

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Maryli Secrest, Bridgeport

File No. 2015-118

FINDINGS AND CONCLUSIONS

The Complainant alleged that ahead of the September 16, 2015 Democratic Party Primary for municipal elected positions within the City of Bridgeport, Democratic Registrar Santa Ayala and Town Clerk Alma Maya failed to properly follow the prescriptions for designating and conducting supervised absentee balloting in multiple locations around the City.¹

Law

1. The default rule is that once the statutory period for absentee ballots commences, a town clerk is required to mail out absentee ballot sets to all qualifying applicants. General Statutes § 9-140 reads, in pertinent part:

(f) Absentee voting sets shall be issued beginning on the thirty-first day before an election and *the twenty-first day before a primary* or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding business day.

(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, *within twenty-four hours*, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the

¹ This Complainant also submitted concerns surrounding supervised absentee balloting to the Secretary of the State's Office on or about September 9, 2015 and the staff of the Secretary of the State took corrective actions that took those concerns out of the purview of the Commission. The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction and which were not already fully addressed by the Secretary of the State.

clerk shall comply with the request. Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. *Issuance of absentee voting sets shall also be subject to the provisions of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions.* (Emphasis added.)

...

2. However, where a street address is designated (by default or by discretion) as a supervised absentee balloting location, all ballot sets are hand delivered to such location by the appropriate elections officials, pursuant to procedures enumerated in General Statutes §§ 9-159q & 9-159r.

3. General Statutes § 9-159q 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.

(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.

...

(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. (Emphasis added.)

4. General Statutes § 9-159r reads, in pertinent part:²

(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

² Additionally, General Statutes § 9-159s addresses the requirement that administrators of institutions inform conservators and guardians when “any voter registration or voting opportunity is presented to the resident with respect to a primary, referendum or election.”

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. (Emphasis added.)

Allegations

5. First, the Complainant alleges that the Respondents unlawfully held back sending absentee ballot sets to absentee ballot applicants at eight locations that were designated as discretionary supervised absentee ballot locations, even when the Registrar and Town Clerk had not yet received the threshold number of 20 applications. This allegation will heretofore be designated as **Count One**.
6. Secondly, the Complainant alleges that the Respondents failed to give notice to the absentee ballot applicants in discretionary absentee ballot locations once those locations had been designated. This allegation will heretofore be designated as **Count Two**.³

³ In a third allegation, the Complainant asserted that when calculating whether 20 or more applications were received from the “same street address in a town” under General Statutes § 9-159q (l), the Respondents should have counted

COUNT ONE: Failure to Send Absentee Ballot Sets to Applicants at Locations Not Yet Legally Designated as Supervised Absentee Ballot Locations

7. As an initial matter, the Commission takes administrative notice that since the primary was to be held on September 16, 2015, the earliest date that absentee ballot sets could be mailed out was August 25, 2015, the 21st day before the primary.⁴ The Town Clerk was permitted to receive absentee ballot applications prior to that date, but could not send out the absentee ballot sets until the 25th at which point they she was required to send them out. The only exception to this requirement would apply to ballot sets assigned to voters registered in a legally designated supervised absentee ballot location under General Statutes § 9-159q and 9-159r.
8. An address becomes a legally designated as a supervised absentee ballot location in one of three ways: 1) when the location qualifies as an “Institution” under the definition in § 9-159q and such institution has 20 or more residents who are registered voters; 2) when the location qualifies as an “Institution” under the definition in § 9-159q, such institution has less than 20 residents who are registered voters, and either the registrars decide to hold supervised absentee balloting or the administrator of such institution submits a request for such; or 3) when more than 20 voters residing at the same street address file an absentee ballot application and the Registrar of Voters designates such location for supervised absentee balloting.
9. The third scenario, more commonly known as “discretionary” supervised absentee balloting, is what is at issue here.
10. In discretionary supervised absentee balloting, the Town Clerk must continue to mail all absentee ballot sets to applicants within the statutory period until such time as both of the following occur:
 - a. The Registrars of Voters designate the location as a supervised absentee ballot location under General Statutes § 9-159q (l); **and**
 - b. 20 or more applications are received from the same street address

each dwelling unit within a multi-unit building as a separate “street address.” Neither the Commission nor the Secretary of the State have interpreted § 9-159q so narrowly as to only allow supervised balloting when an individual dwelling unit reaches 20 requests. Such an interpretation would be in conflict with the plain meaning of “street address” in the statute, as well as the established use of “dwelling unit” in other parts of Title 9. See, e.g., General Statutes § 9-12. Such an interpretation would also create an absurd result in which nearly no address would qualify.

⁴ This is confirmed by the November 2015 Election Calendar issued by the Secretary of the State.

11. Once those two events occur, the Town Clerk must hold the absentee ballot sets and follow the supervised absentee balloting procedure enumerated in General Statutes § 9-159q.
12. In Count One, the Complainant alleges that the Respondents prematurely held onto absentee ballot sets in 8 locations, which they claim were designated as discretionary absentee ballot locations:
 - a. 285 Maplewood Avenue
 - b. 115 Washington Avenue
 - c. 376 East Washington Avenue⁵
 - d. 199 Yacht Street
 - e. 55 Shell Street
 - f. 280 Jewett Street⁶
 - g. 55 George Pipkin Way
 - h. 264 Union Street⁷

Investigation

13. In the City of Bridgeport approximately 3,200 absentee ballot applications were received and over 1,200 absentee ballots were actually cast in the September 16, 2015 Democratic Party Primary.
14. The investigation here reviewed all of the approximately 3,200 absentee ballot application records from the Office of the Town Clerk. Below are the findings for each address based on that review:
 15. 285 Maplewood Avenue
 - a. On or about September 4, 2015 285 Maplewood Avenue met the 20 absentee ballot application threshold.

⁵ The Complainant named "Harborview Apartments, 276 Washington Street" in her Complaint, but the Harborview Apartments are at 376 East Washington.

⁶ The Complainant named "280 Jewett Street" in her Complaint, but no such address exists in Bridgeport. Commission investigators reasonably surmised that 280 Jewett Street this is what she meant as this is a large multi-family building from which many absentee ballot applications were submitted.

⁷ The Complainant named "254 Union Ave" in her Complaint, but such address is not a multi-family residential building. Commission investigators reasonably surmised that 264 Union Ave is what she meant as this is a large multi-family building from which many absentee ballot applications were submitted.

- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

16. 115 Washington Avenue

- a. On or about September 3, 2015 115 Washington Avenue met the 20 absentee ballot application threshold.
- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

17. 376 East Washington Avenue

- a. On or about September 4, 2015 376 East Washington Avenue met the 20 absentee ballot threshold.
- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

18. 199 Yacht Street

- a. On or about September 4, 2015 199 Yacht Street met the 20 absentee ballot application threshold.
- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

19. 55 Shell Street

- a. On or about September 4, 2015 55 Shell Street met the 20 absentee ballot application threshold.
- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

20. 280 Jewett Street

- a. On or about September 2, 2015 280 Jewett Street met the 20 absentee ballot application threshold.

- b. No less than the first 19 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.

21. 264 Union Street

- a. On or about September 4, 2015 264 Union Street met the 20 absentee ballot application threshold.
- b. 3 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.
- c. 16 absentee ballot applicants from this address were held beyond the statutory period for mailing absentee ballot sets in General Statutes § 9-140.

22. 55 George Pipkin Way

- a. On or about September 8, 2015 55 George Pipkin Way met the 20 absentee ballot application threshold.
- b. 5 absentee ballot applicants from this address were mailed absentee ballot sets prior to meeting the threshold, as required in General Statutes § 9-140.
- c. 15 absentee ballot applicants from this address were held beyond the statutory period for mailing absentee ballot sets in General Statutes § 9-140.

Response

- 23. The Respondents here did not deny that in an attempt to be proactive, they began to compile a list of potential supervised absentee balloting locations, which was memorialized in a memorandum from Registrar of Voters Santa Ayala to Town Clerk Alma Maya.
- 24. They assert that as they had been criticized in the past for not being proactive enough about using their discretion to implement supervised absentee balloting, including in a complaint before this commission,⁸ they were sensitive to making sure that they were prepared to implement supervised absentee balloting in the larger buildings with high absentee ballot rates should the requests from those buildings go beyond the threshold.⁹

⁸ In *In the Matter of a Complaint by Jennifer Buchanan, et. al, Bridgeport*, File No. 2013-130B the Commission dismissed allegations that the Bridgeport Registrars of Voters should have conducted supervised absentee balloting at 52 George Pipkin Way and 376 East Washington Avenue.

⁹ The Respondents advised the Commisn through counsel that “[t]he elections officials were preparing in good faith to get ready --in a very small window of time—to provide for supervised absentee balloting at both mandatory and discretionary locations. The elections officials were rightfully trying to avoid further SEEC complaints from Bridgeport

25. In the aforementioned memorandum, Respondent Ayala instructed Respondent Maya to inform her when those addresses listed as “discretionary” met the 20 application threshold, but she did not instruct Respondent Maya in the memorandum to hold ballots for those addresses.

Analysis

26. Liability in this matter is fairly straightforward. In 6 of the 8 street addresses at which the Complainant alleged that the Respondents prematurely held ballots for supervised balloting, the evidence did not support this allegation. Respondents properly mailed out ballots for every application received until the 20 ballot threshold was met for each street address.
27. In 2 of the 8 street addresses at which the Complainant alleged that the Respondents prematurely held ballots for supervised balloting, the evidence did confirm that while the addresses did eventually reach the threshold, ballots were held for supervised absentee balloting from each location that should have been sent in the mail within the statutory period enumerated in General Statutes § 9-140.
28. The Commission takes notice that this Complaint was filed concomitantly with both this agency and with the Office of the Secretary of the State. On or about September 9, 2015 and in response to this Complainant’s concerns, representatives of the Secretary of the State visited the Respondents’ offices and requested that the Respondents rescind all discretionary supervised absentee ballot decisions and immediately mail all ballots being held for a supervised absentee balloting visit, including all permissibly held ballots as well as the 31 ballots for 264 Union Street and 55 George Pipkin Way. In deference to said request, the Respondents mailed all such ballots on or about September 10, 2015 and discontinued supervised absentee balloting in all discretionary locations.
29. Setting aside the question of the necessity of mailing all ballots held for supervised absentee balloting on or about September 10, 2015, the Commission notes that on that date the issue raised here concerning 264 Union Street and 55 George Pipkin Way was resolved by the Secretary’s intervention. Moreover, the Commission investigation of the data revealed that the return rate for ballots at such addresses was at or above the return rate townwide, indicating that the error by the Respondents did not appear to have any demonstrable effect on enfranchisement in those locations. Finally, the Commission takes notice that in the 2016, 2017, and 2018 primaries and elections, no similar issues were put before the

voters – such as was the case in the *Buchanan* Complaint – alleging that the elections officials should be performing supervised absentee balloting at certain locations.”

Commission in Bridgeport. Considering the aforesaid, the Commission will take no further action on Count One.

COUNT TWO: Failing to Give Notice of Discretionary Absentee Balloting

30. In her second allegation, the Complainant alleges that the Respondents failed to give notice to the absentee ballot applicants in discretionary absentee ballot locations once those locations had been designated.
31. The Complainant does not allege that the Respondents failed to communicate the date and time of the supervised absentee balloting to the administrator of the discretionary supervised absentee ballot locations. Rather, she asserts that *each voter* should have been individually notified.
32. However, as the Connecticut Supreme Court affirmed recently, while 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.” *Keely v. Ayala*, 328 Conn 393, 425 (2018) (affirming that the registrars were not required to directly provide any notice to residents of institutions or provide absentee ballot applications on the date absentee balloting is to occur). Cited recently in *In the Matter of a Complaint by Ramon Espinosa, Hartford*, File No. 2018-018.
33. “As such, as long as the administrator and the registrars agree on a date and time and such balloting occurs on that date and time, the statutes specify only that ‘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.’ General Statutes § 9-159q (g)” *Espinoza*, File No. 2018-018 at ¶ 28.¹⁰
34. Considering the aforesaid, the Respondents did not have a responsibility to inform each voter, as asserted by the Complainant.
35. Accordingly, Count Two should be dismissed.

¹⁰ Or, in the case of a primary, designees of the party-endorsed and challenge candidates. General Statutes § 9-159q (i)

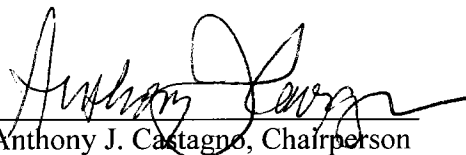
ORDER

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

Count One: No further Action

Count Two: Dismissed.

Adopted this 17th day of April, 2019 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission