



128 Dorrance Street, Suite 400
Providence, RI 02903
Phone: (401) 831-7171
Fax: (401) 831-7175
www.riaclu.org
info@riaclu.org

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R.I. Board of Elections
2000 Plainfield Pike
Cranston, RI 02921

VIA EMAIL

Dear Board Members:

I am writing in response to the Board's vote last week calling for the impending issuance of subpoenas to all the individuals who collected nomination signatures for Lt. Governor Sabina Matos' Congressional District 1 campaign. Because our organization has concerns about both the utility and the unintentional and potentially adverse consequences of such an action, we respectfully request the Board to consider rescinding this vote and, at a minimum, withholding deliberation of any possible actions of this kind until the Attorney General's investigation of the matter is completed.

At the outset, I want to emphasize that we fully agree that this situation has unmistakably demonstrated a critical need for the state to provide more intensive training – to all candidates and to those engaging in signature gathering on their behalf – on the legal requirements surrounding the collection of signatures and, in particular, the obligation to have nomination papers signed in the collector's presence. But the attempt to retrospectively address this issue, as understandable and well-intended as that effort is, comes fraught with problems.

As you know, the Attorney General has acknowledged that his office is conducting a criminal investigation into the possible violation of election laws relating to the fraudulent gathering of signatures. That investigation is ongoing. Separately, the Board quite appropriately and wisely instructed the staff to review each and every signature on the Lt. Governor's nomination papers to determine if there might be additional evidence of fraud. After a thorough review, the Board's staff concluded that there was not. They affirmed, as the local boards of canvassers had, the validity of more than 700 of her nomination signatures, a number well beyond the 500-signature threshold established by law. Based on the results of this internal review, as well as the ongoing criminal investigation by the Attorney General, we were therefore surprised to see the Board decide last week to nonetheless pursue this matter while that investigation continues.

Despite the lengthy discussion that the Board had at its meeting, it is unclear to us what the Board hopes to accomplish by requiring all the signature collectors on Lt. Governor Matos' campaign to testify under oath about their signature collecting practices. Considering

the Board's previous certification of the Lt. Governor's qualifications for the ballot, along with the staff's confirmation of the authenticity of more than 700 signatures, we see no basis to continue to call into question the validity of this candidate's qualifications.

Even if a signature collector were to testify that some of the signatures they collected were inappropriately signed outside of their presence, we fail to see what meaningful action the Board could – or would want to – retrospectively take to address that issue, since the signatures themselves have been found to be valid. On numerous occasions, the Board has made clear its reluctance to reject signatures on nomination papers for technical reasons.

While, as the Board's legal counsel noted, the Board has broad powers to address election violations, there are limits. It would be shocking and, we submit, constitutionally dubious to retroactively reject those signatures – and thereby potentially disqualify a certified candidate or, even more extraordinarily, call for a new election – after they had been formally certified by both the Boards of Canvassers and this Board.¹ But if the Board has no intent to take such drastic action, there is clearly no urgency in conducting an interrogative investigation prior to the completion of the Attorney General's own inquiry.

We understand that eleven individuals were responsible for collecting all the nomination signatures for Lt. Governor Matos' campaign, but based on media reports, it appears that the submission of papers with allegedly substantial fraudulent signatures has thus far been attributed to only two of those people. We have deep concerns about the adverse impact that a Board investigation will have by demanding that all the collectors, including the many about whom there are no allegations of wrongdoing, come and testify under oath about their past conduct.

Especially since a criminal investigation is ongoing, even the most conscientious signature collector, facing such an interrogation, could be wracked with second thoughts as to whether one of dozens of signatures they collected may have been signed outside their presence by, for example, a person bringing the nomination paper into another room for their spouse to sign. They will have to think twice about openly testifying, fearful of possible perjury penalties if, say, another candidate uses this investigation as an opportunity to find a voter who can claim they signed a nomination paper outside that person's presence.

As a result, we believe it would be perfectly understandable for *any* signature gatherer for the Matos campaign to invoke their Fifth Amendment rights while the Attorney General's investigation is proceeding. The Board's hearing is thus likely to place all these individuals in a very difficult position and unfairly stigmatize them before the public if they exercise their constitutional right under these circumstances. We are also concerned about the long-term consequences of such a hearing, as it could have a chilling impact on the willingness of other individuals to volunteer to be signature collectors in the future.

¹ In terms of other possible remedies, Board members have correctly noted the civil nature of any investigation on its part versus the Attorney General's criminal review. However, the only penalties to be imposed on individuals who fraudulently submitted signatures are criminal ones. We are aware of no authority in the General Laws for the Board to impose civil fines against individuals for violation of this law.

The Board also discussed the implications of the exercise of Fifth Amendment rights by witnesses, noting the Board's ability to make adverse inferences from that invocation. Again, though, especially considering the legitimate reasons the witnesses might have for doing this, to suggest that their invocation of the Fifth Amendment could taint all the signatures they gathered – even though the signatures have now twice been verified – is deeply troubling.

While it is the apparent brazenness of some of the rejected signatures that were submitted – including those of dead people – that has understandably generated concern, singling out all of the Lt. Governor's signature collectors, and only those collectors, seems quite unfair. Indeed, at the very same Board meeting at which the vote to subpoena the Lt. Governor's signature collectors was approved, a candidate in another race whose certification was challenged and who averred that all the signatures he gathered were collected in his presence was forced to acknowledge upon further inquiry that, at least in one instance, that was not true.² Yet nobody suggested that that candid admission should call for an intense review of every other signature the candidate had collected, even though he had exceeded the 100-signature threshold for his race by only two votes.

And in Jamestown, where this controversy was first brought to light, other candidates' papers also had mismatched signatures that were rejected, though admittedly not as numerous.³ Further, district-wide, a recent news story disclosed that nine of the candidates running in this election turned in papers where – again, though much lower than those of the Matos campaign – more than 20% of their signatures were rejected and, perhaps more to the point, where noticeable percentages of those rejections were for signature mismatches.⁴

In short, we do not believe that the conduct of a few signature collectors should serve as the basis for dragging eleven individuals into an adversarial, and undoubtedly intimidating, hearing, especially when we know that the Attorney General is exercising his powers to investigate the matter. By taking the extraordinary step of issuing subpoenas to people about whom there is no evidence of misconduct – as indirectly affirmed by the Board's own staff – we are concerned that the Board will be setting a troubling precedent.⁵

² See video of the August 15, 2023 meeting of the R.I. Board of Elections beginning at approximately the 1:58:00 mark. https://www.youtube.com/watch?v=PpA4FxE_u_g

³ "Matos has 94% of nominating signatures tossed in Jamestown. How did other campaigns compare?" Paul Edward Parker, *Providence Journal*, July 26, 2023. <https://www.providencejournal.com/story/news/politics/elections/2023/07/26/sabina-matos-fake-signatures-cd1-nomination-papers-election-rhode-island-congressional/70464749007/>

⁴ "Breakdown: Here's how many signatures were collected, rejected in Rhode Island CD-1 race," Ryan Belmore, *What's Up Newp*, August 20, 2023. <https://whatsupnewp.com/2023/08/breakdown-heres-how-many-signatures-were-collected-rejected-in-rhode-island-cd-1-race/>

⁵ It would be just as inappropriate to subpoena only the people suspected thus far of having engaged in misconduct, knowing full well that, in light of the pending criminal investigation, they will have no choice but to exercise their Fifth Amendment rights.

As I stated at the beginning, there is no question that, along with the criminal investigation, the events brought to light during this nomination process cry out for more robust training of candidates and signature collectors on the laws governing this process. However, we also firmly believe that any retrospective attempt to subject the signature gatherers for the Matos campaign to a quasi-judicial hearing is unnecessary, inappropriate, and unlikely to elicit any meaningful or useful information. Instead, we believe the Board should allow the Attorney General's criminal investigatory process to play out and, in the interim, consider ways that the Board and others can better educate individuals to help prevent future non-compliance with the state's nomination signature process.

We therefore urge the Board to reconsider its vote last week and to withdraw its plan to subpoena the individuals who collected signatures on behalf of the Lt. Governor's campaign. At a minimum, any such effort should be stayed until the AG investigation is completed and a more informed decision can be made by the Board based on the outcome of that investigation.

We fully appreciate the Board's interest in wanting to do something, but the rushed attempt to subpoena these witnesses – according to the Board's vote, immediately following either the upcoming primary or the general election – strikes us as unwarranted, and it goes beyond the more appropriate due diligence the Board demonstrated and exercised in having the staff carefully review all of the Lt. Governor's nomination papers.

Thank you in advance for your consideration on this matter, and if you have any questions at all about our position, I hope you will feel free to let me know.

Sincerely,

A handwritten signature in cursive script that reads "Steven Brown".

Steven Brown
Executive Director

cc: Robert Rapoza
Ray Marcaccio