

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Keith Hedrick, Groton	File No. 2021-122B
In the Matter of a Complaint by Deborah DeMuisis, Guilford	File No. 2021-174B
In the Matter of a Referral by Newington Registrar of Voters Marie Fox	File No. 2021-176B
In the Matter of a Referral by Newington Registrar of Voters Jennifer Ancona	File No. 2021-177B
In the Matter of a Complaint by Jessica Rodi, Shelton	File No. 2021-179B
In the Matter of a Complaint by Sandra Coppola, Berlin	File No. 2021-180B
In the Matter of a Complaint by Jean-Claude Ambroise, Groton	File No. 2021-184B
In the Matter of a Referral by the Bristol Town Clerk	File No. 2021-185B
In the Matter of a Referral by the New Britain Town Clerk	File No. 2021-186B
In the Matter of a Complaint by Richard Marcone, Stratford	File No. 2021-189B
In the Matter of a Complaint by Timothy Lavoy, Portland	File No. 2021-190
In the Matter of a Complaint by Stephanie Weintraub, South Windsor	File No. 2021-191B
In the Matter of a Complaint by Scott Nolan, Windsor Locks	File No. 2021-192
In the Matter of a Complaint by Robert Dempsey, Norwich	File No. 2021-203B
In the Matter of a Complaint by Anne Manusky, Easton	File No. 2021-205
In the Matter of a Complaint by Anthony Simonetti, Shelton	File No. 2021-206B
In the Matter of a Complaint by Anthony Simonetti, Shelton	File No. 2021-207B
In the Matter of a Complaint by Richard Kilby, Bristol	File No. 2021-213B
In the Matter of a Complaint by Michael Ludwick, et al, Enfield	File No. 2022-001B

FINDINGS AND CONCLUSIONS

These findings and conclusions exclusively concern the question of whether the respondents in the above-captioned matters correctly followed the prescriptions in General Statutes § 9-140 (a), (k), and (l) for the distribution of absentee ballot applications to Connecticut electors during the 2021 General Election cycle.¹

¹ The following are the Commission's findings and conclusions based on those portions of the statements of complaints and referrals which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements therewithin 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 will be separately addressed by the Commission.

Factual Background

Covid-19 Pandemic and Absentee Balloting in 2020

1. The events of these matters all occurred during a statewide health emergency due to the Covid-19 pandemic.
2. During the aforementioned statewide health emergency, access to absentee balloting was expanded both through extraordinary authority granted to Governor Lamont by the General Assembly and also through the legislature itself by the enactment of sunseting statutes.²
3. For the August 11, 2020 primaries and November 3, 2020 General Election and for all elections, primaries, and referenda held in 2021, in addition to the reasons specified in Conn. Const. art. VI, § 7 and General Statutes § 9-135, electors could vote by absentee ballot “because of the sickness of COVID-19,” which effectively offered any elector in Connecticut the right and opportunity to cast their ballot without having to go to a polling place.
4. The Connecticut Supreme Court denied a challenge to these changes, holding that the changes were consistent with the “sickness” allowance for absentee balloting enshrined in Conn. Const. art. VI, § 7 insofar as inability to appear at the polling place on the day of election because of sickness, liberally interpreted, was not limited to an individual elector’s illness physically preventing that elector’s travel to the polling place and reasonably could encompass the exceptional circumstance of a pandemic. *Fay v. Merrill*, 338 Conn. 1 (2021).
5. Anticipating excess demand for absentee ballot applications potentially overwhelming town clerks’ offices, the Secretary of the State’s office took the extraordinary act of distributing absentee ballot applications via the mail to every registered elector in the state ahead of both the August 11, 2020 primaries and November 3, 2020 General Election.
6. Pursuant to her authority as the Commissioner of Elections in General Statutes § 9-3 as well as her authority to prescribe the form of an absentee ballot in General Statutes § 9-139a, *et*

² See Governor’s Executive Order Nos. 7QQ, 7MMM, and 9J as well as Sec. 1 of Public Act 20-3 of the July 2020 Special Session. See also, Public Act 20-4 of the September 2020 which made other conforming changes.

seq., the Secretary added the aforementioned “Covid-19” excuse to the absentee ballot application form.³

7. Also pursuant to the above authority, the Secretary individually pre-filled Section I of every absentee ballot application mailed to registered electors with such electors’ name, address, and birth date, utilizing data pulled directly from the statewide registry list maintained by her office.
8. According to the Secretary of the State, 1,861,086 electors of the 2,334,979 eligible cast a ballot in the November 3, 2020 General Election, representing a turnout of approximately 80%. Of the 1,861,086 electors voting, the Secretary reported that 659,370, approximately 35%, voted successfully using an absentee ballot.
9. By comparison, the 2016 report from the Secretary of the State showed a turnout of 1,675,934 of the 2,178,169 eligible electors (77%), 126,948 of which (8%) were absentee ballots.

The 2021 Municipal General Elections

10. While the temporary expansion of absentee ballot access was continued through the 2021 calendar year,⁴ the Secretary of the State declined to mail absentee ballot applications to all electors in 2021 as she did in 2020.

Allegations

11. The events in each of these matters here largely concern the November 2, 2021 Municipal General Election except File Nos. 2021-122A and 2021-184A, which concern the May 3, 2021 Municipal General Election in the City of Groton.

³ See, e.g., General Statutes § 9-139b, which reads:

(a) The Secretary of the State may make any changes in any forms prescribed by this chapter which, in the opinion of the Secretary, are necessary to conform to the applicable provisions of federal law.

(b) For the state election in 2020, the Secretary of the State may make any changes in any forms prescribed by this chapter or in any printed, recorded or electronic material issued pursuant to this chapter which, in the opinion of the Secretary, are necessary to conform to the applicable provisions of law.

⁴ See Governor’s Executive Order Nos. 10, and 10E as well as Public Act 21-2 of the June 2021 Special Session.

12. In each of these matters, allegations were made and/or evidence was presented that the respondents distributed more than five unsolicited absentee ballot applications to persons other than immediate family.
13. In each of these matters, allegations were made and/or evidence was presented that the respondent distributors may not have followed all the prescriptions in General Statutes § 9-140 (a), (k), and (l) regarding the registering and tracking of the distribution of absentee ballot applications to 5 or more individuals.
14. In most of these matters, the respondent distributor was either a candidate, an agent of a candidate, or an agent of a town committee. In one instance, the distributions were made by an agent or agents of a political group called “Envision Shelton.”⁵

Law

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

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

. . .

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

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such

⁵ File Nos. 2021-206 and 2021-207

list with the town clerk prior to the date of the primary, election or referendum for which the applications were so distributed. Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

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

(m) The Secretary of the State shall conspicuously post on the Secretary of the State's web site, adjacent to the absentee ballot application form available for downloading, a notice that the *application may be downloaded by a person only for (1) the person's own use, (2) the use of a member of the person's immediate family, or (3) the use of a designee of the applicant.* The notice shall also contain an advisory statement concerning the requirements of subsection (k) of this section. (Emphasis added.)

16. As a practical matter, if the process of distributing 5 or more absentee ballot applications is followed correctly, it should look like this:
- a. An *individual* goes to the Town Clerk of the municipality in which such distribution will occur and requests absentee ballot applications⁶;
 - b. Such individual registers with the Town Clerk and indicates the number of applications that such individual requires;
 - c. The Town Clerk provides the individual with the number of applications requested;
 - d. The Town Clerk affixes each application with the name of the municipality and a consecutive, unique number for each application;

⁶ As established in *In the Matter of a Complaint of Linda Szykowitz, Middletown*, File No. 2019-151, absentee ballot applications may only be taken out by and in the name of an individual human being.

- e. Alternately, per the advice of the Secretary of the State, if the Town Clerk and such individual agree, the Town Clerk may provide the individual with a single absentee ballot application stamped with the name of the municipality, along with a block of unique, consecutive numbers;⁷
 - i. In this instance, it then becomes the individual's responsibility to photocopy the single page and affix the numbers provided by the Town Clerk
 - f. In a log, the Town clerk records such numbers as associated with such individual;
 - g. Such individual may then distribute the blank applications obtained from the Town Clerk;
 - h. If such application is sent via the mail, such individual includes the warning enumerated in § 9-140 (l)
 - i. Such individual keeps a list of the name of every individual to whom such individual distributed an absentee ballot application and submits such list to the Town Clerk prior to the date of the primary, election, or referendum.
17. The requirements enumerated above were enacted into law in P.A. 05-235 of the 2005 Public Acts, partially at the request of the Commission, who previously had found that law enforcement investigations involving large-scale absentee ballot applications distributions were difficult to conduct without controls in place to these distributions, especially by candidates and campaigns.⁸
18. When there are allegations of potential fraud and/or abuse associated with an elector's execution of an absentee ballot, knowing the identity of the individual who distributed the absentee ballot application to such elector is a key piece of evidence that was often difficult to discern prior to the enactment of P.A. 05-235.
19. The Commission's prior cases in this area have been relatively limited. However, in all but one case since 2005, the Commission has found that where the respondent distributor made best efforts to substantially comply and the respondent distributor's failure to fully comply would not have compromised law enforcement's ability to associate an absentee ballot

⁷ Upon passage Public Act 05-035 of the 2005 public acts, Secretary of State Susan Bysiewicz, in a July 22, 2005 letter to all Registrars of Voters and Town Clerks and pursuant to her authority in General Statutes § 9-3, allowed for the above compromise.

⁸ See February 18, 2005 Testimony of SEEC Executive Director and General Counsel Jeffrey Garfield to the Government Administration and Election Committee concerning HB 6669 (later P.A. 05-235) ("The principle components of the bill allow for continued distribution of applications by candidates and campaign workers on a door to door basis. However, there is more disclosure and transparency. Candidates would register the names of those workers permitted to distribute applications in this manner. These workers would be required to account for the applications they distribute. If abuses do occur, a proved paper trail will enable the Commission to catch and punish offenders.")

application to a particular distributor, a civil penalty was unnecessary with the expectation that the respondent distributor would strictly comply in the future.⁹ No respondent in these matters appeared before the Commission for a repeat of such activity.

20. *In the Matter of a Complaint by Scott Veley, Berlin*, 2011-011 is the only matter in which the Commission issued a civil penalty. In *Veley*, respondent distributor Philip Apruzzese, as President of the Connecticut Education Association (CEA), sent a letter with an enclosed absentee ballot application to approximately 3,626 CEA members in 17 different towns without an enclosed written warning. A CEA employee printed the absentee ballot application from the website of the Office of the Secretary of the State and then photocopied it as needed. No written warning was included with the absentee ballot application. The respondent distributor paid a \$500 civil penalty in that matter.

Investigation

21. The investigation of these 19 complaints and referrals, concerned distributions by separate actors in 14 different towns, including the towns of *Groton* (File Nos. 2021-122B and 2021-184B; *Newington* (File Nos. 2021-176B and 2021-177B), *Guilford* (File No. 2021-174B), *Shelton* (File Nos. 2021-179B, 2021-206B and 2021-207B), *Berlin* (File No. 2021-180B), *Bristol* (File Nos. 2021-185B and 2021-213B), *New Britain* (File No. 2021-186B); *Stratford* (File No. 2021-189B), *Portland* (File No. 2021-190); *South Windsor* (File No. 2021-191B), *Windsor Locks* (File No. 2021-192), *Norwich* (File No. 2021-203), *Easton* (2021-205), and *Enfield* (2022-001).
22. In each instance, the investigation obtained the available records of each distribution from both the elections officials in the town in which the distribution occurred and from the individual responsible for the distribution.
23. Where necessary the investigation interviewed the elections officials of the respective towns and the individuals responsible for the distribution.

⁹ See, e.g., *In the Matter of a Complaint by Britta Lerner, et al, Weston*, File No. 2015-136A 127 (264 applications distributed; respondent attempted to register with the Town Clerk and in reliance on the Town Clerk, did not number a portion of their applications; records were kept and timely submitted); *In the Matter of a Complaint by Joel Gonzalez, Bridgeport*, File No. 2015-123 (1,100 applications distributed, in full compliance with the 9-140 (a), (k), and (l) requirements); *In the Matter of a Referral by the Coventry Town Clerk*, File No. 2014-127 (150 applications distributed, downloaded from the Secretary of the State, failure to register with the town clerk, but record kept and timely submitted); *In the Matter of a Complaint by David Helming, Sharon*, File No. 2009-154 (64 applications distributed, downloaded from the Secretary of the State, failure to register with the town clerk, but record kept and timely submitted)

24. In each instance, the investigation sought to determine the answer to the following questions:
- a. How many applications were taken out for distribution and how many were distributed?
 - b. Did the respondent distributor register with the town clerk?
 - c. Did the respondent distributor obtain an application from the town clerk or download it from the Secretary of the State?
 - d. Did the applications contained unique numbers obtained from the town clerk?
 - e. Did the applications contain the name of the town in which the distribution occurred?
 - f. Did the respondent distributor maintain a list of electors to whom the applications were distributed?
 - g. Was such list timely submitted to the town clerk?
 - h. Was a sufficient warning included with those applications which were distributed via the mail?

Distribution Amounts

25. As to Question (a) above, the investigation found that the size of these distributions was substantially larger than those found in prior cases.
26. The distributions varied in size from approximately 2000-5200 applications distributed in each municipality.
27. However, given the sea change in access to absentee ballots from the 2020 election onward, the uptick in distributions here is roughly proportional to the uptick in the number of absentee ballots utilized in the 2020 and 2021 elections (and dwarfed by the number of distributions made by the Secretary of the State in 2020).

Registration with the Town Clerk

28. As to question (b) above, compliance was substantial in most instances. The Commission investigation found that in most, but not all, instances the respondent distributor communicated with the Town Clerk before making their distribution.
29. The Newington distribution (File Nos. 2021-076 and 2021-177) was an outlier in that the respondent distributor only communicated with the Town Clerk *after* the distribution was brought to the Town Clerk's attention.

30. However, the Commission also found that after the first distribution, subsequent distributions by the respondent distributor in Newington were made with the involvement of the Town Clerk's office.

Sources and Serialization of Applications

31. As to questions (c), (d), and (e), the Investigation revealed common confusion both among Town Clerks and distributors as to the questions of the correct source of the absentee ballot applications and the requirements for marking them with the town's name and a unique number assigned by the Town Clerk.

Application Source

32. Many of the respondent distributors obtained their copy of the absentee ballot application from the one available on the Secretary's website pursuant to § 9-140 (m), which is only intended for individual use and not for distribution.
33. Many such uses of the Secretary's application were done with the knowledge and some instances, the consent and/or urging of the Town Clerk.
34. The investigation found that there was considerable confusion over whether, due to continuing restrictions associated with the Covid-19 pandemic, applications could be obtained virtually and from which source.
35. Considerably adding to the confusion, the Governor issued Executive Order 10E, which read, in pertinent part:

(j) Posting of Absentee Ballot Applications on Municipal or Regional Board of Education Web Sites. Notwithstanding any provision of the Connecticut General Statutes to the contrary, for an election, primary or referendum to be held before May 20, 2021, a municipal clerk or regional board of education may make available on municipal or regional board of education web sites digital versions of absentee ballot applications for download and completion by any person eligible to vote in an election, primary, or referendum subject to this order (Emphasis in original)

36. This section of EO 10E was extended through June 30, 2021 by EO 12B.
37. The investigation found that this EO caused confusion among Town Clerks, many of whom interpreted it to mean that they could simply post a link to the Secretary's application.

38. Moreover, many Town Clerks were not aware that the provision expired on June 30, 2021 and kept them up on their websites throughout the 2021 General Election Season

Application Numbering

39. The Commission found that in almost every distribution, a unique number was included on the absentee ballot application. However, in many cases, such number was not obtained from the Town Clerk, but generated by the distributor for such distributor's own record keeping.
40. For instance, in File No. 2021-205, while the investigation found that the Town Clerk did assign numbers to the respondent distributor, the subcontractor who actually did the numbering for the distributor instead included their own numbers. After investigation of the incorrect numbers, it was verified in communication records that a town clerk in another town had wrongly advised the subcontractor that he could generate his own numbers.
41. The investigation found that compliance with the requirement that the application include the name of the town was very low. Less than half of the distributions contained both the correct serial number and the town name.
42. Importantly, the investigation found that the Commission's own "Dos and Don'ts" document drafted in conjunction with the Secretary of the State pursuant to General Statutes § 9-140 (n) and posted on each agency's website, failed to include mention of the requirements of including the name of the town and consecutively numbering the applications. This omission was subsequently remedied in June 2022, after the events of these matters.

Record Maintenance and Timely Submission to the Town Clerk

43. As to questions (f) and (g), regarding the maintenance of a record of distribution and the submission of such record to the town clerk, each distributor was found to have complied with the requirement of keeping a list of the name of each individual to whom and application was provided. The timely submission of such list was made in most, but not all of the matters.

Warnings Included in Unsolicited Applications

44. Finally, as to question (h), the investigation did not find an instance in which a distributor failed to include a warning that complied with the requirements of § 9-140 (l).

45. Some campaigns used the verbatim language contained in subsection (l) and some incorporated the language into campaign literature that was included with the mailing (which is permissible).

Analysis and Conclusion

46. Turning to the facts here, as an initial matter, the Commission investigation uncovered no evidence suggesting that the respondent distributors in these matters distributed applications with anything other than the best intentions.
47. Moreover, in no instance was there any circumstance found in which a law enforcement entity would have been unable to eventually associate the applications with the appropriate distributors in the event of an investigation into potentially fraudulent activity.
48. Additionally, the investigation of these matters revealed a considerable and well-founded amount of confusion among the election community—including but not limited to veteran elections officials and sophisticated political actors—as to the appropriate procedures for making a distribution of absentee ballot applications.
49. As concerns the respondent distributors in these matters, the issues here came to the fore largely due to extraordinary circumstances, including, but not limited to, an unprecedented expansion of absentee ballot access¹⁰ and a widespread education gap in how to appropriately account for large-scale distributions.
50. Considering these matters in total in light of the above factors, the Commission declines to conclude that it is necessary to take action against any individual respondent distributor here concerning failures found during the above investigations.
51. However, as noted above, failure to comply with these mandatory distribution requirements runs the risk of obstructing law enforcement entities such as SEEC in conducting effective investigations. The Commission expects that these respondent distributors, as well as the Town Clerks in all municipalities, will strictly comply in the future with the distribution provisions of General Statutes § 9-140.¹¹ While the Commission is not issuing penalties

¹⁰ And with the passage of Public Act 22-2 of the 2022 Public Acts, this expansion was codified for future elections without a “sunset” clause.

¹¹ The Commission notes that a willful violation of any provision of Chapter 145 of the General Statutes is a Class D felony under General Statutes § 9-359.

here, the Commission will meet future noncompliance with these distribution requirements, by either distributors or Town Clerks, with severe consequences.

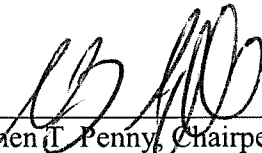
52. Additionally, the Commission also notes that while the Commission concludes that a distributor must meet all the distribution requirements in General Statutes § 9-140, a failure to so does not invalidate the absentee ballot application for the elector.
53. Any election official failing to issue an absentee ballot upon receipt of an otherwise validly executed application risks violating, *inter alia*, General Statutes § 9-140 and disenfranchising such elector.
54. Considering the aforesaid, the Commission declines to take any further action concerning the above-captioned matters.

ORDER

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

No Further Action

Adopted this 21st day of September, 2022 at Hartford, Connecticut.



Stephen T. Penny, Chairperson
By Order of the Commission
Michael Ajello
Vice Chair