

# Sentinel & Enterprise

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## Syria says she and Smiley can vote against election to have them ousted from Lancaster Board of Selectmen

By MICHAEL HARTWELL

LANCASTER, Mass. — Sitting in her living room, a soda can in one hand and the other perched at her computer keyboard, Selectman Jean Syria said she has an upcoming vote up her sleeve that could cancel the recall election intended to remove her and Selectman Susan Smiley from office.

“This is a test case, the first one of (the new recall rules), and it needs to be done correctly,” Syria said.

Syria said when the issue is presented to the board, she and Smiley have the ability to block it by refusing to vote to accept the petitions. There are separate petitions for each selectman’s recall, and while they can’t vote on their own, they each can vote on the other’s recall.

Syria said it would not be part of a reciprocity deal with Smiley or motivated by wanting to quash the recall.

Instead, she said, it’s a matter of principle.

“Why would I or should I vote to accept a recall based on false accusations?” Syria said.

While some petitioners say she is exploiting every loophole she can to delay the recall, Syria said she is simply following the rules.

“I would not call anything a loophole if it’s Massachusetts law,” Syria said.

Last week, Syria and Smiley contested some of the signatures on the recall petition during a hearing, questioning the authenticity of some and saying other signers were duped with false accusations, such as how the petitions claimed the Board of Selectmen violated open-meeting laws and wasted taxpayer money with needless town-counsel services.

Syria’s portion of that hearing was almost delayed by herself.

Minutes before the hearing started, a courier delivered a letter from Syria, saying she couldn’t be there and asking them to delay the meeting another week so she could attend. The registrars wouldn’t have been able to meet for another week and a half, and didn’t know if she would be available then. They proceeded with the hearing despite a warning from town counsel that Syria could use it in a lawsuit challenging the fairness of the process.

Smiley attended the hearing, and it proceeded as normal. No signatures were rejected from Syria’s petition, but one signature was rejected from Smiley’s.

One of the leaders behind the recall effort, Frank Leonard, owns the company that provides the town’s email service. Syria said she is looking into getting a new company for town email, not out of retribution, but because of technical problems with the current email. The petition referenced that issue and accused her of abusing her authority to harass a town vendor.

While some of the accusations are unproven and others have been disproven, such as the supposed violations of the open-meeting law that the state Attorney General’s Office cleared, Town Clerk Barbara Bartlett said the recall petitions are valid, as the listed grievances have no impact on the legitimacy of the petition.

One grievance is disputed on technical grounds by Syria, but not Smiley. The petitions say that the two selectmen terminated former Town Administrator Orlando Pacheco. In fact, they voted to not renew his contract and let it expire in June.

While selectmen individually know that the petitions received more than enough signatures to hold a recall election, the board has not officially received them.

On July 15, Selectman Stan Starr and town Administrative Assistant Kathy Lamb, who has taken over some of the town administrator's duties since Pacheco left, sent a notice to Syria informing her that the recall-election signatures were in, and that she had five days to resign. If she did not, selectmen would be forced to schedule a recall election between 64 and 90 days from that date.

Acting as constable, Police Chief Kevin Lamb delivered that notice to Syria in an envelope. She tried to avoid taking it and told him he must send it by certified mail, but he dropped it in her lap and left.

Both she and Lamb agree she said a vulgar phrase to him out of anger.

"It wasn't illegal," she said. "If it's illegal, he can come here and arrest me."

She said she knows Lamb personally, but said he wasn't in uniform and didn't identify himself as the constable.

A meeting was scheduled for that night, July 15, but Syria said she had to tend to a family tragedy out of town and couldn't go. Smiley also didn't attend that meeting, saying she was stuck in New Hampshire because of work and couldn't make it back to Lancaster in time.

With only Starr in attendance, the meeting lacked a quorum and couldn't continue.

The issue was not added to the agenda for the July 28 meeting either; it is now scheduled to be held today.

She produced emails from Mark Reich, a lawyer with the town's law firm, Kopelman & Paige, that said there is nothing stopping Syria and Smiley from voting on each other's recall petitions, as they do not have a direct conflict of interest to each other's recall election. A tie vote is not a majority, and Syria said a majority is needed for an action.

The same email from Reich said the letter Starr signed that was delivered by Lamb was not legitimate, as it was not officially from the Board of Selectmen. The email stated, "A single member of a three-member board has no authority to take action on behalf of that board, except in very limited circumstances not applicable here."

It didn't matter that Starr was the only member not targeted by the recall effort, it added.

Smiley said she hasn't considered how she will vote on the issue.

"I'm not trying to delay anything, I'm just trying to make sure we get it right," she said. "I do believe in democracy. If, at the end of the day, if this is what people want, fine. That's the majority. But my perspective is, we've never gone through this process before. No one truly understands it. We need to pause and get it right. If we don't get it right, we are setting precedent for future recall activities."

When asked if she thinks Syria is purposely delaying the process, Smiley said she can't answer for Syria and has more than enough to deal with herself.

Marcia Firth, who signed the recall petition, said the two selectmen are doing whatever they can to hinder the recall election.

"I don't think that's surprising," she said.

Firth said the issue started over opposition to getting rid of Pacheco, but said it has grown to criticism of their handling of town business, specifically with Syria's management as

chairwoman of the board and her attitude. She referenced the swearing incident directed at Lamb.

“How does she think she can be like that?” Firth said. “We’d have to be pretty silly to put up with that sort of thing. She’s a huge detriment to the town.”

“This recall was very poorly written, and it was done in haste and emotion,” Syria said.

She said her critics are in “a mob mentality, a barracuda feeding frenzy,” adding that they are using lies and deception, such as the flood of complaints filed by David Dunn to the state.

Dunn, a former selectman and a leader of the recall petition, is the one who filed the open-meeting-law complaint that was turned down by the Attorney General’s Office. He has filed other legal requests, including a recent freedom-of-information request for Syria and Smiley to turn over all of their phone and email records, including personal phone records. Syria said there is no way she will do that.

“We’ll see how it turns out,” Dunn said. “The state will have a ruling. I have the time.”

He said Syria and Smiley are using delay tactics that may work in the short term, but not forever.

“The truth is, people are getting angrier and angrier,” he said. “They’re digging themselves a deeper and deeper hole.”

Starr signed both recall petitions, but he’s not saying publicly if he wants the other two selectmen recalled or not. He compared his signatures to signing a nomination paper for a candidate.

“I want to give the citizens of Lancaster the decision of who should lead this town,” he said.

When asked if he thinks Syria and Smiley will be able to kill the recall election by not accepting the signatures, he said he would not speculate and deferred to town counsel.

Joshua Spivak, a senior fellow at the Hugh L. Carey Institute for Government Reform at Wagner College, studies recalls, and said what is happening in Lancaster is typical for a recall effort, including how it started as a criticism of a political vote.

“People think it’s usually for criminal acts or incompetence, but that’s not the case,” he said of recall bids.

He said most recall elections are successful, but most efforts to create a recall fail.

“The general problem with recalls is getting them on the ballot,” he said.

He said that’s because the public officials being targeted try to delay or defeat them. Spivak said he can’t speculate if Syria and Smiley intentionally stopped the July 15 meeting from taking place, but said delays are a common tactic, as are lawsuits about recalls.

Some states require malfeasance for a recall to happen, but Lancaster does not.

When the recall rules were being created earlier this year, a proposed amendment to require wrongdoing or incompetence was defeated, and Spivak said if it had passed, the process could have been delayed for a long time.

Lancaster rules do not require a stated reason for the recall, so they don’t have any reasons that need to be confirmed by a board.

He said he doesn’t think efforts to delay recalls will change the outcome of the vote.

“One of the reasons is ... the people who are doing the recall are voters who are upset, and not only upset, but so upset they took the time to organize,” he said.

He said that anger is usually already saturated enough to win the recall vote.

Dunn said he doesn’t think there will be a lawsuit in Lancaster, as Syria and Smiley would have to pay for expensive legal fees out of their own pockets.

Smiley said she hasn’t even considered hiring a lawyer, but Syria has. She has been communicating with a friend who is a lawyer and said she is considering it but hasn’t decided yet.