

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

In the Matter of a Complaint by Gail R. Simon, East Haven

File No. 2014-006

**FINDINGS AND CONCLUSIONS**

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the East Haven Registrars of Voters violated individual voters' right to vote their ballot in secret during a supervised absentee ballot session held at a senior center on October 31, 2013.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. Complainant alleges that she was an independent observer during a supervised absentee ballot session held at The Village at Mariner's Point, a senior center, on October 31, 2013.
2. General Statutes § 9-159q describes the procedure of supervised absentee balloting and reads, in pertinent part:

(a) As used in this section:

(1) "Institution" means a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and

(2) "Designee" means an elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

(b) Notwithstanding any provision of the general statutes to the contrary, if less than twenty of the patients in any institution in the state are electors, absentee ballots voted by such electors shall, upon request of either registrar of voters in the town of such electors' voting residence or the administrator of such institution, be voted under the supervision of such registrars of voters or their designees in accordance with the provisions of this section. The registrars of voters of a town other than the town in which an institution is located may refuse a request by the

administrator of such institution when, in their written opinion, the registrars agree that such request is unnecessary, in which case this section shall not apply. Such registrars shall inform the administrator and the town clerk of the electors' town of voting residence of their refusal.

(c) Except as provided in subsection (e) of this section, such request shall be made in writing and filed with the town clerk and registrars of voters of the town of such electors' voting residence, not more than forty-five days prior to an election or thirty-four days prior to a primary and not later than the seventh day prior to an election or primary. The request shall specify the name and location of the institution and the date and time when the registrars of voters or their designees shall supervise the casting of absentee ballots at the institution. The request shall also specify one or more alternate dates and times when supervised voting may occur. No request shall specify a date or an alternate date for supervised voting which is later than the last business day before the election or primary.

(d) The town clerk shall not mail or otherwise deliver an absentee ballot to an applicant who is a patient in any institution if a request for supervision of absentee balloting at that institution has been filed with the clerk during the period set forth in subsection (c) of this section. The clerk shall instead deliver such ballot or ballots to the registrars of voters or their designees who will supervise the voting of such ballots in accordance with this section.

(e) Except in the case of a written refusal as provided in subsection (b) of this section, upon receipt of a request for supervision of absentee balloting during the period set forth in subsection (c) of this section, the registrar or registrars of voters who received the request shall inform the registrar or administrator who made the request and the town clerk as to the date and time when such supervision shall occur, which shall be the date and time contained in the request or the alternate date and time contained in the request. If the registrar or registrars fail to select either date, the supervision shall take place on the date and time contained in the request. If a request for supervision of absentee balloting at an institution is filed during the period set forth in subsection (c) of this section and the town clerk receives an application for an absentee ballot from a patient in the institution after the date when supervised balloting occurred, either registrar of voters may request, in writing, to the

appropriate town clerk and registrars of voters that the supervision of the voting of absentee ballots at such institution in accordance with this section be repeated, and in such case the registrars or their designees shall supervise absentee balloting at such institution on the date and at the time specified in the subsequent request, which shall be not later than the last business day before the election or primary.

(f) On the date when the supervision of absentee balloting at any institution is to occur, the town clerk shall deliver to the registrars or their designees the absentee ballots and envelopes for all applicants who are electors of such clerk's town and patients at such institution. The ballot and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots.

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope "rejected" and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret.

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot

when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope “rejected” and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret.

(h) After all ballots have been voted or marked “rejected” in accordance with subsection (g) of this section, the registrars or their designees shall jointly deliver or mail them in the envelopes, which shall be sealed, to the appropriate town clerk, who shall retain them until delivered in accordance with section 9-140c.

(i) When an institution is located in a town having a primary, the registrar in that town of the party holding the primary shall appoint for each such institution, one designee of the party-endorsed candidates and one designee of the contestants from the lists, if any, submitted by the party-endorsed candidates and contestants. Such registrar shall notify all party-endorsed candidates and all contestants of their right to submit a list of potential designees under this section. Each party-endorsed candidate and each contestant may submit to such registrar in writing a list of names of potential designees, provided any such list shall be submitted not later than ten days before the primary. If no such lists are submitted within said period, such registrar shall appoint one designee of the party-endorsed candidates and one designee of the contestants. Each designee appointed pursuant to this section shall be sworn to the faithful performance of his duties, and the registrar shall file a certificate of each designation with his town clerk.

(j) Any registrar of voters who has filed a request that the absentee balloting at an institution be supervised and any registrar required to conduct a supervision of voting under this section, who neglects to perform any of the duties required of him by this section so as to cause any elector to lose his vote shall be guilty of a class A misdemeanor. Any registrar from the same town as a registrar who has filed such a request may waive his right to participate in the supervision of absentee balloting.

(k) Notwithstanding any provision of this section to the contrary, if the spouse or a child of a registrar of voters or a dependent relative residing in the registrar’s household is a candidate in the election or primary for

which supervised absentee voting is to occur, such registrar shall not supervise such absentee voting but may designate the deputy registrar of voters or an assistant registrar of voters, appointed by the registrar pursuant to section 9-192, to supervise the absentee voting in his place.

(l) Notwithstanding any provision of the general statutes, if a town clerk receives twenty or more absentee ballot applications from the same street address in a town, including, but not limited to, an apartment building or complex, absentee ballots voted by the electors submitting such applications may, at the discretion of the registrars of voters of such town, be voted under the supervision of such registrars of voters or their designees in accordance with the same procedures set forth in this section for supervised absentee voting at institutions.

3. Institutions that have more than 20 registered voters must cast their ballot via the supervised absentee procedure per General Statutes § 9-159r, which reads:

(a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in which the institution is located, in accordance with the provisions of this section. As used in this section, the term "institution" shall be construed as defined in section 9-159q.

(b) Application for an absentee ballot for any such patient shall be made to the clerk of the town in which such patient is eligible to vote. The application procedure set forth in section 9-140 shall apply, except that the clerk shall deliver the absentee voting set for any such application to the clerk of the town in which the institution is located, who shall deliver all such voting sets he receives to the registrars of such town, on the date when the supervision of absentee balloting is to occur. The ballots and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots. 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, which shall be not later than the last business day before the election or primary.

(c) The supervision of absentee balloting under this section shall be carried out in accordance with the provisions of subsections (g), (h), (i) and (k) of section 9-159q.

4. The Village at Mariner's Point is an "institution" as that term is defined in General Statutes § 9-159q (a) (1) and was designated as a supervised absentee balloting site. As such, any electors residing at The Village at Mariner's Point and seeking to vote by absentee ballot were required to cast such ballots via the procedures enumerated in General Statutes § 9-159q, above.
5. Complainant asserts that she visited The Village at Mariner's Point on October 31, 2013 and observed portions of the supervised absentee balloting there, which she asserts occurred at long tables set up in the lobby of the facility.
6. Specifically, the Complainant alleges that she observed a voter, whom she was unable to identify by name, request that she be allowed to take her absentee ballot back to her room, outside of the supervision of the designees of the Registrars of Voters. The Complainant alleges that the designees of the Registrars of Voters informed the voter that she must execute her ballot in the designated area and could not take it back to her room.
7. The Complainant, points to General Statutes § 9-159q (g) and asserts that refusing to allow the voter to execute the ballot alone in her room was a violation of the portion of this provision allowing that “[n]othing in this section shall limit the right of an elector to vote his ballot in secret.”
8. Turning to the question, the Complainant asserts that the allowance for a “secret ballot” in General Statutes § 9-159q (g) necessarily includes allowing the voter to remove the absentee ballot from the room in which the supervised absentee balloting is taking place. We disagree.
9. The right of a Connecticut voter to cast his ballot in secret is guaranteed by Article sixth, § 5, of the Connecticut constitution, as amended by article twenty-four of the amendments to the Connecticut constitution, which reads:

In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. No voting machine or device used at any state or local election shall be equipped with a straight ticket device. *The right of secret voting shall be preserved.* (Emphasis added.)

10. This right to “secret voting,” recognized in General Statutes § 159q (g), above, is also reflected in the statutory procedures surrounding voting at the polling place. General Statutes § 9-261 reads, in pertinent part:

(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. No elector shall remain within the voting booth longer than the time necessary to complete the ballot, and, if the elector refuses to leave such booth after completing the ballot, the elector shall at once be removed by the election officials upon order of the moderator. Not more than one elector at a time shall be permitted to be within the enclosed space which the elector occupies while the elector completes his or her ballot, provided an elector may be accompanied within such enclosed space 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. At least two additional electors, whose next turn it is to vote shall be permitted in the polling area for the purpose of receiving a ballot. If any elector, after entering the voting booth, asks for further instruction concerning the manner of voting, the election officials shall give such instructions or directions to the elector; but no election official instructing or assisting an elector, except as provided in section 9-264, shall look at the ballot in such a way as to see the elector’s markings or in any manner seek to influence any such elector in the casting of the elector’s vote. (Emphasis added.)

11. However, this constitutional provision allows that each elector’s selections shall remain secret as of right, but it does not prescribe a right to execute the ballot without any other person present and/or at a voter’s own convenience. See, generally, *In re Election of U.S. Representative for Second Congressional Dist.* 231 Conn. 602, 635 (1994).
12. Indeed, the Connecticut constitution shows a preference that voters cast their ballots at a designated public voting location and on a particular day. See, Article sixth, § 5, of the Connecticut constitution, as amended by article twenty-four of the amendments to the Connecticut constitution, *supra*.

13. Absentee ballots are an exception to this preference and may only be utilized for the reasons set forth in Article sixth, § 7, of the Connecticut constitution<sup>1</sup> and General Statutes § 9-135<sup>2</sup>.
14. Supervised absentee balloting allows for a voter to utilize an absentee ballot, where necessary, under conditions more closely akin to a polling location, thereby combining the greater security from fraud and abuse found at the polls with the accessibility of receiving and executing the ballot at one's home location.
15. Considering the aforesaid and applying it to the facts here, the Commission concludes that it was neither unlawful nor unreasonable for the designees of the Registrars of Voters to require that the electors remain within the lobby of the facility while they executed their ballots. Accordingly, this matter should be dismissed.<sup>3</sup>

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<sup>1</sup> Article sixth, § 7, of the Connecticut constitution reads:

The general assembly may provide by law for voting in the choice of any officer to be elected or upon any question to be voted on at an election by qualified voters of the state who are unable to appear at the polling place on the day of election because of absence from the city or town of which they are inhabitants or because of sickness, or physical disability or because the tenets of their religion forbid secular activity.

<sup>2</sup> General Statutes § 9-135 reads:

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he or she is unable to appear at his or her polling place during the hours of voting for any of the following reasons: (1) His or her active service with the armed forces of the United States; (2) his or her absence from the town of his or her voting residence during all of the hours of voting; (3) his or her illness; (4) his or her physical disability; (5) the tenets of his or her religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his or her duties as a primary, election or referendum official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than his or her own during all of the hours of voting at such primary, election or referendum.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant.

<sup>3</sup> The allegations in this case did not specifically plead that this particular supervised absentee balloting location was set up in such a way that each voter's right to opt to secretly mark such voter's selections was somehow not protected or preserved. However, the Commission emphasizes that supervised absentee balloting officials under § 9-159 must set up each location with this important principle in mind, else they risk violating the provisions cited herein.

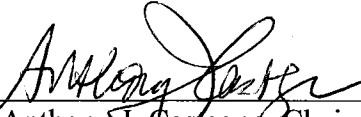


**ORDER**

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed.

Adopted this 16th day of April, 2014 at Hartford, Connecticut.

  
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Anthony J. Castagno, Chairperson  
By Order of the Commission