

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Linda Kuja, Montville

File No. 2017-080B

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Dana McFee and Christine Kutz, of the Town of Montville, County of New London, 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. The Complainant here alleges that the Montville elections officials failed to honor her husband Michael Kuja's right to designate her to assist him in executing his ballot on November 7, 2017 at the Fair Oaks/Community Center polling place in the Town of Montville.
2. General Statutes § 9-264, provides:

An elector who requires assistance to vote, by reason of blindness, disability or inability to write or to read the ballot, may be given assistance by a person of the elector's choice, other than (1) the elector's employer, (2) an agent of such employer, (3) an officer or agent of the elector's union, or (4) a candidate for any office on the ballot, unless the elector is a member of the immediate family of such candidate. The person assisting the elector may accompany the elector into the voting booth. **Such person shall register such elector's vote upon the ballot as such elector directs.** *Any person accompanying an elector into the voting booth who deceives any elector in registering the elector's vote under this section or seeks to influence any elector while in the act of voting, or who registers any vote for any elector or on any question other than as requested by such elector, or who gives information to any person as to what person or persons such*

elector voted for, or how such elector voted on any question, shall be guilty of a class D felony. As used in this section, “immediate family” means “immediate family” as defined in section 9-140b. (Emphasis added.)

3. General Statutes § 9-261 (e), the last subsection of the “Process of voting” statute, reads:

(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 area, and shall then register his or her vote in secret.*** Having voted, the elector shall immediately exit the voting booth area 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. *If any elector, after entering the voting booth area, 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.)

(Emphasis added.)

4. General Statutes § 9-236b, the Voter's Bill of Rights, reads, in pertinent part:

- a. (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:

- (1) Inspect a sample ballot before voting;
- (2) Receive instructions concerning how to operate voting equipment, on sample voting equipment before voting;
- (3) Cast a ballot if the voter is in line when the polls are closing;
- (4) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law;**
- (5) Vote free from coercion or intimidation by election officials or any other person;**
- (6) Cast a ballot using voting equipment that accurately counts all votes;
- (7) Vote by provisional ballot if the individual registered to vote and the individual's name is not on the voter list;
- (8) Be informed of the process for restoring the individual's right to vote if the individual was incarcerated for a felony conviction; and
- (9) Vote independently and in privacy at a polling place, regardless of physical disability.**

If any of your rights have been violated, you have the right to file an official complaint with the State Elections Enforcement Commission at (toll-free telephone number) or the United States Department of Justice at (toll-free telephone number). In addition, before leaving the polling place you may notify the moderator of the violation.” (Emphasis added.)

5. Registrars are responsible for training poll workers. General Statutes § 9-249 reads, in pertinent part:

(a) Before each election, the registrars of voters, certified moderator and certified mechanic shall instruct the election officials. Any provision of the general statutes or of any special act to the contrary notwithstanding, election officials shall be appointed at least twenty days before the election except as provided in section 9-229. The registrars, certified moderator and certified mechanic shall instruct each election official who is to serve in a voting district in which a voting machine is to be used in the use of the machine and his duties in connection therewith, and for the purpose of giving such instruction, such instructors shall call such meeting or meetings of the election officials as are necessary. Such instructors shall, without delay, file a report in the office of the municipal clerk and with the Secretary of the State, (1) stating that they have instructed the election officials named in the report and the time and place where such instruction was given, and (2) containing a signed statement from each such election official acknowledging that the official has received such instruction. (Emphasis added.)

Complainant's Allegations

6. In her Complaint, Mrs. Kuja alleged specifically as follows:
- a. that Mr. Kuja suffers from early onset Alzheimer's and as a result can no longer read, write, or use a telephone or computer;
 - b. that on Election Day November 7, 2017 they appeared together at the Fair Oaks School/Community Center polling place to cast their ballots;
 - c. that Mr. Kuja designated Mrs. Kuja to "fill out his ballot" and to "vote the Republican Party Line;"
 - d. that Mrs. Kuja began to fill out Mr. Kuja's ballot "as we stood together in the voting station" when Assistant Moderator Colleen Rix told her that "I could NOT write on his ballot."
 - e. that she explained to Ms. Rix that Mr. Kuja had special needs, but that Ms. Rix "was adamant that I stop;"
 - f. that Mrs. Kuja, upset, tore up their ballots and left with her husband, but as her husband was insistent on voting they returned and spoke to a woman who she later discovered to be Moderator Carla Chacho-Blanchard;

- g. that they had a discussion about ADA rights for persons with disabilities. She asserted to Ms. Chacho-Blanchard that her husband designated her to assist him and asked if it made a difference that she had Power of Attorney;
- h. that Ms. Chacho-Blanchard told her that Mr. Kuja could only use the AVS machine and that only the elections officials could assist him;
- i. that at the AVS machine, for each selection, Ms. Chacho-Blanchard asked Mr. Kuja "who do you want to vote for," but did not read the names to him.
- j. that he would not respond until Mrs. Kuja asked him "who do you want to vote for, Democrat or Republican?" and Mr. Kuja would respond "Republican;"
- k. that in one race (which may have been for Zoning Board of Appeals), up to two selections were possible, but that only one Republican candidate and one Democratic candidate were running.
- l. that Ms. Chacho-Blanchard told him "there are 2 people running for 2 spots, who do you want?" to which Mr. Kuja responded "give me 1 of each!"
- m. that Mr. Kuja just wanted to leave and that he would never have "split his ticket" and voted for a Democrat.
- n. that when she got home, she read about the assistance rights posted on the website of the Office of Protection and Advocacy and returned to the polling place to show the Respondent;
- o. that Ms. Chacho-Blanchard called and spoke to Republican Registrar of Voters Dana McFee who also she claims asserted that only the elections officials could assist her husband;
- p. that it was not until someone called "the State of Connecticut" (presumably the Secretary of the State; SEEC has no hotline record of this) who corrected Ms. McFee on his error;
- q. that after the call purportedly correcting their error, Mr. McFee apologized, "but that is not enough to make up for the injustice that was endured that night;
- r. that her husband's rights were taken away, that he did not vote in private and it was "a three ring circus show"

Commission Investigation

- 7. The individuals present at the polling place on the day in question responded promptly to the inquiry, including Moderator Carla Chacho-Blanchard, Assistant Registrar Colleen Rix, Assistant Registrar Jessica Bonin, and Montville

Republican ROV Dana McFee, who was not present, but who spoke with Mrs. Kuja on the date in question, as described above.

Colleen Rix – Assistant Registrar

8. Ms. Rix was the first person to speak to Mrs. Kuja about filling out her husband's ballot. She asserts that she was trained by the Montville Registrars that disabled voters could only be assisted by elections officials and not family members, which is why she approached Mrs. Kuja in the first place.
9. Ms. Rix confirmed that Mrs. Kuja almost left the polling place without voting but was convinced to return by Ms. Chacho-Blanchard so that Mr. Kuja could vote using the AVS system.
10. She also confirmed that she witnessed Ms. Chacho-Blanchard assist Mr. Kuja with the AVS machine in the manner alleged (and by so doing, Ms. Rix was also a party to Mr. Kuja's selections).
11. She also confirmed that the Complainant returned to the polling place with the OPA materials and that there was a telephone conversation with the Republican Registrar, Mr. McFee, but asserted that it was she who interacted with the Complainant, not Ms. Chacho-Blanchard, the moderator.
12. She asserted that:

I kept Mrs Kuja in the hallway and read over the paperwork with her. At that time I was made aware that due to the verbiage she had presented she was correct that she could have filled out his ballot for him. She was still very upset and I tried to calm her down explaining this was the way we were trained. We had a short discussion where I apologized many times. We then phoned Dana Mcfee to set up a time she could go in and speak with him personally. I even explained to Mrs Kuja that I was deeply sorry for the events that occurred but that I was so glad she was advocating because I felt the verbiage and training needed to be changed to further help and prevent this from happening again.

Jessica Bonin – Assistant Registrar

13. Ms. Bonin corroborated Ms. Rix's statements regarding the events that occurred at the polling place.
14. Regarding the training that they received, stated as follows:

During our trainings for Election Day we are taught all the rules of Election Day, from proper identification to voter's rights. As Assistant Moderators and Moderators, Colleen, Carla and I all receive additional training for assisting those with disabilities vote—including a special touch screen laptop that allows for the hearing impaired, vision impaired and others an adaptive way to vote. We've found with the filling in of bubbles on the ballots that this tool is particularly helpful for those with Parkinson's disease. In our training, we are also taught that while everyone that is disabled has the right to vote, they must fill out their ballot on their own OR ask an election official to assist them in making the vote (at this point we offer the computer as it is easier for many). In these instances, an election official can assist, but not a family member, caretaker, etc.

Moderator Carla Chacho-Blanchard

15. At all times relevant to the instant Complaint, Moderator Carla Chacho-Blanchard was a certified moderator, who, according to the records of the Secretary of the State, obtained her latest two-year certification on or about June 10, 2017 pursuant to the moderator training programs enumerated in General Statutes § 9-229.
16. In her recollection of the events, Ms. Chacho-Blanchard asserted in a written response to the Commission as follows:

[Colleen Rix] noticed that [Mrs. Kuja] had presented the id's and had taken both ballots into her custody and walked over to the privacy blinds to fill out said ballot. Her husband who was approximately six or more feet away was talking to the ballot clerk. [Colleen Rix] notified me about what she had witnessed and we went over to make sure everything was ok and if they needed assistance. [Mrs. Kuja] starts telling us in a rather loud voice No we are fine and that she was filling out their ballots.

We explained to her that the individual who is casting the vote needs to be present when the ballot is being filled out he was still approximately eight or more feet away when this was taken place and that she can assist him to fill the circles but only assist that she was not allowed to just fill out his ballot for him. She then started raising her voice even more stated that she was his power of attorney and that it was her right to do so. At that time she stated that her husband could not read or write I told her I would have to call our town hall to verify that she was able to do that I then called and talked to [Town Clerk and Head Moderator] Lorraine to clarify the situation and I was informed by the town that a power of attorney has no bearing in regards to voting and that she could be arrested for taking it upon herself to do so.

17. Ms. Chacho-Blanchard confirmed that at this point Mrs. Kuja ripped the ballots up and started insisting that they were discriminating against Mr. Kuja.

18. Ms. Chacho-Blanchard asserted that she

assured [Mrs. Kuja] that we take our job very seriously and follow the law to the letter to ensure anyone with or without a disability wanting to vote has the right to cast their vote, and that other options were available if he needed assistance.

19. Ms. Chacho-Blanchard then asserted that she was able to calm Mrs. Kuja down and convince her that the best course of action would be to have her husband use the AVS machine.

20. She asserted that after Mr. Kuja indicated that he couldn't read, Ms. Chacho-Blanchard offered to read the choices for him. She asserted that she had Colleen Rix present, as well as Mrs. Kuja, to verify that the choices that she was selecting for him were indeed the ones that he chose.

Response of Dana McFee

21. While Mr. McFee was only involved after the fact regarding the events that occurred at the polling place, and only over the phone, he offered that he went over the assistance guidelines in the Moderator's Handbook with Mrs. Kuja. He asserts that her recollection was incorrect and that he actually went over the Moderator's Handbook with her regarding assistance.

22. He was apologetic that Ms. Bonin and Ms. Rix, who were trained by his office, did not seem to appreciate Mr. Kuja's right to appoint his wife as his assister.

Analysis

23. Many of the substantive pertinent facts are largely not in dispute. Mr. and Mrs. Kuja entered the polling place with Mrs. Kuja carrying her and her husband's IDs in hand and checked in for both of them. She then took both ballots to the privacy booth and was marking them on her own while her husband stood a few feet away. Mrs. Kuja was told by Ms. Rix, then by Ms. Chacho-Blanchard that she could not fill out her husband's ballot for him. Mrs. Kuja became upset at this assertion and nearly left the polling place. Ms. Chacho-Blanchard convinced her and her husband to return and have him use the AVS system with the assistance of Ms. Chacho-Blanchard and Ms. Rix. At the AVS machines, Mr. Kuja requested mainly Republican candidates, except one race in which he instructed the moderator to "choose one of each."

24. The question for the Commission to answer is here is whether the Respondent Registrars of Voters met their responsibilities under General Statutes § 9-249 to train the polling place officials here.¹

25. In *In the Matter of a Complaint by Christine Halfar, Danbury*, File No. 2012-086, the Commission established that:

14. General Statutes § 9-249 (a) requires that registrars "instruct each election official who is to serve in a voting district in which a voting machine is to be used in the use of the machine and his duties in connection therewith. . . ." (Emphasis added.) The Commission concludes that the phrase "duties in connection therewith" plainly and unambiguously contemplates that registrars must instruct poll workers on all of the duties required of them. As such, the Commission concludes that a failure to adequately and/or completely train a poll worker on all of their duties is a violation of General Statutes § 9-249

(Emphasis in original.)

¹ Moderator Carla Chacho-Blanchard's liability will be addressed in a separate proceeding.

26. General Statutes § 9-264 establishes that a voter may chose anyone to assist him (barring a few types of individuals not relevant here) at the polls in filling out his ballot.
27. The Moderator's Handbook, which is the written advice of the Secretary of the State pursuant to General Statutes § 9-3, goes into more detail:

Any elector who requests assistance to vote by reason of blindness, disability, or limited English proficiency may be given assistance. An elector being assisted by the person of their choice may be accompanied into the voting privacy booth by such person. It is a criminal offense for the person assisting such elector to influence or deceive such elector or to divulge any information concerning how such elector voted. When assistance is requested, the Moderator must record the name of the person assisted, the person who assisted the elector and any other pertinent facts surrounding the request for assistance in the Moderator's Diary of Events.

See, Sec. A-9 and A-10

28. As an initial matter, Mr. Kuja was permitted to choose his wife to assist him. However, it does not appear that any elections official was informed of this designation. They simply proceeded into the polling place with Mrs. Kuja doing the speaking on her husband's behalf. By the eyewitness accounts of the three elections officials, Mrs. Kuja was witnessed filling out his ballot without him in the privacy booth with her.
29. Accordingly, the Commission finds that the elections officials were not in the wrong in approaching Mrs. Kuja and speaking with her about the issue.
30. The language in § 9-264 necessarily infers a level of control maintained by the voter in a situation in which such voter is receiving assistance at the polls. While the statute holds that the assister "may accompany the elector into the voting booth" the statute is very clear that the elector be there in the booth. "Such person shall register such elector's vote upon the ballot as such elector directs" implies an active exchange between the elector and his assistor. 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.

31. Indeed, the final language of the statute concerns itself with abuse by assistors in registering votes not indicated by the elector (or revealing such electors selections). It is possible that Mr. Kuja told her ahead of time how he wanted to vote and asked her to mark the ballot while he stood aside, but that is not a permissible method of assistance under the statute. Mr. Kuja needed to be there with his wife actively involved in the marking of his own ballot, if not actually physically making such marks.
32. Accordingly, insofar as the elections officials witnessed what they perceived to be an improper application of the assistance, they were not wrong in addressing the question with Mrs. Kuja and telling her that she could not fill out the ballot without her husband actively directing her how he wished to vote.
33. However, there is no dispute that both Ms. Rix and Ms. Bonin believed, due to their training, that Mrs. Kuja was not permitted to assist her husband at all, which is incorrect. Insofar as this misunderstanding stemmed from the training of the Respondent Registrars of Voters, the Commission concludes that they failed to meet their responsibility under General Statutes § 9-249 to adequately train Ms. Rix and Ms. Bonin.
34. 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.
35. Here, the elections officials clearly had an incorrect understanding of the assistance rules, one that could have led to a worse outcome than the one here. The failure of the Respondent Registrars to adequately train elections officials could have a cascade effect on Election Day, leading to multiple incidents.

36. The Respondent Registrars were prompt and forthright in response to this matter. They did not attempt to deflect from the issue and were apologetic that their training did not appear to adequately explain the voter assistance rules to the elections officials in Montville.
37. The Respondent Registrars have no prior history of similar acts or omissions
38. As stated above, the Respondent Registrars were apologetic and expressed remorse that their elections officials did not properly understand how assistance works at the polls. They have promised to revamp their training procedures to assure that all polling place officials trained by them, especially assistant registrars like Ms. Rix and Ms. Bonin, understand the rights and responsibilities under General Statutes § 9-264.
39. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent Registrars agree, that in lieu of a civil penalty the Respondent Registrars will enter into a consent agreement and henceforth order whereby they will be required to submit a training plan for elections officials for the November 2018 General Election to the SEEC within 30 days of the Commission's adoption of the Agreement.
40. The Respondents admit all jurisdictional facts and agrees 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
41. The Respondent waives:
 - 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.
42. 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 Respondent in any subsequent hearing, if the same becomes necessary.

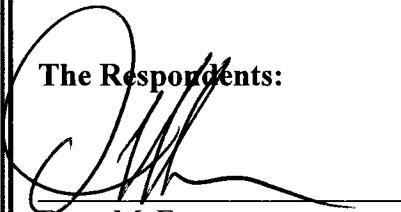
43. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

That the Respondents will henceforth strictly comply with General Statutes § 9-249.

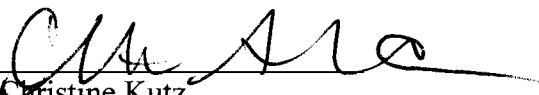
That the Respondents will submit a training plan for elections officials for the November 2018 General Election to the SEEC within 30 days of the Commission's adoption of the Agreement.

The Respondents:



Dana McFee
Montville, CT


Dated: 8-27-18



Christine Kutz
Montville, CT

Dated: _____

For the State of Connecticut:

BY: 

Michael J. Brandi, Esq.
Executive Director and General Counsel
and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 8/30/18

Adopted this _____ day of _____ of 20____ at Hartford, Connecticut

Anthony J. Castagno, Chair
By Order of the Commission

ORDER

That the Respondents will henceforth strictly comply with General Statutes § 9-249.

That the Respondents will submit a training plan for elections officials for the November 2018 General Election to the SEEC within 30 days of the Commission's adoption of the Agreement.

The Respondents:

For the State of Connecticut:

Dana McFee
Montville, CT

Dated: _____

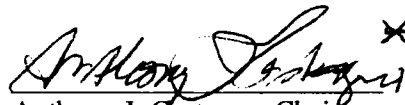
Christine Kurtz
Montville, CT

Dated: _____

BY: _____
Michael J. Brandi, Esq.
Executive Director and General Counsel
and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: _____

Adopted this 15 day of April of 20 18 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission

*conditional upon signatures
above received by 8/30/18

43. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.