccogna, Stratford

File No. 2020-040

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between David Harden, of the Town of Stratford, 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.¹ In accordance herewith, the parties agree that:

Background

1. The allegations here concern the August 11, 2020 primary for the Democratic Party Nomination for Registrar of Voters in the Town of Stratford. Richard Marcone, the incumbent Democratic Registrar of Voters, was not endorsed for re-election by his party. Mr. Marcone filed paperwork to attempt to petition and force a primary for the nomination.
2. Twenty-two different circulators submitted petition pages on Mr. Marcone's behalf in late May and early June 2020. Additionally, a number of single-signature pages lacking a circulator page were submitted pursuant to the special procedure enumerated in Section (2) (c) of Governor Lamont's Executive Order 7LL.
3. In the end, 60 petition pages bearing 556 total signatures were submitted on Mr. Marcone's behalf. 488 signatures were certified and counted, which was 30 more than the 458 signature threshold applicable for that race. Mr. Marcone qualified for the August 11, 2020 primary, but lost the primary to the endorsed candidate.

¹ The following Agreement concerns only 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 and which applied to Respondent Harden specifically. 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 or did not concern Mr. Harden specifically.

Allegation

4. The Complainant here was at all times relevant to the instant Complaint the chair of the Stratford Democratic Party Committee. The Complainant set forth a number of allegations with the stated goal of seeking to disqualify petition pages and prevent a primary.²
5. The Complainant submitted nine signatures on two different petition pages and alleged that they may have been signed by the same person.
6. Respondent Harden signed the circulator statement under oath on both pages swearing that he circulated each page, witnessed each signature, and verified the identity of each signatory.

Law

7. General Statutes § 9-410, provides 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. Such form shall include, at the top of the form and in bold print, the following:

WARNING

IT IS A CRIME TO SIGN THIS PETITION

IN THE NAME OF ANOTHER PERSON

WITHOUT LEGAL AUTHORITY TO DO SO

AND YOU MAY NOT SIGN THIS PETITION

² Commission Counsel informed Complainant after the matter was docketed that such relief could only be found before the Superior Court and that the Commission's authority in General Statutes § 9-7b did not extend to such relief.

IF YOU ARE NOT AN ELECTOR.

The form shall include thereon a statement of instructions to persons using the form and shall indicate the date and time by which it shall be filed and the person with whom it shall be filed. The form shall provide spaces for the names and addresses of the candidates, the offices to which nomination is sought or the positions to which election is sought and the political party holding the primary, and shall provide lines for the signatures, street addresses, dates of birth and the printing of the names of enrolled party members supporting the person or persons on behalf of whose candidacy the petition is used. 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.

(b) The names of enrolled party members signing a primary petition need not all be on one sheet but may be on several sheets, but no person shall sign more than one petition page for the same candidate or candidates. Any person who signs a name other than the person's own to a primary petition filed under the provisions of this section or who signs a name other than the person's own as circulator of such a petition shall be fined not more than one hundred dollars or imprisoned not more than one year or both. Each such sheet shall indicate the candidate or candidates supported, the offices or positions sought and the political party the nomination of which is sought or which is holding the primary for election of town committee members. No page of such a petition shall contain the names of enrolled party members residing in different municipalities and any page thereof which has been certified by the registrars of two or more municipalities shall be rejected by the registrar. Withdrawal of petition signatures shall not be permitted.

(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.

8. General Statutes § 9-410 requires that each individual who circulates a petition must provide an attestation under the penalties of false statement that each person who signed

that petition signed in the circulator's presence, and that each signatory was either known to the circulator or satisfactorily identified him or herself to the circulator.

9. A requirement of General Statutes § 9-410 is that the circulator's attestation be true. Accordingly, if the circulator signed a General Statutes § 9-410 petition statement that he or she knew or reasonably should have known was untrue, that circulator will be deemed to have violated General Statutes § 9-410.

Investigation

10. As an initial matter, the Commission notes that the two petition pages highlighted in the instant Complaint were the only two pages submitted in which Respondent Harden signed as the circulator.
11. The first page submitted by the Complainant contained only three signatures, all individual electors registered at the same address: Cathy Reed, Gracie Reed, and Cynthia Thorpe.
12. The Complainant asserted that the signatures of these three individuals appeared to have been signed all by the same person.
13. Upon examination by Commission investigators the handwriting and signatures of these three electors appeared to be similar. However, a comparison to the handwriting and signatures on the electors' last known voter registration applications ("VRA") was inconclusive.
14. Commission investigators spoke with Cathy Reed, who asserted that she remembered signing the petition and denied signing the petition on behalf of any other person. Commission investigators were unable to make contact with the other two electors.
15. The second page submitted by the Complainant contained a full sheet of signatures, 6 of which the Complainant questioned: 2 registered at one address and 4 registered at another.
16. The 2 individuals whose names and apparent signatures appeared on the second page and whose address was the same were Jamie and Michael Soderberg.
17. Upon examination by Commission investigators the handwriting and signatures of these two electors appeared to be similar. However, a comparison to the handwriting and signatures on the electors' last known voter registration applications ("VRA") was inconclusive.

18. Commission investigators reached Mrs. Soderberg, who asserted that each elector signed their own name. Investigators were unable to make contact with Mr. Soderberg.
19. The 4 individuals whose names and apparent signatures appeared on the second page and whose address was the same were Larry Johnson, Sandra Johnson, Carrie Johnson, and Daniel Johnson.
20. Upon examination by Commission investigators the handwriting and signatures of these two electors appeared to be similar
21. Upon comparison of the electors' handwriting and/or signatures on the petition to that on their VRAs, the handwriting and signatures appeared to be different, except for that of Larry Johnson, which appeared to match the handwriting and signature on all four.
22. Commission investigators made affirmative contact with both Sandra Johnson and Daniel Johnson. Both electors confirmed that they recalled 2 individuals coming to their home asking for petition signatures, but they both did not recall signing the petition.
23. Daniel Johnson speculated that his son Larry may have signed on behalf of the 4 of them, but could not state that for certain. Commission investigators were unable to make affirmative contact with Larry Johnson.

Respondent Reply

24. In response to Commission inquiries regarding the allegations, Mr. Harden did not specifically recall his experience collecting the signatures in question. He asserted that he had circulated petition pages twice in the past: once during a campaign for state representative, and again in 2015 for a municipal campaign.
25. The Respondent stated to Commission investigators that "Mr. Marcone was very thorough with his instructions on circulating petitions; he reviewed the Secretary of State guidelines very thoroughly prior to us going door-to-door in our respective locations or areas [and] he also pointed out the dos and don'ts of circulating petitions." When asked if he ever allowed any person to sign on behalf of another person he asserted:

At no given time was anyone encouraged to sign for any individual; any signatures collected were in the presence of the petitioner (meaning the person collecting signatures) Nor was anyone encouraged to do so Mr. Marcone was very strict when it came to

collecting signatures and asked that all the secretary of state guidelines to collecting signatures be followed thoroughly . . . there were several signatures that were witnessed by myself and Mr. Marcone by either first and last name date of birth and also ID cards/drivers license

Commission Analysis & Conclusions

26. The Complaint here concerned two petition pages circulated by Respondent David Harden in which the allegation is that he did not witness nine of the signatures which he swore under oath to have witnessed.
27. Based on the investigation, the Commission concludes that the evidence was insufficient to support a conclusion that it was more likely than not that Mr. Harden failed to meet his responsibilities as circulator regarding the petition signatures of Cathy Reed, Gracie Reed, Cynthia Thorpe, Jamie Soderberg, Michael Soderberg, Larry Johnson, or Carrie Johnson.
28. However, the Commission concludes that evidence supports that it was more likely than not that two of the signatures in the Johnson family were not their own: that of Daniel Johnson and Sandra Johnson.
29. Either Mr. Harden failed to properly witness each signature (e.g., may have allowed Larry Johnson to take the petition inside and sign it) or failed to properly identify the individual or individuals who signed Sandra Johnson and Daniel Johnson's names to the petition.
30. Accordingly, the Commission concludes that it was more likely than not that Respondent David Harden violated General Statutes § 9-410 for failing to meet the requirements of witnessing all of the signatures on a single petition page and/or failing to properly identify all of the signatories on a single petition page and improperly certifying that he did.
31. 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, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g to 9-19k, inclusive, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o.

32. 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.
33. Petition cases involving circulators is well trod ground before the Commission. The Commission has consistently held that circulators are solely responsible for verifying signatures. The Commission has largely held circulators strictly liable when a circulator fails to witness a signature and such signature turns out to be false. *See, e.g., In the Matter of a Complaint by Alison C. Heimer, New Haven*, File No. 2013-111A through 2013-111E.
34. The cases largely break down into three levels of severity. The harshest penalties have been reserved for those individual circulators who falsify signatures themselves. *See, e.g., In the Matter of a Complaint by Jimmy Cooper, Bridgeport*, File No. 2004-102 (Respondent circulator falsified 22 signatures himself, resulting in petition pages being rejected and the slate being removed from the ballot by the Superior Court; \$3,500 civil penalty). The Commission also issued a severe penalty in *In the Matter of a Complaint by Donna Donovan, Glastonbury*, 2000-226 when the investigation revealed that the circulator did not witness any of the 701 signatures on almost 351 pages that she signed. In *Donovan*, the civil penalty agreement was \$6,000 (reduced to \$2,500 due to financial hardship).
35. The most common matters before the Commission involve circumstances in which the evidence showed that the circulator knew that someone impermissibly signed on behalf of another, most commonly in instances where family members signed for each other. These matters largely have ended in civil penalties of \$300 per occurrence. *See, e.g., In the Matter of a Complaint by Ellen Camhi, Stamford*, File No. 2014-164; *In the Matter of a Complaint by Alison C. Heimer, New Haven*, File No. 2013-111A through 2013-111E.
36. The third involves signatures later proven to be false, but where the evidence does not support a finding either that the circulator signed it, or that s/he had specific knowledge that the signature was false. *See, e.g., In the Matter of a Complaint by Joel Gonzalez, Bridgeport*, File No. 2019-126 and *In the Matter of a Complaint by Charles A. Marino, West Haven*, 2008-078. In both of these cases, the signature was provably false, but the evidence did not support a finding that the circulator had any knowledge that the signer was

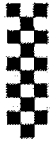
not the same person. The Commission concluded that the circulator nonetheless was responsible for one instance of violating 9-410 (c) and the matters ended in civil penalties of \$300 and \$200, respectively.

37. The Commission notes that the evidence discovered during the investigation did not reveal any specific facts that would support that Respondent Harden signed his circulator statement in bad faith.
38. Upon examination of our cases, the investigation revealed that Respondent Harden has no prior history in this area.
39. On its face, this matter is fairly straightforward, and not unlike the facts of *Camhi*, *Heimer*, *Gonzalez*, and *Marino*, cited above.
40. Consistent with the above precedent, a civil penalty of \$400, \$200 for each of the two signatures not witnessed by Respondent Harden, is appropriate here.
41. However, while the Respondent did not raise COVID-19 as a specific defense or make a request for mitigation here, the Commission notes the unique exigencies of attempting to gather petition signatures in person during a period in which the COVID-19 pandemic was in its first few months and was causing considerable disruption to many activities without any relief on the horizon.
42. It is not difficult to imagine a scenario where the unique complexities of making unannounced visits to electors' homes and seeking to hand over a piece of paper to electors—which may have touched many hands already—may have been a factor affecting strict compliance in this matter.
43. Indeed, serious consideration was given by Secretary of State Denise Merrill and Governor Lamont to eliminating petition gathering altogether in 2020. Ultimately the Governor issued Executive Order 7LL, which kept the traditional petition-gathering process in place for primary petitions and nominating petitions but reduced the number of petitions required and made limited allowances for submitting signatures through electronic means.
44. EO 7LL was not released until just before the period in which petitions could be gathered. At the time there were protests both from potential political primary challengers as well as those potentially seeking direct access to the General Election ballot (through the nominating petition procedure), asserting that even a reduced petitioning option unnecessarily risked the health and safety of all involved.

45. As such, considering the totality of the circumstances here and comparing the facts in *Camhi, Heimer, Gonzalez, and Marino*, a reduced civil penalty of \$300, \$150 for each of the two signatures, is appropriate here.

Resolution

46. The 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. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
47. 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.
48. 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.
49. 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 HEREBY FURTHER ORDERED THAT the Respondent will henceforth strictly comply with General Statutes § 9-410; and

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of three hundred dollars (\$300.00) to the Commission, in full and final resolution of this matter.

The Respondents:

For the State of Connecticut:



David Harden
Stratford, CT

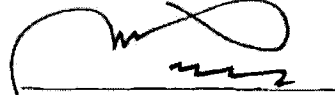
BY: 

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

Dated: 8-4-2021

Dated: 9/16/2021

Adopted this 16th day of September of 20 21 at Hartford, Connecticut



Stephen T. Penny, Chair
By Order of the Commission