

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Keith Hedrick, Groton	File No. 2021-122A
In the Matter of a Complaint by Deborah DeMuis, Guilford	File No. 2021-174A
In the Matter of a Referral by Newington Registrar of Voters Marie Fox	File No. 2021-176A
In the Matter of a Referral by Newington Registrar of Voters Jennifer Ancona	File No. 2021-177A
In the Matter of a Complaint by Jessica Rodi, Shelton	File No. 2021-179A
In the Matter of a Complaint by Sandra Coppola, Berlin	File No. 2021-180A
In the Matter of a Complaint by Jean-Claude Ambroise, Groton	File No. 2021-184A
In the Matter of a Referral by the Berlin Town Clerk	File No. 2021-185A
In the Matter of a Referral by the New Britain Town Clerk	File No. 2021-186A
In the Matter of a Referral by Stratford Registrar of Voters Louis DeCilio	File No. 2021-187A
In the Matter of a Complaint by Richard Marcone, Stratford	File No. 2021-189A
In the Matter of a Complaint by Stephanie Weintraub, South Windsor	File No. 2021-191A
In the Matter of a Complaint by Robert Dempsky, Norwich	File No. 2021-203A
In the Matter of a Complaint by Anthony Simonetti, Shelton	File No. 2021-206A
In the Matter of a Complaint by Anthony Simonetti, Shelton	File No. 2021-207A
In the Matter of a Complaint by Richard Kilby, Bristol	File No. 2021-213A
In the Matter of a Complaint by Michael Ludwick, et al, Enfield	File No. 2022-001A

FINDINGS AND CONCLUSIONS

These findings and conclusions exclusively concern two unique legal questions that came up in each of these matters, namely: 1) whether an unsolicited absentee ballot application may be “pre-filled” by a person other than the elector for whom the absentee ballot is requested and without such elector’s consent; and 2) whether an assistor may sign an absentee ballot application using something other than an original “wet ink” signature. Any remaining issues in these matters over which the Commission has jurisdiction will be separately addressed and resolved.

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.¹
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 seq.*, the Secretary added the aforementioned “Covid-19” excuse to the absentee ballot application form.²

¹ 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.

² 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.

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,³ 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 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.
12. In each of these matters, allegations were made and/or evidence was presented that the Respondents, who were either candidates or town committee chairpersons, 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 Respondents pre-filled information in Section I – “Applicant’s Information” and in Section IV – “Declaration of person providing assistance.”
14. In each of these matters, allegations were made and/or evidence was presented that the Respondents’ signature in Section IV was a scanned and reproduced copy of an original signature instead of an original “wet ink” signature.

³ See Governor’s Executive Order Nos. 10, and 10E as well as Public Act 21-2 of the June 2021 Special Session.

Investigation

15. Insofar as the questions addressed here are mainly ones of law, the facts necessary to adjudicate these questions were substantially contained in the allegations and can, for the purposes of answering these questions, be assumed to be true.
16. However, insofar as evidence potentially necessary to the adjudication of these two issues has been discovered during the investigation of these matters, it is presented here.
17. The Commission investigation discovered that with the exception of the matters in the Town of Shelton⁴, the Respondents employed the firm “Blue Edge Strategies” and worked to various degrees with principal Michael Farina in the process of pre-filling, signing, and distributing the absentee ballot applications.
18. The three Shelton matters concern distributions of pre-filled and signed absentee ballot applications by James Capra and Anne Gaydos, campaign officials supporting candidates David Eldridge and Chris Jones, who asserted that they got the idea after seeing a distribution in Stratford that had been facilitated by Blue Edge.
19. The Commission investigation discovered that the data used to pre-fill the absentee ballot applications in each of these matters originated from the statewide registry list available from the Secretary of the State for a fee.⁵
20. The investigation thus far shows that the number of applications requested varied from a low number of 500 in one municipality to as many as 10,000 in another.
21. The Commission investigation discovered that in each of these matters, in lieu of having an individual sign Section IV of each absentee ballot application personally and individually (aka, in “wet ink”), a single original signature was scanned and then reproduced on each application through the use of a computer and machine print process.
22. In defense of this practice of utilizing a scanned and reproduced copy of a signature, Mr. Farina presented an e-mail exchange between he and Ted Bromley, the Director of Elections for the Secretary of the State, dated on or about August 9, 2021.

⁴ File Nos. 2021-179A, 2021-206A, and 2021-207A.

⁵ In some instances, this data was obtained indirectly through the Democratic State Central Committee, which obtained the data directly from the Secretary of the State.

QUESTION FROM MR. FARINA

*From: Michael Farina [REDACTED]
Sent: Monday, August 9, 2021 10:46:31 AM
To: Bromley, Ted [REDACTED]
Subject: Signature in Section 4 of AB Application*

*Ted,
Quick question, when I (or someone else) helps fill out an absentee ballot application, in the past, we've always used a digital signature at the bottom when sending out over 1000 applications.*

I was recently told that that signature needs to be wet. Is that in statute? Or are we safe sending applications out in bulk with a printed signature? We've done that for years with no issue (but that doesn't mean it's been legal).

*All my best,
Mike*

ANSWER FROM DIRECTOR BROMLEY

*From: Bromley, Ted [REDACTED]
Date: Mon, Aug 9, 2021 at 11:28 AM
Subject: Re: Signature in Section 4 of AB Application
To: Michael Farina [REDACTED]*

Digital is fine

Get Outlook for iOS

COUNT ONE: Pre-filling Unsolicited Absentee Ballot Applications

23. Count One concerns the question of whether an individual distributing an unsolicited absentee ballot application to an elector may fill out any portion of that application without the direction and/or permission of the elector. For the reasons set forth below, the Commission concludes that “pre-filling” of unsolicited absentee ballot applications is not permissible per General Statutes § 9-140.

Voting is an Elector's Responsibility

24. As a rule, the act of voting is the sole responsibility of the elector to execute themselves.
25. In General Statutes § 9-19j, 9-20, and 9-23g, for example, registering for admission as an elector is enumerated as the sole initiative and responsibility of the individual seeking to register themselves.
26. In General Statutes § 9-21, even though it is the registrars' responsibility to effectuate elector removals from the registry list, it is the affirmative act of the elector that allows such elector's removal.
27. In General Statutes § 9-261, by default it is the elector who is expected and permitted to enter the polling booth and execute such elector's ballot.
28. In General Statutes § 9-140, *et seq.*, it is the elector who is expected to apply for, execute, and return such elector's absentee ballot, even when such elector is residing in an "institution" subject to supervised absentee balloting by the registrars.

Assisting Electors in Title 9

29. However, Title 9 of the General Statutes is not so rigidly constructed to hamstring potential electors who may require assistance in exercising their franchise.

Assistance in Registration

30. The registration statutes—§§ 9-19j, 9-21, and 9-23g for example—allow assistance and have been interpreted broadly by the Secretary of the State and the Commission to allow third parties to assist potential electors in executing voter registration applications without limitation to such elector's physiological condition.

Assistance in Execution of a Ballot

31. Assistance with the execution of an existing elector's ballot is more strictly regulated in the General Statutes.
32. General Statutes § 9-261 (e) allows elections officials at a polling place to enter the polling booth to assist an elector who requests assistance concerning the manner of voting, provided such election official does not "look at the ballot in such a way as to see the

elector's markings or in any manner seek to influence any such elector in the casting of the elector's vote.”

33. General Statutes § 9-264 allows assistance to be provided to an elector who requires assistance to vote, by reason of blindness, disability, or inability to write or to read the ballot, as follows:

An elector who requires assistance to vote, by reason of blindness, disability or inability to write or to read the ballot, may be given assistance by a person of the elector's choice, other than (1) the elector's employer, (2) an agent of such employer, (3) an officer or agent of the elector's union, or (4) a candidate for any office on the ballot, unless the elector is a member of the immediate family of such candidate. The person assisting the elector may accompany the elector into the voting booth. Such person shall register such elector's vote upon the ballot as such elector directs. Any person accompanying an elector into the voting booth who deceives any elector in registering the elector's vote under this section or seeks to influence any elector while in the act of voting, or who registers any vote for any elector or on any question other than as requested by such elector, or who gives information to any person as to what person or persons such elector voted for, or how such elector voted on any question, shall be guilty of a class D felony. As used in this section, “immediate family” means “immediate family” as defined in section 9-140.

34. The assistance provisions of § 9-264, which substantially mirror language found in 52 USC § 10508, apply to the execution of all ballots, whether they be in a polling place or absentee.⁶

Limitations on Assistance

35. The provision of assistance is limited in the General Statutes. For instance, as exemplified in General Statutes § 9-264, cited above, candidates and agents of campaigns and committees are generally barred from assisting electors in the execution of their ballot.

⁶ See *In the Matter of a Complaint by Louis Salvo, New Britain*, File No. 2003-273 (respondent permitted to provide assistance to eligible electors in executing absentee ballots per § 9-264 and 42 U.S.C. 1973aa-6, now codified as 52 USC § 10508); see also *In the Matter of a Referral of the New Haven City Clerk* File No. 2013-149B.

36. Indeed, as seen above in § 9-264, the General Statutes err on the side of keeping candidates and campaigns at an “arm’s length” from the execution of ballots.
37. Section 9-236, for instance, makes it impermissible to, *inter alia*, electioneer in the polling place up to 75 feet from any door being used as an entrance to a polling place.⁷
38. Subsection (e) of § 9-140b limits campaigns’ access to the execution of absentee ballots, as follows:
- (e) No (1) candidate or (2) agent of a candidate, political party or committee, as defined in section 9-601, shall knowingly be present when an absentee ballot applicant executes an absentee ballot, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present or (B) when the absentee ballot is executed in the office of the municipal clerk and the municipal clerk or an employee of the municipal clerk is a candidate or agent.
39. Even where those individuals are explicitly permitted to render assistance, they are permitted to do so only to the extent necessary, and, importantly, only at the elector’s direction.
40. For instance, in the context of registering to vote, General Statutes § 9-23n, 9-23o, and 9-23p allows and directs “voter registration agencies,” and public institutions of higher learning to aid potential electors registering to vote but makes clear that the applicants are in charge of whether they receive such assistance.⁸

⁷ General Statutes § 9-236 (a) reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach.

⁸ General Statutes § 9-23n (b) reads, in pertinent part:

(b) Voter registration agencies shall (1) distribute mail voter registration application forms, (2) assist applicants for such assistance or services in completing voter registration application forms, except for applicants who refuse such assistance, . . . (Emphasis added.)

41. *In the Matter of a Complaint by Linda Kuja, Montville*, File Nos. 2017-080A and 2017-080B involved a set of facts where the elector and the elector's spouse entered the polling place and the elector's spouse, under the auspices of assisting the elector, took both ballots and executed them in the privacy booth while the elector stood off in another part of the room, well away.
42. The Commission concluded in *Kuja* that the elections officials were correct in intervening and asserting that the elector's spouse could not execute her husband's ballot in that fashion. The Commission looked not only to the language of § 9-264, but also to subsections (4), (5), and (9) of § 9-236b, the Voters Bill of Rights, which reads:

Every registered voter in this state has the right to:

...

(4) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law;

(5) Vote free from coercion or intimidation by election officials or any other person;

...

(9) Vote independently and in privacy at a polling place, regardless of physical disability. (Emphasis added.)

43. The Commission in *Kuja* determined:

30. The language in § 9-264 necessarily infers a level of control maintained by the voter in a situation in which such voter is receiving assistance at the polls. While the statute holds that the assister "may accompany the elector into the voting booth" the statute is very clear that the elector be there in the booth. "Such

General Statutes § 9-23o, which reads, in pertinent part:

Such voter registration agency shall provide each applicant to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the agency with regard to the completion of its own forms, unless the applicant refuses such assistance. (Emphasis added.)

General Statutes § 9-23p reads:

Each public institution of higher education shall (1) distribute mail voter registration application forms, and (2) assist applicants who request assistance in completing voter registration application forms.

person shall register such elector's vote upon the ballot as such elector directs” implies an active exchange between the elector and his assistor. The voter is and must remain the primary actor in the exchange. The assistor is simply there as a mechanism for recording the voter’s own wishes due to the voters inability to do so him/herself.

31. Indeed, the final language of the statute concerns itself with abuse by assistors in registering votes not indicated by the elector (or revealing such electors selections). It is possible that Mr. Kuja told her ahead of time how he wanted to vote and asked her to mark the ballot while he stood aside, but that is not a permissible method of assistance under the statute. Mr. Kuja needed to be there with his wife actively involved in the marking of his own ballot, if not actually physically making such marks.

44. The Commission confirmed its decision in *Kuja* when it considered *In the Matter of a Referral by East Hampton Town Clerk Sandra Wiebela*, File No. 2017-077, which involved the question of assistance in the execution of an absentee ballot.

45. The Commission in *Wiebela* stated:

Normally, a voter may ask for and receive assistance in executing either an absentee ballot or at the polling place. Such assistance must be rendered only insofar as such voter has requested such assistance and such assistance must be rendered in a manner in which it is clear that the voter is directing the choices. See *In the Matter of a Complaint by Linda Kuja, Montville*, File No. 2017-080A ("The voter is and must remain the primary actor in the exchange. The assistor is simply there as a mechanism for recording the voter's own wishes due to the voters inability to do so him/herself") (Emphasis in original)

Id. at ¶ 58.

46. In *Wiebela*, the assistance involved an absentee ballot executed in the context of supervised absentee balloting, as enumerated in General Statutes §§ 9-159q through 9-159s.

47. Section 9-159q enumerates the circumstances under which an elector may receive assistance in the context of a supervised absentee ballot, as follows, in pertinent part:

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope “rejected” and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret. (Emphasis added.)

48. This notion that the elector drives the assistance process was evidenced in another supervised absentee balloting case, *In the Matter of a Complaint by Howard Jubrey, Windsor*, File No. 2013-001.
49. *Jubrey* involved a complaint by the conservator of an individual residing in an institution, as that term is defined in General Statutes § 9-159r. The Complainant in *Jubrey* alleged, *inter alia*, that the conserved individual, his brother, lacked the capacity to vote and should not have been allowed to do so by the respondents, the Windsor Registrars of Voters.
50. The Commission found in *Jubrey*, that

20. . . . Mr. Jubrey voted using the supervised absentee ballot process enumerated in General Statutes §§ 9-159r, through 9- 159s. Capacity to vote is up to a probate judge to decide and there was no evidence that Guy Jubrey's right to vote had been compromised.

21. As concerns allowing Mr. Jubrey to vote in the first place, there is no discretion for the supervised absentee ballot designees to make a determination of the elector's fitness to vote. If s/he is a registered voter who has made a request for an absentee ballot and the

registrars (or their designees) are able to determine how the elector desires to vote the ballot, the elector may execute the ballot (or have it executed on his/her behalf). Here, Guy Jubrey was registered to vote, he did request an absentee ballot and he was able to convey his basic choices to these Respondents.

22. Moreover, by the Complainant's own allegations, Guy appears to be a person with severe limitations, both physically and mentally. However, the evidence is sufficient to find that providing assistance to Guy was necessary and appropriate to enable him to vote his ballot.

51. Assistance is prescribed and limited not only in the context of marking the actual ballot, but in the return of the executed ballot.
52. The question of assistance to an elector in returning their ballot was taken up by the Connecticut Supreme Court in *Keeley v. Ayala*, 328 Conn 393 (2018).
53. In *Keeley*, the Chair of the Bridgeport Democratic Town Committee directed the Bridgeport Police Department to send an officer to homes at which they knew absentee ballot sets had been sent but not yet returned by the voter. There was no evidence on the record that the electors had made such requests and/or even knew prior to the visit by the officer that such officer would be there to collect such voters' executed absentee ballots.
54. The Court in *Keeley* held that the absentee ballot voter must himself or herself, either personally or through the registrars, request that a police officer act as a designee for purposes of returning the ballot and that General Statutes § 9-140b "prohibits partisan individuals from doing so on a voter's behalf." *Keeley* at 409-410.
55. The Court held that "[w]ith respect to who may choose a 'designee' for an absentee voter, the language used in § 9-140b manifests an intent on the part of the legislature that a 'designee' be a person whom the absentee voter, himself or herself, selects to return his or her ballot." *Id.* at 412.
56. The Court went further to hold that "the language describing permissible designees for absentee ballot returns makes it abundantly clear that the legislature intended for partisan individuals . . . to be excluded from the process." *Id.* at 414 (emphasis added).

57. Finally, the court held:

We glean two clear intentions from the foregoing legislative history. First, it is an absentee voter himself or herself, and not a third party, who must appoint or select a designee, from within the approved categories of persons, to return his or her absentee ballot on the voter's behalf. Second, similar to the mandatory procedures pertaining to in person voters, partisan individuals are required to distance themselves from absentee voters when those voters are in the process of casting their ballots, that is, when they are returning them to the town clerk for submission pursuant to § 9-140b.

Id. at 416.

58. The reasoning in *Keeley* was applied by the Commission in *In the Matter of a Referral by the West Haven Democratic Registrar of Voters*, File No. 2018-013, which concerned similar facts to *Keeley*. In *West Haven*, the Commission concluded, in part, that “the West Haven Police Department should never have agreed to [pick up an executed absentee ballot] as they had no first-hand knowledge at the time they sent the officer as to whether the assignment had been lawfully requested by the voter.” *Id.* at ¶ 38.

Assistance with Absentee Ballot Applications

59. The execution of an absentee ballot application may also be assisted, but as with registering to vote, and marking and returning a ballot, the provision of assistance is limited at law.

60. General Statutes § 9-140 (a), which provides that:

[a]ny person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application.

61. The Commission has interpreted “assistance in the completion of an application” to include not only the act of executing the ballot itself, but also the act of taking possession of a completed application in order to deliver it to the town clerk.

62. *In the Matter of a Complaint by Beth Lazar, Bridgeport*, File No. 2013-120A concerned a conclusion by the Commission that while the evidence did not support a finding that the respondent assisted in the actual execution of the application, she admitted that she took possession of the executed application in order to return it on behalf of the elector.

63. The Commission in *Lazar* decided:

8. Generally, these types of cases involving assistors concern individuals who actually personally fill out portions of the absentee ballot application for the applicant. However, there is nothing in the statute that limits the scope of what “assists another person in the completion of an application” means to merely those individuals who actually fill out portions of the application.

9. Assistance in completing an application may come in many forms. Here, while merely distributing an application may not constitute assistance, once an individual gets involved in the process of the elector actually completing the application, that individual has placed themselves into the role of . . . assisting the elector.

. . .

12. Insofar as her actions were intended to assist the elector in filling out the application and did assist in completing the application, the law and the evidence support a finding that she provided assistance on both applications.
(Emphasis added.)

“Distribution” v. “Assistance”

64. However, as noted in paragraph 9 of *Lazar*, above, assistance, as that term is used in subsection (a) is different and apart from mere distribution of absentee ballot applications prior to execution, which is specifically permitted, provided those individuals distributing applications adhere to the distribution provisions of subsections (a), (j), (k), and (l) which read:

(a) . . . 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. The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word “by” and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.⁹

...

(j) No person shall pay or give any compensation to another and no person shall accept any compensation solely for (1) distributing absentee ballot applications obtained from a municipal clerk or the Secretary of the State or (2) assisting any person in the execution of an absentee ballot.

(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 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

⁹ The Secretary of the State has opined that town clerks may, in lieu of providing individually printed and consecutively numbered pages at the town's expense, opt to provide to a high-volume distributor a single copy of an absentee ballot application page stamped with the town's name along with a range of consecutive numbers assigned to such distributor. The Secretary's opinion allows the distributor to then make photocopies of such application page provided by the town clerk and affix the consecutive numbers to the applications in the clerk's stead.

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.

65. Importantly, an individual who obtains blank absentee ballot applications from the town clerk¹⁰ and distributes such applications is not considered an assistor and is, consequently, not required to adhere to the assistance provisions of subsection (a) of § 9-140, as such individual has not “assist[ed] another person in the completion of an application.”¹¹

Analysis and Conclusion

66. The pertinent facts here are straightforward. Each of the respondents here distributed multiple absentee ballot applications to electors in which portions of such application was pre-filled by the respondent without permission and/or direction from such elector.
67. The initial question for the Commission is whether such pre-filling of applications is part of the distribution process or the assistance process.
68. The Commission concludes that it is clear on the face of General Statutes § 9-140 that filling out any part of an absentee ballot application is an act of assistance not distribution.

¹⁰ Per General Statutes § 9-140 (n), the Secretary of the State has a downloadable/printable absentee ballot application available, but such application may not be used for distribution and may only be downloaded 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.”

¹¹ This also applies to an “authorized agent” who may sign on behalf of an absentee ballot applicant, as follows, in subsection (a), in pertinent part:

Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word “by” and his own signature.

69. The remaining question then is whether such assistance is permissible to provide prior to the elector's involvement in the process and without the elector's permission and/or at such elector direction.
70. The act of executing an absentee ballot application is the first of a number of regulated steps that an elector must take in the process of successfully casting their vote via absentee ballot.
71. As explored above, the general rule is that an elector is in charge of such elector's own franchise. Whether and how such elector wishes to exercise their franchise is such elector's sole decision and prerogative.
72. And, while General Statutes § 9-140 (a) explicitly permits a person other than the elector to obtain and deliver an absentee ballot application to such elector (aka, unsolicited distribution), it does not permit such third party to partake in such elector's execution of their franchise by filling out any portion of such absentee ballot application unless and until such elector assents to the assistance and only to the degree that such elector permits.
73. Considering the aforesaid, the Commission concludes that unsolicited absentee ballot applications distributed pursuant to General Statutes § 9-410 (a) may not be pre-filled on behalf of an elector.
74. Turning to the facts here, the Commission investigation uncovered no evidence suggesting that these Respondents distributed these pre-filled applications with anything other than the best intentions.
75. Moreover, while there were *anecdotal* reports of some electors, including the Complainants here, who were *less* inclined to submit a pre-filled absentee ballot application, there was no evidence available demonstrating that what these Respondents did here affected the overall rates of submitted applications and/or the rates of rejected applications (positively or negatively).
76. However, while the Commission's decision here is rooted in the § 9-140 and Title 9, the Commission notes its concern that the act of pre-filling absentee ballot applications by private actors without the elector's consent and direction presents a real and *unnecessary* risk of disenfranchisement.
77. In addition to the risk a pre-filled application presents to the likelihood of submission, there is no guarantee that the information that the assistor pre-fills would be *accurate* and/or the same information the elector would have written themselves on those pre-filled applications that are submitted.

78. Both the bad actor and the well intentioned alike could end up “pre-filling” such application with *defective* registration information, which could result in the elector’s disenfranchisement if such elector does not closely examine to see that such “pre-assistance” was rendered correctly.
79. However, as concerns the Respondents in these matters, as this is a question of first impression, brought largely due to extraordinary circumstances and the temporary expansion of absentee ballot access, the Commission declines to take any further action concerning COUNT ONE in this instance.
80. However, the Commission expects that these Respondents will strictly comply in the future and only distribute blank applications in line with the assistance and distribution provisions of General Statutes § 9-140.¹²
81. Additionally, the Commission also notes that while the Commission concludes here that it is impermissible for a distributor to execute any portion of an elector’s absentee ballot application without their consent and direction, doing so does not invalidate the absentee ballot application for the elector. 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.

COUNT TWO: Signing an Absentee Ballot Application with a Copy of an Original Signature

82. The question for the Commission here is whether the affixation of a copy of an original “wet ink” signature by an assistor on an absentee ballot application complies with the requirements that such assistor “sign the application . . . under the penalties of false statement in absentee balloting” as required in General Statutes § 9-140 (a). For the reasons set forth below, the Commission concludes that per General Statutes § 9-140, an absentee ballot application has not been executed unless such signature is in “wet ink.”

Law

83. General Statutes § 9-140 provides, in pertinent part:

(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

¹² 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.

applied for such eligibility. Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. 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. The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word “by” and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

(b) A municipal clerk may transmit an application to a person under this subsection by facsimile machine or other electronic means, if so requested by the applicant. If a municipal clerk has a facsimile machine or other electronic means, an applicant may return a completed application to the clerk by such a machine or device, provided the applicant shall also mail the original of the completed application to the clerk, either separately or with the absentee ballot that is issued to the applicant. If the clerk does not receive such original application by the close of the polls on the day of the

election, primary or referendum, the absentee ballot shall not be counted. (Emphasis added.)

Analysis

84. The question here is straightforward, as Title 9 is not silent as to when and under what circumstances something other than an original “wet ink” signature on a page is acceptable.
85. Indeed, one example is found directly in § 9-140, which explicitly accepts the use of a non-original signature on an application, but only in a very specific situation.
86. Subsection (b) allows for a town clerk to accept a copy of an executed “original” application transmitted by electronic means and issue an absentee ballot set based on the receipt of just the copy.
87. However, subsection (b) allows the ballot to be counted only if the applicant mails the original and such original is received by the close of polls.
88. Subsection (b) does not differentiate between particular sections of the form, nor does it state that its provisions apply differently to the elector versus the assistor.
89. If the logic applied by the respondents here were to hold and a copy of an original signature of the assistor were acceptable in lieu of an original, then it stands to reason that a copy of the original signature of the elector would also be acceptable.
90. This interpretation would render the provisions of subsection (b) moot and is patently out of line with the clear direction that requires original and not copied content in order for the document to have been validly executed.
91. Looking outside of § 9-140, Title 9 allows something other than a live, “wet ink” signature, in another context. General Statutes § 9-19k allows an individual to register as an elector through an online application and without a new “wet ink” signature on a piece of paper if such individual already has a signature scanned and on file with the Department of Motor Vehicles.
92. Indeed, Section 101 of Public Act 21-2 of the June 2021 Special Session provides for Secretary of the State to develop an online absentee ballot application system that works similarly to the system utilized in § 9-19k and similarly waives the need for a “wet ink” signature on a piece of paper if such individual already has a signature scanned and on file with the Department of Motor Vehicles. To date, this system has not been implemented.

93. Finally, while the Commission considers the statute to be clear on its face, to the extent that it is necessary to consider legislative history, the Commission notes that 9-140 (a) once explicitly allowed for something other than an original signature of an assistor on an application.
94. With the enactment of P.A. 89-297 of the 1989 Public Acts, the legislature allowed assistors to affix a signature stamp on the application in lieu of an original signature. However, that provision was short-lived. P.A. 95-177 of the 1995 Public Acts, which produced the assistor language in subsection (a) seen today, removed the allowance of a signature stamp.
95. Finally, the Commission notes that subsequent to the August 9, 2021 exchange between Director Bromley and Mr. Farina, the Secretary of the State issued a formal opinion to all Town Clerks on or about October 6, 2021 which stated, in pertinent part:

We are aware of the fact that many of you have received some completed absentee ballot applications where a campaign has filled in section 1. This requires the person who filled out Section 1 of the application to also complete section 4 as an assistor of the applicant and personally sign the application (aka, in “wet ink”).

However, if you, as the town clerk, receive such an application and it is otherwise valid, you should not penalize the voter for such a mistake. You should issue the absentee ballot and refer the matter to the State Elections Enforcement Commission.

96. Additionally, at the time the Commission began to receive the first of these allegations, Director Bromley sent a letter to the Executive Director and General Counsel of the SEEC on or about October 14, 2021, in which Director Bromley stated that it was the opinion of the Secretary of the State that applications must be “personally signed” in “wet ink.”

Conclusion

97. Considering both the Commission’s own analysis, as well as the concurring opinion of the Office of the Secretary of the State, the Commission concludes that General Statutes § 9-140 requires an original “wet ink” signature for both the elector and the assistor and that a reproduction is not compliant.
98. However, the Commission also notes that in his October 14, 2021 letter, Director Bromley also stated as follows:

Our review of the communication between this office and a representative of various campaigns across the state has led us to the conclusion that, due to a miscommunication caused by imprecise language on our part, many campaigns may have understandably relied on those emails to believe that it was permissible to use a reproduced signature on the pre-filled applications. Although Connecticut statute does require a “wet ink” signature, it is clear that campaigns could have justifiably relied on our advice to believe the opposite was true.

99. Turning to the question here, the Commission concludes that it was not permissible for the respondents to use reproduced signatures on applications upon which they may have assisted.
100. However, as with COUNT ONE, COUNT TWO presents a question of first impression, also brought largely due to extraordinary circumstances and the temporary expansion of absentee ballot access.
101. Additionally, the Commission concurs with Director Bromley insofar as his brief statement to Mr. Farina in the August 9, 2021 e-mail regarding the use of “digital” signatures could have been reasonably relied upon to assume that something other than an original signature was acceptable.
102. Accordingly, the Commission declines to take any further action concerning COUNT TWO.¹³
103. As with COUNT ONE, the Commission expects that these Respondents will strictly comply in the future and should they assist electors with their application, they will sign each such application individually with an original ink signature.
104. Also, as with COUNT ONE, the Commission notes that while the Commission concludes here that it is impermissible for a distributor to use a reproduced signature, doing so does not invalidate the absentee ballot application for the elector. Any election official failing to

¹³ The Commission notes that the events of File Nos. 2021-122a and 2021-184a occurred prior to the August 9, 2021 e-mail exchange between Mr. Farina and Director Bromley and File Nos. 2021-179A, 2021-206A, and 2021-207A do not appear to have had any direct involvement by Mr. Farina. However, as the use of reproduced signatures is a question of first impression for all these matters, the Commission’s decision applies equally to these matters as well

issue an absentee ballot upon receipt of an otherwise validly executed application risks violating General Statutes § 9-140 and disenfranchising such elector.

ORDER

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

COUNT ONE: No Further Action.

COUNT TWO: No Further Action

Adopted this 6th day of April, 2022 at Hartford, Connecticut.



Stephen T. Penny, Chairperson
By Order of the Commission