

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Scott Dale, Brookfield

File No. 2012-097

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Dorothy A. Dori and Jeffery M. Dunkerton, of the Town of Brookfield, County of Fairfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. On August 14, 2012, a party primary was held in the Town of Brookfield.
2. Respondents Dori and Dunkerton were at all times relevant to the instant Complaint the Democratic and Republican Registrars of Voters for the Town of Brookfield.
3. The Complainant here was at all times relevant to the instant Complaint a registered elector in the Town of Brookfield.
4. The Respondent registrars secured the Huckleberry Hill Elementary School site with Principal Mary Rose Dymond on or about July 2, 2012. They further assert that at the time, they were not made aware of any issues of unsuitability in the building. They were only aware that the gym that the polling place would occupy was being painted in the intervening period, but would be finished by the August 14th primary.
5. On or about August 8, 2012, 6 days prior to the primary, Brookfield Superintendent Anthony Bivona visited their office and told them that anyone under the age of 18 would not be permitted to enter the building due to asbestos abatement occurring in another section of the school. Mr. Bivona did not cite any particular authority, nor did the Respondents seek proof of the restriction. To date, no specific authority has been provided pursuant to the investigation of this matter.
6. In light of this development, the Respondents did not attempt to move the polling place, but rather decided that they would have polling place workers provide so-called "curbside voting" outside the polling place to any electors who were either under the age of 18 (17-year-olds who turn 18 by the general election were permitted to vote in the primary pursuant to General Statutes § 9-431 (c)) or were accompanied by minor children.
7. Prior to the primary, the Respondents posted notice of the restriction and this alternative option in local newspapers as well as the online Brookfield Patch website.

8. The Respondents assert that they believed that the deadline had passed to move the polling place to a different location and that the solution that they crafted was the best under the circumstances. The Respondents admit that they did not seek the advice of the Secretary of the State prior to Primary Day on whether such use of "curbside voting" was permissible. (The Respondents sought advice of the SOTS only when the Complainant took issue with this method on Primary Day.)
9. The Complainant alleges, and the Respondents do not dispute, that he arrived to vote on the morning of the primary with his 3-year old son at his side. He was a registered voter and otherwise eligible to cast a ballot on that day. However, the Respondents had instructed the polling place workers to comply with what they identified as a statutory restriction on entry to the building due to ongoing asbestos abatement in an area separate from the polling place. As such, the Complainant was denied entry due to his son's presence.
10. The moderator at the polling place, as instructed by the Respondents, offered the Complainant the option of voting his ballot outside of the building and having an elections official bring it back into the polling place and feed it into the tabulator for him.
11. The Complainant disregarded the instruction and the offer and proceeded into the polling place with his son. Pursuant to the Respondents' instructions the moderator and the official checkers refused to give the Complainant a ballot. They offered to either have a polling place worker watch his son outside while he voted or to bring a ballot to him outside the building and insert it in the tabulator on his behalf. The Complainant refused and again requested his ballot. The moderator refused to allow the checker to give him a ballot and warned him that the moderator would seek to have him and his son removed from the polling place by the police. Threatened with expulsion and possible police involvement, the Complainant left the polling place without voting and went home.
12. After contacting the SEEC's Election Day Hotline, the Complainant was informed of his right to vote privately in a polling place under General Statutes § 9-236b, the "Voters Bill of Rights." Subsequent to the telephone discussion with the Election Day Hotline, the Complainant contacted the Respondent registrars and asked if there was a way that he would get to insert the ballot himself from outside the building. The parties agreed that they would wheel the tabulator to the door of the building and allow him to mark his ballot and feed it into the machine through the open door. The Complainant returned and proceeding to cast his ballot through this improvised method.

13. General Statutes § 9-168 and 9-169 regulate the designation of polling places under the present facts. General Statutes § 9-168 reads, in pertinent part:

In any town not divided into voting districts, the place of holding elections may be determined by the legislative body of such town. In towns divided into voting districts the place of holding elections shall be determined as provided in section 9-169 or any special act, whichever applies. . . .

14. General Statutes § 9-169 reads, in pertinent part:

The legislative body of any town, consolidated town and city or consolidated town and borough may divide and, from time to time, redivide such municipality into voting districts. The registrars of voters of any municipality taking such action shall provide a suitable polling place in each district but, if the registrars fail to agree as to the location of any polling place or places, the legislative body shall determine the location thereof. Polling places to be used in an election shall be determined at least thirty-one days before such election, and such polling places shall not be changed within said period of thirty-one days except that, if the municipal clerk and registrars of voters of a municipality unanimously find that any such polling place within such municipality has been rendered unusable within such period, they shall forthwith designate another polling place to be used in place of the one so rendered unusable and shall give adequate notice that such polling place has been so changed. . . . (Emphasis added.)

15. General Statutes § 9-236 (c) permits voters to bring their minor children into the polling place with them to vote, and reads, in pertinent part:

c) No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote. . . . An elector may be accompanied into any polling place by one or more children who are fifteen years of age or younger and supervised by the elector if the elector is the parent or legal guardian of such children. (Emphasis added.)

16. The process of voting in a polling place is enumerated in General Statutes § 9-261, which reads, in pertinent part:

(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the official checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the official checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the official checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the official checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the registrar of voters or the assistant registrar of voters, as the case may be, shall examine the information on such form and either instruct the official checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.

(b) In the event that an elector is present at the polling place but is unable to gain access to the polling place due to a temporary incapacity, the elector may request that the ballot be brought to him or her. The registrars of voters or the assistant registrars of voters, as the case may be, shall take such ballot, along with a privacy sleeve to such elector. The elector shall show identification, in accordance with the provisions of this section. The elector shall forthwith mark the ballot in the presence of the election officials in such manner that the election

officials shall not know how the ballot is marked. The elector shall place the ballot in the privacy sleeve. The election officials shall mark the elector's name on the official voter list as having voted and deliver such ballot and privacy sleeve to the voting tabulator where such ballot shall be placed into the tabulator, by the election official, for counting. The moderator shall record such activity in the moderator's diary.

...

(e) If not challenged by anyone lawfully present in the polling place, the elector shall be permitted to pass to the separated area to receive the ballot. The elector shall give any receipt the elector has received to a ballot clerk who shall give the elector a ballot to vote only in the primary of the party specified by the receipt. The elector shall be permitted into the voting booth, and shall then register his or her vote in secret. Having voted, the elector shall immediately exit the voting booth and deposit the ballot in the voting tabulator and leave the room.

... (Emphasis added.)

17. General Statutes § 9-236b, the "Voter's Bill of Rights," enumerates a number of rights accorded to voters in Connecticut. The statute reads, in pertinent part:

(a) The Secretary of the State shall provide each municipality with sufficient quantities of a poster size copy, at least eighteen by twenty-four inches, of a Voter's Bill of Rights, which shall be posted conspicuously at each polling place. The text of the Voter's Bill of Rights shall be:

"VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:

...

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

18. The facts of the case here are unusual and a matter of first impression for the Commission. Here, the Complainant otherwise qualified as an elector in the instant primary. Moreover, he was expressly permitted to enter the polling place with his minor child pursuant to General Statutes § 9-236 (c). Finally, General Statutes § 9-236b (9) gave him the express right to vote independently and in privacy at a polling place.

19. The questions here are twofold:

- a. Were the Respondents required to allow the Complainant into the polling place?
- b. If so, were the efforts the Respondents made to allow the Complainant to vote outside the polling place permissible at law or at least mitigating of their liability?

20. As to the first question and after review of the facts in this matter, the Commission finds that there was no legal impediment under Title 9 to the Complainant entering the polling place with his minor child. While other laws may have put restrictions and/or liabilities on the school district for allowing minor children in the building, it was the Respondents, not the school district, who actually sought to prevent the Complainant from entering the building and from receiving and casting a ballot therein.

21. Considering the aforesaid, the Commission concludes that under Title 9, the Respondents are liable for failing to discharge their duties enumerated in General Statutes §§ 9-236, 9-236b (9) and 9-261.

22. As to the second question, the Commission must first consider whether so-called “curbside voting” was permissible under the facts here and whether the Respondents provision of such was mitigating of their failure to allow the Complainant into the polling place.

23. Curbside voting is enumerated in subsection (b) of General Statutes § 9-236 and permits that “[i]n the event that an elector is present at the polling place but is unable to gain access to the polling place due to a temporary incapacity, the elector may request that the ballot be brought to him or her.” The question here, which is one of first impression, is whether “temporary incapacity” contemplates a legal incapacitation, such as the one here. That is, even assuming that the Respondents were correct in preventing the Complainant from voting inside the polling place, did the Complainant qualify to receive a ballot pursuant to General Statutes § 9-236 (b)?

24. Pursuant to General Statutes § 9-3, Counsel asked for an opinion from the Secretary of the State on this issue. The Secretary responded, as follows, in pertinent part:

Looking at the entire statutory section of General Statutes § 9-261 entitled ‘Process of voting,’ we find a detailed description of the voting process. Within this detailed description, we find the provision in question. Reading each word of the phrase, it is clear that the intention of the procedure is to assume that the elector in question is already legally entitled to be present at the polling place in question. ‘In the event that the elector is present at the polling place . . .’ If this was not the case, the legislature would have prescribed additional

qualifications in addition to those already in place for . . . an election in the municipality. The provision goes on to state that once present, the elector in question is unable to ‘gain access’ to the polling place due to a temporary incapacity. The phrase ‘gain access’ is also used in General Statutes § 9-168d, ‘(l) Doors, entrances, and exits used to gain access to or egress from the polling place shall have a minimum width of thirty one inches; . . .’ Reading these statutory sections together, it becomes clear that the term ‘unable to gain access’ within the process of voting refers to direct physical access to the polling place in question.

Given the unique wording of the provision in question and the limited references located within related statutory sections, we must also look to the relevant legislative history for additional clarification. The legislative history regarding this provision is limited; however, it does provide some additional clarification by referring to a ‘sudden’ incapacity that prevents a voter from entering the polls. ‘Fourth, we’re asking to add new language for registrars to accommodate electors at the polls who have a sudden incapacity that prevents them from entering the polls and they would be disenfranchised without this addition.’ GAE Public Hearing Transcript 2/28/2007.

Clearly, if the provision in question was referring to a predefined legal incapacity, the elector in question would not be legally at the polling location, would not have difficulty when attempting to physically ‘gain access’ to the polling place, and the incapacity suffered would not be ‘sudden’. As such, after a review of the relevant statutory provisions, surrounding statutory sections, and legislative history, it is our opinion that the term ‘incapacity’ as used in 9-261 (b) refers to physical incapacity and a voter’s inability to gain access to the polling place because of their current physical status.

25. The Commission concludes that the Secretary’s reasoning is sound and presumes that her opinion in this instance is correct.
26. As such, the Commission concludes that the Respondents were not permitted to offer voters “curbside” voting under General Statutes § 9-236 (b) unless such voters were *physically* incapacitated. The Complainant here made no representation that he was physically incapable of entering the polling place.

27. In consideration of the aforesaid, the Commission concludes that not only was the provision of so-called “curbside” voting insufficient in mitigating the Respondent’s liability for failing to allow the Complainant to vote in the polling place, the Respondents violated General Statutes § 9-236 (b) by providing a “curbside” ballot to the Complainant, who did not assert a physical incapacity.<sup>1</sup>
28. Moreover, the Commission concludes that while the Respondents made an effort to accommodate the Complainant by rolling the tabulator to the door, this did not mitigate their liability for failing to allow him into the polling place. While the Respondents could have potentially used their authority in General Statutes § 9-168 & 9-169 to move the entire polling place on to the curb, the polling place remained inside while the voter was forced to mark and cast his ballot from the outside. As such, this solution did not allow the Complainant to “[v]ote independently and in privacy at a polling place” per General Statutes § 9-236b (9).
29. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of 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. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
- (1) the gravity of the act or omission;
  - (2) the amount necessary to insure immediate and continued compliance;
  - (3) the previous history of similar acts or omissions; and
  - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
30. Here, the Respondents failed to successfully protect the rights of otherwise eligible voters to “[v]ote independently and in privacy at a polling place.” Upon learning that the Huckleberry Hill School could not accommodate minors in the building, they should have moved the polling place. Instead they made two incorrect assumptions about the law without seeking any legal advice from either the Secretary of the State or the town’s corporation counsel: first, that they could not move the polling place and second that “curbside” voting could be offered to voters affected by the restriction.

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<sup>1</sup> The question of what, if any, inquiry an election official may make of a voter asserting a temporary incapacity under this provision is not before the Commission and as such is not addressed in this decision. The evidence in this matter demonstrated that the so-called “curbside” ballot was provided to the Complainant without prompting.



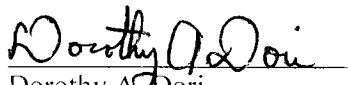
31. The Complainant here is the only voter known for certain to have been offered the “curbside” voting, but the Registrars admit that there were a “handful” of others on that day who had a similar issue and voted using this same method.
32. However, there are a number of factors that mitigate here. The Respondents have no prior history of similar acts or omissions. Ultimately, every voter was able to cast a ballot, if not in the manner provided in the Voter’s Bill of Rights. Moreover, while the Respondents erred considerably in failing to seek legal advice, they made good faith attempts to accommodate those voters that might be affected by the restriction. Finally, the issue of curbside voting for legally incapacitated individuals is one of first impression.
33. Considering the aforesaid, the Commission declines to assess a civil penalty in this instance and in exchange the Respondents agree to henceforth comply with the statutes at issue here.
34. The Respondents admit all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
35. The Respondents waive:
  - 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 contest the validity of the Order entered into pursuant to this Agreement.
36. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondents in any subsequent hearing, if the same becomes necessary.
37. Upon the Respondents’ compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

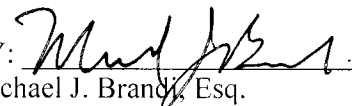
IT IS ORDERED THAT:

- a. The Respondents will henceforth strictly comply with General Statutes § 9-236, 9-236b (9) and 9-261.

**The Respondents:**

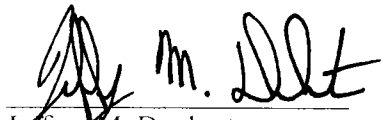
  
Dorothy A. Dori  
Brookfield, CT

**For the State of Connecticut:**

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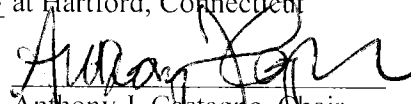
Dated: 7-21-13

Dated: 7/30/13

  
Jeffery M. Dunkerton  
Brookfield, CT

Dated: 7/21/13

Adopted this 17<sup>th</sup> day of July of 2013 at Hartford, Connecticut

  
Anthony J. Castagno, Chair  
By Order of the Commission

**RECEIVED**  
**STATE ELECTIONS**

**JUL 26 2013**

**ENFORCEMENT COMMISSION**