

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Judith Lester, Mansfield

File No. 2016-099

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Respondent Jeanne Ahern Mogayzel, Respondent Beverly Miela (collectively the "Respondents") and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

PARTIES

1. At all times relevant hereto, Respondent Mogayzel was the Democratic Registrar of Voters in the Town of Mansfield.
2. At all times relevant hereto, Respondent Miela was the Republican Registrar of Voters in the Town of Mansfield.
3. At all times relevant hereto, Complainant Judith Lester was an elector in the Town of Mansfield and a voter at the Mansfield District #1 polling location.

COUNT I

4. The Complainant alleged that the Mansfield District #1 polling location was not accessible to individuals that use a wheelchair during the November 8, 2016 general election.
5. Many of the issues raised by the Complainant would not have amounted to a violation within the Commission's jurisdiction, even if they were true. However, Complainant's allegation the top surface of the privacy booths were too high for use by individuals that use a wheelchair at the District #1 polling location in Mansfield would be a violation of Connecticut's elections laws, if true.
6. Section 9-242a-11 of the Regulations of Connecticut State Agencies, which sets out certain criteria for the organization of polling places and requires, in pertinent part, "at least one voting booth in each voting district shall be accessible to persons with disabilities[.]"
7. General Statutes § 9-247 further requires that all tabulators, including AVS machines, be tested and functional by the open of polls and reads:

The registrars of voters shall, before the day of the election, cause test ballots to be inserted in each tabulator to ensure that each tabulator is prepared and read and cause each other voting system approved by the Secretary of the State for use in the election, including, *but not limited to, voting devices equipped for individuals with disabilities that comply with the provisions of the Help America Vote Act, P.L. 107-25, as amended from time to time, to be put in order in every way and set and adjust the same so that it shall be ready for use in voting when delivered at the polling place.* Such registrars of voters shall cause each voting system to be in order and set and adjusted, to be delivered at the polling place, together with all necessary furniture and appliances that go with the same, at the room where the election is to be held, and to be tested and operable not later than one hour prior to the opening of the polling place.

(Emphasis added.)

8. Pursuant to General Statutes § 9-247 and Regs. Conn. State Agencies § 9-242a-11, at least one voting booth in each polling place must be accessible to individuals with disabilities. Pursuant to the Americans with Disabilities Act Accessibility Guidelines (ADAAG), accessible work and dining surfaces should be between 28 and 34 inches from the floor. 36 CFR PART 1191 APPENDIX D § 902.3.
9. The investigation into this matter revealed that the writing surfaces in the privacy booths were 32 inches from the floor. As this is within the band of acceptable heights for work surfaces in the ADAAG, the allegation that the writing surface height in the privacy booth was inaccessibly high is not supported by the facts.
10. Accordingly, this Count should be dismissed.

COUNT II

11. The Complainant further alleged that there was an insufficient number of privacy booths at his polling location during the November 8, 2016 general election.

12. The Regulations of State Agencies § 9-242a-2 provides:

The officials of a municipality . . . shall provide a number of voting booths sufficient to provide at least one for each two hundred and fifty or fraction of two hundred and fifty electors eligible to vote at each primary and election in the municipality or voting district, as the case may be, and shall provide other necessary equipment.

13. General Statutes § 9-247 further provides:

The registrars of voters shall, before the day of the election, cause test ballots to be inserted in each tabulator to ensure that each tabulator is prepared and read and cause each other voting system approved by the Secretary of the State for use in the election, including, but not limited to, voting devices equipped for individuals with disabilities that comply with the provisions of the Help America Vote Act, P.L. 107-25, as amended from time to time, to be put in order in every way and set and adjust the same so that it shall be ready for use in voting when delivered at the polling place. Such registrars of voters shall cause each voting system to be in order and set and adjusted, to be delivered at the polling place, *together with all necessary furniture and appliances that go with the same*, at the room where the election is to be held, and to be tested and operable not later than one hour prior to the opening of the polling place.

(Emphasis added.)

14. Finally, pursuant to General Statutes § 9-7b (a) (2), the Commission shall have the authority:

To levy a civil penalty not to exceed . . . two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147[.]

15. Pursuant to General Statutes § 9-247, the Registrars of Voters are required to deliver to the polling place “all necessary furniture” that go with the voting tabulators. Because tabulators require voters to fill out a ballot at another space within the polling location, privacy booths are “necessary furniture” as described in General Statutes § 9-247. The Regulations of State Agencies § 9-242a-2 requires that one privacy booth per 250 registered voters or fraction of 250 registered voters of a voting district be provided to the polling place.
16. The investigation into this matter revealed that there were 9,705 registered voters in the District #1 voting district. Pursuant to law, that number of registered voters would require 39 privacy booths to be set up at the polling place. However, the Respondents admit that there were only 11 privacy booths at that location. This resulted in voters using tables without privacy booths to complete their ballots, risking the privacy of the voting process.
17. Accordingly, the Commission finds that the Respondents violated General Statutes § 9-247 and the associated Regs. Conn. State Agencies § 9-242a-2.

TERMS OF GENERAL APPLICATION

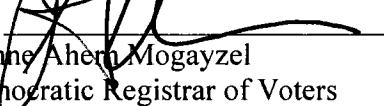
18. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
19. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or to contest the validity of the Order entered into pursuant to this Agreement.
20. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
21. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

It is hereby ordered that:

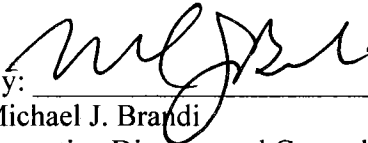
- 1) Respondents Mogayzel and Miela shall henceforth strictly adhere to the requirements of General Statutes § 9-247 and § 9-242a-2 of the Regulations of Connecticut State Agencies.
- 2) Respondents Mogayzel and Miela shall each pay a civil penalty of \$200.
- 3) Respondents Mogayzel and Miela shall provide the number of privacy booths required by Regs. Conn. State Agencies § 9-242a-2 prior to the next regular election or referendum.

Respondent Mogayzel:

By: 
Jeanne Ahern Mogayzel
Democratic Registrar of Voters
4 S. Eagleville Rd.
Mansfield, CT 06268


Dated: 8/17/2017

For the State of Connecticut:

By: 
Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

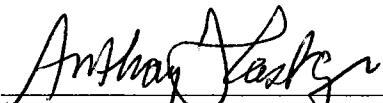
Dated: 8/28/17

Respondent Miela:

By: 
Beverly Miela
Republican Registrar of Voters
4 S. Eagleville Rd.
Mansfield, CT 06268

Dated: 8-7-2017

Adopted this 20th day of Sept, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission