STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re Complaint by Shirley Surgeon

RESPONDENT:
Beatriz Román
75 Franklin Ave.
Hartford, CT 06114

File No. 2007-336
FINAL DECISION

August 5, 2009

FINAL DECISION

The State Elections Enforcement Commission designated Theresa Gerratana to serve as Hearing Officer in this matter at a meeting held by the Commission on November 19, 2008. This matter was heard as a contested case on February 10, 2009 pursuant to Chapter 54 of the Connecticut General Statutes, §9-7b of the Connecticut General Statutes, and §9-7b-35 of the Regulations of Connecticut State Agencies. Attorneys Marc Crayton and Kevin Ahern appeared on behalf of the State of Connecticut, and the Respondent Beatriz Román appeared *pro se*. Both sides presented evidence consisting of testimony and documentary evidence.

After consideration of the entire record, the following facts are found and conclusions of law are made:

1. In a sworn letter dated August 9, 2007, Complainant Shirley Surgeon, then the Democratic Registrar for the City and Town of Hartford, filed this complaint with the Commission, stating that "many individuals" had circulated primary petitions for more than one mayoral candidate, apparently in violation of Section 9-410 (c). *See* ***Joint Ex. 1.*** Complainant-registrar did not identify individuals who she believed had violated this statute. Ms. Surgeon asked the Commission to investigate the matter, stating: "Although it is the City of Hartford's position that it acted properly and in compliance with Connecticut law when the aforementioned petitions were rejected, I believe that it is my obligation, as Democratic Registrar of Voters, to inform the Commission of this violation of State election law so a thorough investigation of it can occur." ***Joint Ex. 1.***

2. The Commission's Regulations authorize a Hearing Officer in a contested case to "take administrative notice of judicially cognizable facts, including the records and the prior decisions and orders of the Commission." Regs., Conn. State. Agencies § 9-4b-41 (d).

3. Pursuant to Section 9-4b-41 (d) of the Regulations of Connecticut State Agencies, the Hearing Officer takes administrative notice of the legislative act amending Gen. Stat. § 9-410 (c), three prior court decisions related to this case, and 12 final decisions approved by the Commission that arose out of the same set of operative facts at the case addressed in this report. Specifically, the Hearing Officer takes notice of the following: Public Act 78-125 "An Act Concerning Election Complaints and the Revision of Primary Petition Circulation to Preclude Possible Fraud;" *Gonzalez v. Surgeon*, 2007 WL 2742318 (Conn. Super., Aug. 29, 2007); *Gonzalez v.*

Surgeon, 284 Conn. 554 , 937 A.2d 13 (Sept. 19, 2007); *Gonzalez v. Surgeon*, 284 Conn. 5573 , 937 A.2d 24 (Sept. 19, 2007); Final Decision, State Elections Enforcement Commission, Case No. 2007-336 (Maria Diaz, Respondent) (Feb. 10, 2009); and Final Decision, State Elections Enforcement Commission, Case No. 2007-336 (Ramfis Borque-Colon, Respondent) (Feb. 26, 2009).

4. In 2007, Respondent circulated a primary petition for Minnie Gonzalez in support of Gonzalez's failed attempt to secure ballot status for a Hartford mayoral primary. See ***Joint Ex. 6B***. Respondent circulated the single petition sheet of signatures in support of Gonzalez's candidacy on Saturday, July 21, 2007, and Sunday, July 22, 2007. ***Román Hearing Testimony***. The Respondent's single primary petition supporting Gonzalez was notarized on July 23, 2007. ***Joint Ex. 6B.***

5. On Tuesday, July 24, 2007, several individuals, including Respondent, filed an application for primary petition and a candidate consent form to obtain petitions allowing them to appear as a challenge slate on the Democratic ballot for the primary. The challenge slate's consent form named Andrea Comer, Eric Crawford, Maria Diaz, David Morin, Paolo Mozzicato and Beatriz Roman as candidates for the court of common council and Jonathan Clark as a candidate for the office of mayor. ***Gonzalez v. Surgeon*, 284 Conn. 573, 577, 937 A.2d 24 (Conn. 2007).**

6. After registering the challenge slate on Tuesday, July 24, 2007, Respondent read the instructions for circulating petitions. ***Román Hearing Testimony***. In reviewing the circulator's instructions that accompanied the primary petitions that she received for her candidacy, Respondent realized that by circulating petitions for Gonzalez and the challenge slate she could violate Section 9-410 (c). ***Id***. Respondent testified that she contacted other members of her slate as well as candidate Minnie Gonzalez. ***Id***. Respondent testified that she asked Gonzalez whether Respondent could violate the law by circulating primary petitions for both the challenge slate and Gonzalez. ***Id***.

7. According to her uncontroverted hearing testimony, it is Respondent's understanding that Gonzalez then sought a clarification of the prohibition in Section 9-410 (c) from Complainant-Registrar. ***Román Hearing Testimony***. Respondent was told by Gonzalez that Complainant-Registrar had indicated that respondent could turn in the petition signatures she had collected for Gonzalez without penalty. ***Id***.

8. After asking Gonzalez to find out about the propriety of submitting the petitions, Respondent ceased collecting signatures on behalf of Gonzalez and collected signatures exclusively for the challenge slate. ***Román Hearing Testimony***. Respondent relied on Gonzalez who communicated Complainant-Registrar's interpretation of Section 9-410 (c) that submitting the primary petition signatures that Respondent had collected prior to the creation of the challenge slate would not violate the statute. ***Id***.

9. Complainant-Registrar Surgeon consulted the Secretary of the State's office for advice on how to handle the primary petitions submitted by those cross-circulators. She received verbal advice, which was later provided also in writing. ***See Respondent's Ex. A***. **Electronic Mail Message from Ted Bromley to**

SURGS001@hartford.gov "FW: Primary Petitions" (August 16, 2007), including Memorandum to Lesley D. Mara, Deputy Secretary of State, from Mike Kozik, Managing Attorney, "Circulation of Primary Petitions in Violation of CGS § 9-410(c)" (Aug. 9, 2007). The Secretary of the State's office informed the Complainant-Registrar that she had the discretion to accept some of the primary petitions gathered by Respondent and the other circulators based on when those signatures were collected:

> If the Registrars (sic) of Voters is able to determine that some of the primary petitions in question were in fact circulated in advance of a competing candidacy, the Registrar would have the discretion to validate and count the signatures on those petition pages; for example, where there is satisfactory proof that a circulator ceased circulating petitions for one candidate before circulation began exclusively for another candidate. ***Id.***

Managing Attorney for the Secretary of the State Mike Kozik stated that, in reaching the conclusions contained in the advice of the Secretary of the State, he had reviewed prior decisions of the Secretary of the State as well as legislative history surrounding the adoption of the restrictions on cross-circulation included in General Statutes § 9-410 (c). ***Id.*** Ted Bromley, a staff attorney with the Secretary's Legislation and Elections Administration Division, noted in an August 16, 2007 electronic message to Complainant-Registrar that accompanied the Kozik memorandum that the registrar could count the petition signatures if the petitions "were not circulated simultaneously" and remarked that he understood that Complainant-Registrar Surgeon had already followed the Secretary of the State's advice in this matter. ***Id.***

10. General Statutes § 9-3 designates the Secretary of the State as the state's "Commissioner of Elections" and specifies that any written decisions rendered by the Secretary of the State on an election question shall be presumed correct in the administration of elections and primaries. ***See Gen. Stat. § 9-3 (2009)***.

11. On August 6, 2007, Complainant-Registrar validated the primary petition signatures that Respondent collected for both Gonzalez and the challenge slate, based on the fact that the signature page Respondent submitted in support of Gonzalez was notarized before the formation of the challenge slate. ***Surgeon Hearing Testimony***. ***See also Joint Ex. 6a & 6b***. Complainant-Registrar certified the 18 signatures that Respondent collected as valid and included them in the final tally of the total petition signatures collected in support of Gonzalez's candidacy. ***See Joint Exhibit 6b***. In contrast, Complainant-Registrar Surgeon invalidated petition signatures collected by other circulators who had cross-circulated primary petitions for two separate mayoral candidates, namely Jonathan Clark and Minnie Gonzalez. ***See, e.g., Joint Ex. 5a and 5b (Petitions Circulated by Borque-Colon); Joint Ex. 7a and 7b (Petitions Circulated by Maria Diaz)***.

12. On August 8, 2007, the deadline date for filing the petitions, Complainant-Registrar informed Gonzalez that she had rejected some of the petitions submitted on Gonzalez' behalf. Several days later, Complainant-Registrar determined that neither Gonzalez nor the challenge slate had obtained enough signatures on valid petitions to qualify to appear on the primary ballot. ***Gonzalez v. Surgeon*, 284 Conn. 573, 577, 937 A.2d 24 (Conn. 2007)**.

13. On August 20, 2007, Gonzalez and certain members of the slate sued complainant-registrar in Hartford Superior Court to enjoin her invalidation of the primary petitions. ***See Gonzalez v. Surgeon,* 2007 WL 2742318, at *1 (Conn. Super., Aug. 29, 2007), aff'd, 284 Conn 573, 579**. Respondent was a plaintiff in a companion case that was consolidated with the *Gonzalez* matter. ***Id.*** (identifying Román as plaintiff in *Comer v. Surgeon*, Docket No. CV 07 4032321, which was consolidated with *Gonzalez v. Surgeon* at trial). The consolidated cases quickly reached the Connecticut Supreme Court, which upheld the lower court's decision that the invalidation of certain primary petitions was proper. ***See Gonzalez v. Surgeon,*, 284 Conn. 554, 937 A.2d 13 (Conn., Sept. 19, 2007)**. Neither the trial nor appellate courts considered the propriety of petitions circulated under the facts of the matter presenting before this Hearing Officer.

14. In September 2007, the Connecticut Supreme Court determined that the timing of the circulation of the petitions, upon which the Secretary of the State had based her verbal advice as memorialized in the August 9, 2007 memorandum, did not affect the application of Gen. Stat. § 9-410 (c). Noting that the Court was not asked to rule on the validity of petition signatures collected before the creation of the challenge slate on July 24, 2007, such as the ones that Respondent Román had collected, the Court remarked that the analysis it had applied to the broader application of the statute would likely apply in that situation as well and would lead to the invalidation of the nominating petitions submitted by Respondent as well.

> As we have indicated, in this case, Surgeon accepted all petitions that were circulated on behalf of Gonzalez before the challenge slate submitted its application for primary petition to Surgeon on July 24, 2007, regardless of whether the petitions were submitted by persons who subsequently circulated petitions for the challenge slate. In doing so, Surgeon followed the advice of the secretary of the state. That action has not been challenged in this appeal. In light of the foregoing analysis, however, we can see no reason to distinguish petitions filed on behalf of Gonzalez before the official creation of the challenge slate from petitions filed later for purposes of § 9-410 (c).

***Gonzalez v. Surgeon*, 284 Conn. 554, 568, FN 11, 937 A.2d 13, 22 (2007)**.

15. It appears under the Supreme Court's analysis in the above-cited case that the Respondent's circulation of a primary petition for Gonzalez and for Respondent's own challenge slate that included mayoral candidate Jonathan Clark violated Gen. Stat. § 9-410 (c).[1]

16. But Respondent's actions in this case indicate that she took every step possible to avoid violating the statute, including alerting Gonzalez and other circulators about the potential problems that could arise if they circulated primary petitions for Gonzalez and the challenge slate; waiting for advice from the registrar before submitting signatures she had collected for Gonzalez; and ceasing to collect signatures in support of Gonzalez's primary petition once the challenge slate was formed.[2] ***Román Hearing Testimony.***

17. Nothing in the documentary or testimonial record contradicts Respondent's testimony that she alerted Gonzalez about the "cross circulation" issue and that she sought advice regarding § 9-410 (c) from Complainant-Registrar Surgeon, albeit through Gonzalez instead of directly. The Hearing Officer finds Respondent's testimony in this regard credible and overrules any hearsay objection to Respondent's testimony evidence, citing Complainant-Registrar's validation of Respondent's primary petitions on behalf of Gonzalez as corroborating evidence that Complainant-Registrar believed Respondent's primary petitions were valid under § 9-410 (c).

18. Because of the Supreme Court's analysis of § 9-410 (c) issued in September 2007, however, the Commission must find an inadvertent violation of that statute because of Respondent's circulation of primary petitions in July 2007 for "more than the maximum number of candidates to be nominated by a party for the same office . . . ." ***Gen. Stat. § 9-410 (c) (2009).*** In this instance, Respondent circulated primary petitions for mayoral candidates Gonzalez and Clark.

19. It is concluded that the Respondent violated Gen. Stat. § 9-410 (c) by circulating primary petitions for two candidates for the same office in the 2007 Democratic Primary for the City of Hartford.

20. The Commission's regulations allow the Commission to reduce a civil penalty based on mitigating factors. ***See*** **Reg. of State Agencies § 9-7b-48 (2009).** (allowing Commission to determine the amount of the civil penalty to be imposed and requiring it "to consider, among other mitigating or aggravating circumstances, (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)

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[1] Applying this analysis to its logical conclusion, it would also appear that the complainant-registrar acted improperly when validating certain signatures submitted by respondent and other circulators based on the date on which those primary petitions were notarized.

[2] In contrast to similarly situated respondents Maria Diaz and Ramfis Borque-Colon, who negotiated a settlement with the Commission and paid a $200 civil penalty each, Respondent Román did not circulate primary petitions for Gonzalez after the creation of the challenge slate on July 24, 2007. Both Diaz and Borque-Colon circulated primary petitions for Gonzalez after July 24, 2007.

whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.")

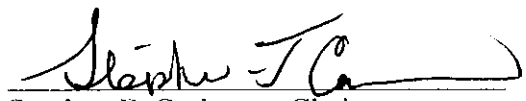
21. In this case, full mitigation is an appropriate resolution. Among the factors that the Commission may consider are the gravity of the act; previous history, and showing of good faith in attempting to comply with the statute. ***Id***. Román ceased collecting petition signatures once she registered as a member of a challenge slate and began petitioning for that slate; she has no previous history with the Commission; and she submitted the petition signatures she had collected for Minnie Gonzalez only after receiving advice through Gonzalez from the registrar of voters that doing so would not violate Section 9-410 (c). The signatures that Respondent collected bore no significance in relation to the election since neither Gonzalez nor the challenge slate collected enough signatures to qualify for the ballot. Based upon the facts found, the Respondent has shown good faith in attempting to comply with applicable provisions of the General Statutes. She sought advice and followed the advice that she received. Although the Connecticut Supreme Court ultimately disagreed with the Secretary of the State's analysis, the Respondent could not have foretold this. At the time she acted, she was acting in accord with the advice being issued by the Secretary of the State and the Complainant–Registrar.

The following is hereby ordered on the basis of these findings and conclusions:

ORDER

IT IS ORDERED that henceforth the Respondent shall circulate petitions only for a single candidate, in compliance with Gen. Stat. § 9-410(c).

Adopted this 5th day of August, 2009 at Hartford, Connecticut.



Stephan F. Cashman, Chairman
By Order of the Commission