

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

In the Matter of a Referral by East Hampton Town Clerk Sandra Wiebela

File No. 2017-077

**FINDINGS AND CONCLUSIONS**

The Referring Official, the Town Clerk for the Town of East Hampton at all times relative to instant matter, alleged a number of impermissible acts against Christine Avery in the course of supervised absentee balloting conducted at Cobalt during the November 2017 General Election.<sup>1</sup>

**Background**

1. The following facts are not in dispute.
  - a. The events in this matter concern the November 7, 2017 General Election held in the Town of East Hampton.
  - b. At all times relevant to the instant matter, Lori Wilcox and Stephanie Lee were, respectively, the Republican and Democratic registrars for the Town of East Hampton.
  - c. At all times relevant to the instant matter, Respondent Christine Avery was the Recreation Director at Cobalt Health Care and Rehabilitation Center (“Cobalt”).
  - d. At all times relevant to the instant matter, there were 25 registered voters at Cobalt, which qualified as an “institution” under General Statutes §§ 9-159q & 9-159r at which all absentee ballots were required to be executed using the supervised absentee ballot process enumerated in those statutes.
  - e. At all times relevant to the instant matter, Respondent Avery was the absentee balloting coordinator for Cobalt and was the person who informed all of the

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<sup>1</sup> 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. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

registered voters of the opportunity to vote via supervised absentee balloting, as well as collected and/or assisted on the five absentee ballot applications submitted by patients Cobalt ahead of the November 7, 2017 ballot.

- f. On or about November 2, 2017, the East Hampton registrars sent Republican Jim Swindal and Democrat Dennis Wall and to Cobalt Health Care and Rehabilitation Center to conduct supervised absentee balloting as the duly appointed designees of the registrars.
- g. Respondent Avery was present during the execution of all five of the absentee ballots submitted pursuant to the supervised absentee ballot process.

### **Allegations**

- 2. The Referring Official, the Town Clerk, alleges that the Respondent may have taken actions during the course of the supervised absentee balloting process that could be construed as attempting to disenfranchise one or more voters at Cobalt.
- 3. Generally, the Referring Official alleges that the Respondent took it upon herself to decide which patients at the facility had the capacity to cast a ballot and that she had specifically eliminated any patients diagnosed with dementia.
- 4. Specifically the Referring Official alleges that the Respondent specifically attempted to disenfranchise Cobalt resident Robert Nichols.
- 5. First she alleged that the Respondent improperly failed to give Mr. Nichols an absentee ballot application at the time she was making inquiries about absentee balloting around the facility. She alleges that this may have been improper as Mr. Nichols' daughter Cathy Sirois, a town employee, told her that Mr. Nichols wanted an absentee ballot.
- 6. The Referring Official alleges that Ms. Sirios ultimately obtained an absentee ballot application for Mr. Nichols and that Mr. Nichols executed his absentee ballot during supervised absentee balloting using the assistance of his wife, Lynne.
- 7. The Referring Official alleges further that on the supervised absentee balloting day, the Respondent attempted a second time to discourage Mr. Nichols from voting when the Respondent reminded Mr. Nichols right before the voting occurred that he had told her earlier that he did not wish to vote in the Municipal General Election and that Mr. Nichols reacted like she "had two heads."

8. Finally, the Referring Official alleges that the Respondent attempted again to disenfranchise Mr. Nichols when she called the Referring Official's office and "indicated that the ballot voted by Mr. Nichols 'should be pulled' because she did not feel that he was mentally qualified to vote the ballot and that his wife had assisted him."

**Law**

9. General Statutes § 9-159q provides:

(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.

...

(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.)

10. General Statutes § 9-159r provides:

(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. (Emphasis added.)

11. General Statutes § 9-159s provides:

*(a) The administrator of an institution, as defined in subsection (a) of section 9-159q, a residential facility for persons with intellectual disability licensed pursuant to section 17a-227, or a community residence, as defined in section 19a-507a, shall use his or her best efforts to provide written notice pursuant to subsection (b) of this section to any conservator or guardian appointed to manage the affairs of a resident of such institution, facility or residence pursuant to sections 45a-644 to 45a-663, inclusive, or sections 45a-669 to 45a-683, inclusive, at least seven days prior to the date any voter registration or voting opportunity is presented to the resident with respect to a primary, referendum or election. As used in this section, "voter registration" or "voting opportunity" includes, but is not limited to, the solicitation or completion of: (1) An application for admission as an elector; or (2) an absentee ballot, regardless of whether supervised absentee ballot voting will take place at such institution. The administrator of such institution, facility or residence shall also use his or her best efforts to provide written notice to any such conservator or guardian at least seven days prior to the date when the resident may be brought to a polling place to vote in person. The notification provisions of this section shall not apply when a member of the resident's immediate family provides the resident with an absentee ballot application or brings the resident to a polling place to vote.*

(b) Any such notice shall indicate that the resident is entitled to vote or register to vote unless the resident is determined incompetent to do so by a probate court, or unless the registrars of voters or their designees jointly conclude at a supervised voting session that the resident declines to vote the ballot or they are unable to determine how the resident desires to vote the ballot, as provided in subsection (g) of section 9-159q. The notice shall also specify that a resident who requires assistance to vote in accordance with section 9-264 by reason of blindness, disability or inability to read or write may receive assistance from a person of the resident's choosing.

(c) The administrator of any such institution, facility or residence may also provide such notice to a person with a power of attorney

for a resident of the institution, facility or residence. (Emphasis added.)

12. General Statutes § 9-364 provides:

Any person who, with intent to disenfranchise any elector, influences or attempts to influence by force or threat, bribery or corrupt, fraudulent or deliberately deceitful means any elector to stay away from any election shall be guilty of a class D felony.

### **Response**

13. The Respondent here was prompt and thorough in her responses, in which she generally denied the allegations and specifically addressed each in turn.
14. Regarding the allegation that she “eliminated” dementia voters, she strenuously denied that she would ever do any such thing and asserted that every patient who is a registered voter is offered the opportunity to vote by absentee ballot either personally or such notice goes to that patient’s legal conservator (per § 9-159s, above).
15. Specifically, the Respondent asserts that approximately a week before Election Day, she received approximately 15 blank absentee ballot applications from the East Hampton Registrar of Voters Office at which point she she went room to room and asked every (non-conserved) patient if they wished to vote and noted their answer on a checklist of patients’ names.
16. She asserts that only four patients expressed a desire to vote in the municipal election and that Mr. Nichols specifically stated that he did not wish to participate.
17. The Respondent included a copy of the checklist of patient’s names that she used when determining which patients expressed a desire to cast a ballot.
18. The Respondent further asserts that on the morning of November 2, 2017, the date the supervised absentee balloting was scheduled to occur, Mr. Nichols’ wife approached her and asked her what time voting was scheduled to occur and the Respondent informed her that Mr. Nichols had told her that he didn’t want to participate. The Respondent asserts that Mrs. Nichols stated that Mr. Nichols “always votes” and that she would ask her daughter to arrange for an absentee ballot application and ballot set be delivered for Mr. Nichols that



morning. The Respondent asserts that she did not press the matter any further with Mrs. Nichols.

19. The Respondent asserted that the registrars' designees conducted supervised absentee balloting in the rooms of each patient, with Mr. Nichols going last.
20. The Respondent asserted that along with the registrars' designees, she was in attendance for each ballot execution.
21. She asserted that in three instances she was asked to assist and did assist the voters in either reading the one referendum question on the ballot and/or filling in ovals when the voter had trouble holding a pen.
22. In the case of Mr. Nichols, the Respondent asserted that Mrs. Nichols joined the group for the execution of his ballot.
23. The Respondent does not deny reminding Mr. Nichols of his earlier declination before he executed his ballot.
24. The Respondent asserted that she assisted Mr. Nichols in reading both the referendum question as well as the town's official explanation of the question. She asserted that the Referring Official's allegation of Mr. Nichols' looking at the Respondent like she "had two heads" actually came from this moment, as Mr. Nichols appeared confused as to the referendum question—not, as alleged, in response to her reminder that he had earlier declined to vote that day.
25. The Respondent admits to some parts of the allegation concerning the telephone call after absentee balloting was complete.
26. The Respondent asserts that what she observed during Mr. Nichols' execution of his ballot troubled her so much that she called the Referring Official's office to relay what she observed and spoke with the Assistant Town Clerk.
27. Specifically, the Respondent asserts that she told Assistant Town Clerk that after Mr. Nichols had finished reading the referendum question, his wife then took the ballot from him and proceeded to execute it herself while referring to what appeared to her to be another ballot. She asserted that she told Assistant Town Clerk that she believed that Mr. Nichols did not have any time to read the choices of candidates and that Mr. Nichols' wife did not ask her husband any questions about any of the choices on the ballot and that at no point did Mr. Nichols make any marks on the ballot on his own.

28. The Respondent asserted that she said that she asked if this method was proper and was told that the Referring Official's office would "look into it."
29. The Respondent asserted generally that she did not believe that she did anything wrong, but in an abundance of caution she and Cobalt instituted new procedures to assure that no such future confusion might occur.
30. The Respondent forwarded a new "Voting Procedure Form" that was created in response to this matter and that each patient, personally or with an affirmed assistor, is now required to complete if they wish to utilize supervised absentee balloting for a primary or election.
31. The Respondent further noted that any execution of the "Voter Procedure Form" will be witnessed by at least two Cobalt employees going forward so that there is no future misunderstandings and/or disputes as to a (non-conserved) patient's expressed intent.
32. The Respondent also asserted that in the future, she would not be present in the room while patients executed their ballots, but would only escort the designees to each patient's room.
33. Finally, the Respondent stated that "I apologize if anything that was done on my part was wrong; I truly just thought I had the best interest of the voting process and the residents in mind."

### **Investigation**

34. As an initial matter, the Commission highlights that the Referring Official did not claim to have any first-hand knowledge of the events alleged and identified the sources of her information, whom the Commission investigators then interviewed.
35. Moreover, the Commission notes that the material facts here are largely undisputed other than the allegation that the Respondent had "eliminated" dementia patients.
36. The source of the allegation that the Respondent had "eliminated" dementia patients was an email from Republican Registrar Lori Wilcox to designee Jim Swindal in which Ms. Wilcox shared her notes from a telephone conversation she had with Donna Long, whom Ms. Wilcox consulted regarding doing supervised absentee balloting at Cobalt.
37. Ms. Long stated that she used held various election worker positions in East Hampton and other towns, but the reason Ms. Wilcox called her was because she was the supervised

absentee designee at Cobalt for 8 years, but that she stopped working after the 2016 election.

38. Ms. Long did not support the account in the Referral.
39. Ms. Long stated that she did not tell Ms. Wilcox (or the Referring Official) that the Respondent was eliminating dementia patients. She stated that she told Ms. Wilcox that she noticed that there were fewer absentee voters than in the past and that the Respondent told her that it was due to dementia.
40. Ms. Long made it clear that “I have no knowledge of staff keeping patients from voting.”
41. Finally, Ms. Long stated that the designees, Mr. Wall and Mr. Swindal, had experience as election workers in the past, but that in her experience with Ms. Wilcox and Ms. Brazal, the registrars, there was little or no training of the election workers.
42. Insofar as the statement about Mr. Nichols’ looking at the Respondent like she “had two heads” is relevant the investigation revealed that that statement was relayed to the Referring Official’s office directly from the Respondent and not from any third party

### **Analysis**

43. As noted above, most of the material facts here are undisputed.
44. The Respondent does not deny that she did not give Mr. Nichols and absentee ballot application.
45. The Respondent does not deny that she was present for the execution of each supervised absentee ballot, that she assisted on 3 of the 5 ballots, in whole or in part, or that she reiterated to Mr. Nichols at the time of the execution of his ballot that he had earlier declined.
46. The Respondent also does not deny contacting the registrars to question whether the manner in which Mr. Nichols’ absentee ballot was executed was improper.
47. Moreover, neither the Referring Official nor the Respondent deny that Mr. Nichols’ wife executed the ballot for her husband.
48. Turning to the question here, § 9-364 states that “[a]ny person who, with intent to disenfranchise any elector, influences or attempts to influence by force or threat, bribery or

- corrupt, fraudulent or deliberately deceitful means any elector to stay away from any election shall be guilty of a class D felony.”
49. As an initial matter, the basis of the allegation of “elimination” of dementia patients here was a 3<sup>rd</sup>-hand hearsay recollection of a conversation with Donna Long, was refuted during the investigation by Ms. Long, the primary source.
  50. Moreover, the allegations regarding the Respondent’s handling of Mr. Nichols’ absentee ballot here are materially undisputed. The only question here is whether the facts found rise to the level of “force or threat, bribery or corrupt, fraudulent or deliberately deceitful means.”
  51. Pursuant to the investigation, the Commission concludes that neither the evidence brought by either the Referring Official, nor found through the investigation establish that the Respondent’s actions displayed any intentionally disenfranchising intent towards Mr. Nichols.
  52. The Respondent’s initial marking of Mr. Nichols as a “no” was not in and of itself a illegally disenfranchising act.
  53. The Respondent provided evidence that she made a full accounting of each patient’s (or such patient’s conservator’s) expressed intent, including Mr. Nichols. The fact that she checked that Mr. Nichols as a “no,” alone, does not in and of itself support any allegation of “force or threat, bribery or corrupt, fraudulent or deliberately deceitful means”—it supports only that her records indicated a “no” for Mr. Nichols, but a “yes” for other voters.
  54. No evidence provided or found during this investigation indicates any particular motive for eliminating Mr. Nichols over the other patients such that it would call into question this fairly routine act of marking him as a “no.”
  55. The Commission also concludes that the fact that the Respondent called out Mr. Nichols’ prior declination just before he executed his ballot was also not a materially liable act. It was not unreasonable for the Respondent to be concerned that the involvement of Mr. Nichols’ daughter and/or his wife may have precipitated this change of mind.
  56. This concern was also reasonable when she reached out to the Referring Official’s office to express her apprehension that Mrs. Nichols had filled Mr. Nichols’ ballot.
  57. The concern was specifically reasonable, because Mrs. Nichols should never have been filing it out.

58. Normally, a voter may ask for and receive assistance in executing either an absentee ballot or at the polling place. Such assistance must be rendered only insofar as such voter has requested such assistance and such assistance must be rendered in a manner in which it is clear that the voter is directing the choices. See In the Matter of a Complaint by Linda Kuja, Montville, File No. 2017-080A (“The voter is and must remain the primary actor in the exchange. The assistor is simply there as a mechanism for recording the voter's own wishes due to the voters inability to do so him/herself.”)
59. However, in supervised absentee balloting, § 9-159q specifically enumerates that only the designees may render assistance.
60. Here, while there is a factual dispute between the Referring Official and the Respondent as to the degree of assistance that Mrs. Nichols provided, there is no dispute that Mrs. Nichols was the person providing the assistance, not either of the designees.<sup>2</sup>
61. Accordingly, insofar as the Respondent had a concern that Mrs. Nichols filled out the ballot for her husband—which no one disputes—the Respondent was entirely justified in bringing these concerns to the Referring Official. This act certainly did not rise to the level of an illegal attempt to disenfranchise Mr. Nichols.
62. Considering the aforesaid, the Commission concludes that the investigation did not reveal facts that arise to a finding that the Respondent had any intent to disenfranchise Mr. Nichols or any other voter at Cobalt.
63. Accordingly, this matter should be dismissed.

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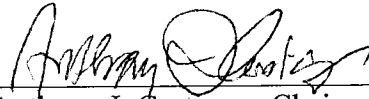
<sup>2</sup> Indeed, it's clear that the designees did not understand this rule, as it is undisputed that they also allowed the Respondent to provide assistance to 3 of the 5 voters, including Mr. Nichols.

ORDER

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

That the matter is dismissed.

Adopted this 21 day of August, 2019 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson  
By Order of the Commission