

State Elections Enforcement Commission



2019 REGISTRAR OF VOTERS CONFERENCE

Kevin M. Ahern – Staff Attorney
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Law Enforcement Unit

Duties and Responsibilities of Commission Staff



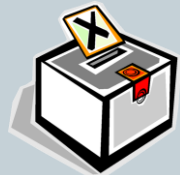
- Investigate Complaints and Enforce Law
- Assist candidates and campaign staff
- Research and answer questions about campaign finance compliance
- Provide Campaign Finance Education Seminars
- Perform Audits
- Recommend Legislative Changes
- Administer and Maintain Electronic Campaign Reporting Information System (eCRIS)



Elections Ecosystem



	<i>Compliance</i>	<i>Execution</i>	<i>Law Enforcement</i>
<i>Campaign Finance</i>	SEEC/FEC	SEEC/FEC & Town Clerks	<u>SEEC/FEC</u> (& State's Attorney/FBI)
<i>Election Administration</i>	SOTS/EAC	SOTS, <u>Registrars</u> & Town Clerks	<u>SEEC</u> (& State's Attorney/FBI)



SEEC and ROVs



- Two Roles
 - Referring Cases for Investigation
 - Responding to Complaints



SEEC and ROVs



- Referring Cases for Investigation
 - Referral vs. Complaint
 - Are you required?
 - What to do before making a referral



SEEC and ROVs



- Responding to Complaints
 - SEEC Docketing Process
 - Pro se vs. Corporation Counsel
 - Preservation of Evidence
 - Communications with Investigators



Case Discussion



- Key SEEC cases since April 2018.
 - 8 Cases
 - Anonymity of Cases
- Questions/Hypotheticals



Enrollment Lists



- **CASE:** [File No. 2017-046](#)
- **FACTS:**
 - Candidate requested a hard copy of a party enrolment list.
 - Registrar offered a free electronic copy but stated that it was a \$0.50 charge per page for a physical copy



Enrollment Lists



- **Holding:**

- Registrar violated §§ 9-55 and 9-55a
- While the FOIA allows Registrars to charge for requested documents, the specific language in Title 9 is controlling.
- Candidate's for nomination are entitled to one free hard copy of the enrolment list.
- If candidates prefer an electronic copy, Registrars may provide that instead, but only if it is at the request of the candidate.

Voting Assistance vs. AVS System



- Case Citation: [File No. 2017-080A & 2017-080B](#)
- Facts:
 - Disabled voter and spouse
 - Spouse filled out both ballots while voter standing aside
 - PP officials insisted that not appropriate and made voter use AVS system with the assistance of the PP officials
 - Spouse alleges violation of voter's rights to privacy and secret ballot
 - General Statutes §§ 9-264, 9-247, and 9-236b (Voter Bill of Rights)



Voting Assistance vs. AVS System



- **HOLDINGS:**

- **FIRST**

- Voter may use assistor of choice
- Voter must declare her/his desire for assistance and ID the assistor of choice *at the time s/he checks in*
- Voter must direct the choices and remain in the booth.
- Assistor is just a mechanism for recording votes

- **SECOND**

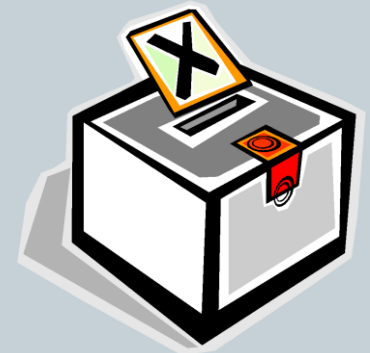
- AVS an option only when voter requests it
- Elections officials may assist if voters request assistance. No violation of privacy and/or secret ballot in that instance



Voter Intimidation and Challenge Ballots



- **CASE:** [File Nos. 2016-096 & 2016-097](#)
- **FACTS:**
 - Registrar pulled a voter out of line and told her she was not able to vote because she did not live in town.
 - Voter was an enrolled voter in town.
 - When the voter held her ground, she was permitted to vote

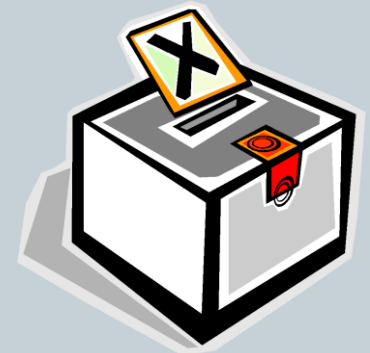


Voter Intimidation and Challenge Ballots



- **Holding:**

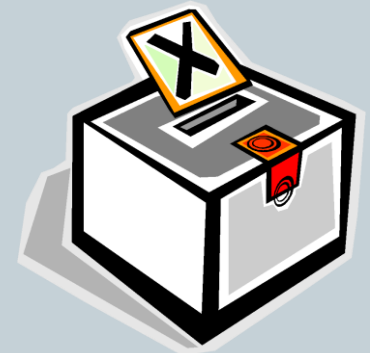
- Registrar violated § 9-236 (Voter's Bill of Rights)
- Voters have the right to “vote free from coercion or intimidation by election officials or any other person.”



Voter Intimidation and Challenge Ballots



- **What should have been done:**
 - Challengers - § 9-232
 - Each Registrar may appoint challengers that may challenge a persons right to vote based upon **identity, disenfranchisement, or bona fide residence.**
 - Challenges must be based upon knowledge or reason to believe.
 - Moderator decides all challenges.



Voter Intimidation and Challenge Ballots



- **What should have been done:**
 - Challenge ballots - § 9-232d – 9-232f
 - If moderator agrees with challenger, voter may request a challenge ballot.
 - Include regular ballot and a numbered envelope marked challenged ballot.
 - Moderator takes possession of the ballot until they are given to the town clerk.
 - Town Clerk only counts ballot if election is challenged.

Polling Places in Schools and ID



- Case Citation: [File No. 2016-038](#)

- Facts:

- During primary, schools remained open
- Superintendent did not modify school security protocols for voters entering the building
- Photo ID and Sign-in/Sign-Out requirements at every entrance, including entrances just being used by voters
- General Statutes § 9-261, 9-169, 9-236, 10-239



Polling Places in Schools and ID



- ISSUE 1 QUESTION:

- Can a polling place be situated in a building that itself requires heightened security measures, even if the polling place itself follows the Voter ID rules?



Polling Places in Schools and ID



- ISSUE 1 HOLDING:

- “In order for a polling place to be ‘suitable’ it must allow for all of the rights of voters enumerated in Title 9 to be effectuated.”
- Example Cases: ADA, Minors w/Parents
- Voter must be able to enter building and follow only the Voter ID rules in Title 9 in order to vote.
- Any non-election officials requesting additional ID are violating provisions on loitering and the Voters’ Bill of Rights



Polling Places in Schools and ID



POLLING PLACE

Outside building, within 75' of outside entrance leading to Polling Place

Inside building: corridor, passageway or other approach leading from outside entrance

Inside Polling Place

§ 9-236 (c)

§ 9-236 (a)

§ 9-236 (a)

Polling Places in Schools and ID



- ISSUE 2 QUESTION:

- What responsibilities and liabilities do the school officials have?



Polling Places in Schools and ID



- 10-239 (b):

- (b) **Any local or regional board of education [shall] grant the temporary use of rooms, halls, school buildings or grounds or any other school facilities under its management or control for . . . any purpose of voting under the provisions of title 9 whether or not school is in session, in each case subject to such restrictions as the authority having control of such room or building, grounds or other school facility considers expedient.**

- Statute has never been interpreted in any Case before SEEC or the Superior Court



Polling Places in Schools and ID



- ISSUE 2 HOLDING:
 - SEEC lacks jurisdiction to decide.



Polling Places in Schools and ID



- ISSUE 2 HOLDING (cont.):

- “[I]n the Commission’s reading of the statute, we find it hard to believe that the “expedient” exception would allow the procedures applied here as of right. . . [S]uch an interpretation would allow the exception to swallow the rule that schools must make their facilities available. This would appear to go against the clear intent of this statute, as it would allow superintendents to skirt the law and exempt entire school systems from this requirement merely by applying enhanced security procedures.”



Polling Places in Schools and ID



- ISSUE 2 HOLDING (cont.):
 - Legal Question
 - Local officials or SOTS needs to address the legal question
 - Practical Question Easier to Answer:
 - Work with superintendent and, if necessary, corporation counsel to find solution.
 - Close School (like a snow day)
 - Separate entrance to PP and close off PP from remainder of building



Supervised AB – ROV Notice Requirements



- Case Citation: [File No. 2018-018](#)
- Facts:
 - ROV scheduled Supervised AB at a location with the building administrator for a particular date & time
 - ROV designees were held up at prior location and called and rescheduled time with building administrator.
 - Allegation that ROV should have informed the AB applicants of the time change directly.
 - General Statutes §§ 9-159q, 9-159r, 9-159s



Supervised AB – ROV Notice Requirements



- HOLDINGS:

- ROVs not required to contact voters directly.
- “The registrars of the town in which an institution is located and the administrator of the institution shall mutually agree on a date and time for such supervision of absentee balloting, . . .” § 9-159r (b)
- See also, *Keely v. Ayala*, 328 Conn 393, 425 (2018), recent CT Supreme Court case:
 - Supervised absentee balloting must be “held on a date mutually agreed on by the institution’s administrator and the registrars of voters...Notably, however, there are no provisions that require town officials either to notify residents at an institution that supervised absentee balloting is to occur there or to approach these residents and to offer them absentee ballot applications in advance of that balloting.”
 - ROVs met their responsibilities by keeping in contact with the administrator of the building



Supervised AB – Application Distribution



- Case Citation: [File No. 2018-064](#)
- Facts:
 - Absentee ballot application distribution occurring in locations that include mandatory supervised absentee balloting sites
 - Allegation that ROV told distributor that she was not allowed to distribute absentee ballot applications in buildings with supervised absentee balloting
 - General Statutes §§ 9-140, 9-159q, 9-159r, 9-159s



Supervised AB – Application Distribution



- HOLDINGS:

- Absentee ballot application distribution may occur in supervised absentee ballot buildings
- Must follow regular rules enumerated in § 9-140, which concern all absentee ballot applications.
- Supervised absentee ballot laws (§§ 9-159q, 9-159r, & 9-159s) do not limit distribution of applications.



ROV Responsibility vs. Liability



- Case Citation: [File No. 2018-054](#)
- Facts:
 - ROV filed complaint against counterpart for failing to be in town for a referendum and for failing to perform any of the duties associated with the referendum



ROV Responsibility vs. Liability



- HOLDINGS:

- Not a violation of law, alone, for an ROV to willfully abdicate her/his responsibilities. (i.e., not something for which the SEEC could issue civil penalties)
- However, if any of those duties are improperly performed (or not performed at all) by the remaining ROV, liability rests with both of you.
- I.e., “Joint and Several” liability between ROVs.
- Additionally, this would not prevent SEEC from referring such an ROV to the SOTS for potential suspension and/or removal if such actions constituted “misconduct, wilful and material neglect of duty or incompetence in the conduct of” the office of Registrar. See General Statutes § 9-190c.



Where to Find SEEC Cases



- Online

- www.ct.gov/seec

- Click “[Commission Decisions](#)” in left nav bar
- Search by keyword, or pick case from list.
- E-mail “seec@ct.gov” if you can’t find a case

- SEEC Library

- 20 Trinity St., Hartford, CT
- Every SEEC legal decision bound and organized by year and category.

